Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/06119/2013

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Promulgated**
On 14 January 2014	**On 18 February 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

NOSA IDEMUDIA

Appellant

and

ENTRY CLEARANCE OFFICER - ABUJA

Respondent

Representation:

For the Appellant: Ms S Harrison, Halliday Reeves
For the Respondent: Mr N Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Nosa Idemudia, was born on 5 December 1994 and is a male citizen of Nigeria. The appellant had appealed to the First-tier Tribunal against the decision of the respondent dated 21 February 2013 to refuse him entry clearance to the United Kingdom as a visitor. The United Kingdom sponsor is the appellant's mother,

Harriet Egberanmwen Uyikpen (hereafter referred to as the sponsor). The First-tier Tribunal (Judge Shimmin) in a determination promulgated on 21 November 2013 dismissed the appeal.

2. The appellant's application was refused under paragraph 41(i), (ii), (vi) and (vii):

> 41. The requirements to be met by a person seeking leave to enter the United Kingdom as a general visitor are that he:
>
> **(i) is genuinely seeking entry as a general visitor for a limited period as stated by him, not exceeding 6 months or not exceeding 12 months in the case of a person seeking entry to accompany an academic visitor, provided in the latter case the visitor accompanying the academic visitor has entry clearance; and**
>
> **(ii) intends to leave the United Kingdom at the end of the period of the visit as stated by him; and does not intend to live for extended periods in the United Kingdom through frequent or successive visits; and**
>
> (iii) does not intend to take employment in the United Kingdom; and
>
> (iv) does not intend to produce goods or provide services within the United Kingdom, including the selling of goods or services direct to members of the public; and
>
> (v) Save to the extent provided by paragraph 43A, does not intend to undertake a course of study; and
>
> **(vi) will maintain and accommodate himself and any dependants adequately out of resources available to him without recourse to public funds or taking employment; or will, with any dependants, be maintained and/or accommodated adequately by relatives or friends who can demonstrate they are able and intend to do so, and are legally present in the United Kingdom, or will be at the time of their visit; and**
>
> **(vii) can meet the cost of the return or onward journey; and**
>
> (viii) is not a child under the age of 18.

(ix) does not intend to do any of the activities provided for in paragraphs 46G (iii), 46M (iii) or 46S (iii); and

(x) does not, during his visit, intend to marry or form a civil partnership, or to give notice of marriage or civil partnership; and

(xi) does not intend to receive private medical treatment during his visit; and

(xii) is not in transit to a country outside the common travel area.

(xiii) where he is seeking leave to enter as a general visitor to take part in archaeological excavations, provides a letter from the director or organiser of the excavation stating the length of their visit and, where appropriate, what arrangements have been made for their accommodation and maintenance.

3. Judge Shimmin found that the appellant had "not provided any basis credible to the required standard for challenging the assertions, analyses and conclusions in the ECO's refusal of entry clearance". The judge observed that the sponsor is a naturalised British citizen but he noted that the sponsor had entered the United Kingdom herself illegally and had been given indefinite leave to remain under a legacy policy. He described her immigration history as "very poor". The judge noted that the appellant was leaving paid work in Nigeria to go to university and regarded this as an indication that he had "no incentive to return on that account" [20]. The judge doubted that the documents produced by the appellant which indicated he had a place at the university were credible "bearing in mind that he had spent the last three years on a shoemaking apprenticeship rather than advancing his academic career". The judge also noted at [22] some inconsistency as to the evidence in relation to the appellant's accommodation. He found that there was "a considerable difference" between the length of time the appellant claimed to have lived at his address with his grandmother (five years) and his sponsor's estimate of the period (eleven years). This led the judge to doubt whether "the appellant really has settled accommodation to return to [in Nigeria]". Finally, the judge was not satisfied with the accommodation proposed for the appellant in the United Kingdom. The sponsor claims to live alone with her four children but a man named "Edwin" (whose surname or address the sponsor could not give to the judge) was looking after her youngest child in the waiting room during the Tribunal hearing.

4. There are some problems with the judge's analysis. It is not entirely clear why the fact that the appellant should have decided to change from his shoemaking apprenticeship to take up a place at university should cast doubt on the documents he had produced concerning his new academic career. Likewise, it was not entirely

clear why the judge considered it somewhat sinister (in the sense of having an impact on the appellant's appeal) that the sponsor's child was being looked after at court by a friend whose full name and address the sponsor could not provide. However, I find that most of what the judge has said is entirely valid. It was open to the judge to have regard to the circumstances and immigration history of the sponsor and, although he does not say so in terms, it is clear the judge was concerned that the sponsor (who had a very poor immigration history) is the mother of the appellant. The appellant is not yet 20 years of age. He appears to have had a manual job in Nigeria which he is giving up. The appellant is visiting his closest relative in the United Kingdom, a woman who herself has made a life here having had no legitimate reason for entering the country in the first instance. I consider that those are circumstances which the judge was entitled to consider and which he was entitled to find cast serious doubt upon the appellant's intention to return to Nigeria at the end of his proposed holiday. Matters were not improved for the appellant when he and the sponsor were unable to give consistent evidence about the length of time the appellant had spent living with his grandmother. The burden of proof was on the appellant and I am fully satisfied that the judge was right to conclude that the appellant had failed to discharge that burden by satisfying the provisions of paragraph 41(i) and (ii). As I have noted above, a number of the judge's findings carry less force but I do not consider that those findings have in any way "infected" the perfectly sound findings he has made elsewhere in the determination.

DECISION

5. This appeal is dismissed.

Signed Date 11 February 2014

Upper Tribunal Judge Clive Lane