



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/42966/2014  
IA/42967/2014  
IA/42968/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 October 2015**

**Decision & Reasons Promulgated  
On 29 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**MRS AGNES MONISOLA ONILUDE  
MASTER OPEYEMI AYOMIDE ONILUDE  
MISS FOPEFUNOLUWA OLUWAMAYOKUN ONILUDE  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Unrepresented

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Borsada (Judge Borsada), promulgated on 13 February 2015, in which he dismissed their appeals. The appeals were against the Respondent's decisions of 16 October 2014, refusing to vary their leave to

remain and to remove them from the United Kingdom under section 47 of the Immigration, Asylum and Nationality Act 2006. The Appellants are all citizens of Nigeria. The first Appellant is the mother of the second and third.

2. On 30 July 2014 the first Appellant made an application to the Respondent for further leave to remain as a Tier 1 Entrepreneur. She submitted supporting evidence with that application. The second and third Appellants applied as dependents of their mother. The Respondent refused the first Appellant's application on the basis that no points were awarded under Appendix A to the Rules. It was said that the advertising materials provided was inadequate and that the contract for services did not state the duration of the contract.

### **Decision of Judge Borsada**

3. The judge found that the advertising materials were in fact compliant with the requirements of paragraph 41-SD of Appendix A (see paragraph 7). The sole remaining issue for determination was therefore whether the contract satisfied the evidential requirements of paragraph 41-SD(iv)(1) of Appendix A in respect of the contract.
4. Judge Borsada concluded that the requirements were not in fact met. He found that the contract did not include the contact details of the other party, and that the contract did not state its duration (paragraph 7). On this basis, the appeal failed insofar as the Tier 1 Entrepreneur issue was concerned.
5. The judge specifically notes that the issue of the children's circumstances was not being pursued before him. In any event, he deals with Article 8 briefly, given the dearth of information provided. The appeals failed on this ground too.

### **The grounds of appeal**

6. The grounds focus on the issue of fairness. It is said that the Respondent should have exercised discretion in either seeking further evidence from the first Appellant or granting the application exceptionally. Article 8 was not raised.
7. In granting permission to appeal, Upper Tribunal Judge McWilliam observed in her decision of 31 July 2015 that Judge Borsada may have erred in failing to consider whether the evidence provided by the first Appellant did in fact satisfy the evidential requirements of paragraph 41-SD. Nothing is said about fairness here.

### **The hearing before me**

8. Although the first Appellant had been legally represented before the First-tier Tribunal, she was by now appearing in person. I took time to ensure

that she was aware of the nature of the proceedings. It was clear to me that she was a well-organised individual, and fully able to present her case. A skeleton argument (prepared with assistance of a friend) was submitted on her behalf. Mr Whitwell provided myself and the first Appellant with the decisions in Shebl (Entrepreneur: proof of contracts) [2014] UKUT 00216 (IAC) and Sabir [2015] EWHC 264 Admin, these having been mentioned in the grant of permission. He also produced a copy of HC532, which introduced relevant changes to the evidential requirements of paragraph 41-SD.

9. It was noted at paragraph 9 of Judge Borsada's decision that the Appellants' representative had sought to withdraw the appeals of the second and third Appellants at the hearing because they should have been dependents on the first Appellant. For whatever reason, their appeals remained live, and are before me now. The first Appellant and Mr Whitwell agreed that I should deal with them.
10. The first Appellant confirmed that the contract in the papers was the only one provided in support of the application (see D1 of the Respondent's bundle and 31 of the Appellant's bundle). She accepted that the duration of the contract had accidentally been omitted from section 4.1 of the document. In respect of the other party's contact details, she said that the company did not have a landline or email address. A mobile telephone number had existed, but this was not required by paragraph 41-SD(iv)(1) (d). The address of the other party was in fact included in section 7.1 of the contract. Alternatively, she submitted that a Barclays Bank letter dated 1 July 2014, provided with the application, was enough to satisfy paragraph 41-SD(iv)(2).
11. Mr Whitwell submitted that the contract did not contain all of the required information and therefore the requirements of paragraph 41-SD were not met. The duration of the contract was not stated. It was not clear what the address stated in section 7.1 of the contract referred to, it being a section on restraint of trade. The Barclays letter did not assist the first Appellant because it did not show trading, but only when the business account was opened. In terms of fairness, the omissions were of a substantive rather than a formal nature. As the Respondent's initial refusal was based on multiple grounds, there was no requirement to contact the first Appellant.
12. The first Appellant briefly replied by saying that the bank letter was sufficient and that the contract only had minor omissions. She did not seek to say anything about Article 8.

### **Decision on error of law**

13. I have concluded that there are no material errors of law in respect of Judge Borsada's decision.
14. The simple fact is that the sole contract provided by the first Appellant did not contain its duration. Section 4.1 is the appropriate location for the

duration to have been included, but the first sentence reads, "This agreement shall be effective as of 6 July 2014, and shall continue in full force and effect for \_\_ consecutive months." The judge did not overlook any other evidence which might, on a common sense view, have verified the duration in any event. The judge was entitled to conclude that the requirement of paragraph 41-SD(iv)(1)(d) of Appendix A was not met.

15. In respect of the contact details of the other party to the contract, the only reference to any form of address other than that of the first Appellant's company is to be found in section 7.1 of the document. This relates to a restraint of trade clause. The address stated therein is not expressly linked to the other party to the contract. There was no other evidence, as far as I can see, to establish such a link. Having read the Record of Proceedings from the hearing before Judge Borsada and the witness statement contained in the first Appellant's bundle, I can see no reference to any explanation by way of evidence or submissions as to why or how the address in section 7.1 referred to the other party. The judge was fully entitled to find as he did on this issue.
16. The two cases of Shebl and Sabir do not in fact assist the first Appellant. In respect of Shebl, the present case is not one in which no single contractual document has been provided: it has. In respect of Sabir, I note the observation of the Deputy High Court Judge in paragraph 36 of her judgment that the requirement to provide a physical address for the client was a sensible one.
17. The Barclays Bank letter of 1 July 2014 takes the first Appellant's case no further. Although the judge did not refer to it, it is clear to me that the letter was not evidence of trading for the requisite period, but simply confirmation of the opening of the business account. Therefore the judge made no material error here.
18. There is then the issue of fairness. From what I can see the point was not argued before Judge Borsada. It was not in the original grounds to the First-tier Tribunal. It featured for the first time in the grounds of appeal to the Upper Tribunal. In the circumstances, I find that the judge did not err in failing to address a matter that was simply not put to him, whether by evidence or submissions.
19. In the event that I was wrong about that, any error in failing to deal with the issue was not material to the outcome of the appeal. It is right that the Respondent's concerns over the advertising materials was found by Judge Borsada to be misplaced. It is also right that on its face, the omission in section 4.1 of the contract appears fairly obvious in the sense that a figure had not been inserted into the appropriate space. However, the carelessness of the first Appellant in making this omission was compounded by the failure to include express reference to the physical address of the other party to the contract. What is said in section 7.1 is, as I have observed earlier, obscure and insufficient. Thus, whilst if it were

only the duration omission I might have had more sympathy to the first Appellant's cause, the additional omission of required information leads me to conclude that the Respondent was under no duty of fairness by virtue of paragraph 245AA(b) of the Rules or otherwise, and the judge did not materially err in failing to consider the point.

20. Article 8 has not been raised as a challenge to the judge's decision.
21. The first Appellant's appeal to the Upper Tribunal fails and the decision of Judge Borsada therefore stands. The same applies to the appeals of the second and third Appellants.

### **Additional comments**

22. It transpired at the hearing that the first Appellant's husband had had an appeal dismissed by the First-tier Tribunal in a decision promulgated on 19 August 2015. She appeared to be unaware of this, as did her husband, who attended the hearing before me. A copy of that decision was provided to them by Mr Whitwell. It is a matter for them as to what action if any to take in respect of that decision. Further, as I understand it, the first Appellant could make a new Tier 1 application provided this occurs within twenty eight days of her appeal to the Upper Tribunal being finally determined. That too is a matter for her.

### **Anonymity**

23. I make no direction.

### **Decision**

**The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.**

**The Appellants' appeals are dismissed.**

**The decision of the First-tier Tribunal stands.**

Signed

Date: 24 October 2015

H B Norton-Taylor  
Deputy Judge of the Upper Tribunal

### **TO THE RESPONDENT FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date: 24 October 2015

Judge H B Norton-Taylor  
Deputy Judge of the Upper Tribunal