



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

Appeal Number: OA/09669/2014  
OA/09667/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 July 2015**

**Determination Promulgated  
On 16 July 2015**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA**

**Between**

**MOGBONJUBOLA IDOWU KINGSLEY-EMU  
CHIDER ROSAMOND IBITOMI KINGSLEY-EMU  
(anonymity direction not made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Ms Sujad, Solicitor

For the respondent: Ms I Sherwood, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant in this appeal is the Secretary of State for the Home Department. The appellant are nationals of Nigeria born on 29 August 1962 and 2 April 2000 respectively. I shall however, for the sake of convenience, refer to the parties as they were referred to before the proceedings at the First-tier Tribunal.
2. The respondent appealed to the Upper Tribunal against the determination of First-tier Tribunal Judge AJ M Baldwin dated 20 April 2015 allowing their appeals against the decision of the respondent dated 29 July 2014 cancelling the

appellants leave on the basis that the respondent was satisfied that there were counterfeit stamps in the passports which had not been proved by the respondent.

3. First-tier Tribunal Judge Frankish granted the respondent permission to appeal stating that the respondent had failed to satisfy the burden of proof in respect of objections under paragraph 321 and in doing so, he completely overlooked a bundle that the respondent had filed under s108. The Judge states that if the grounds of application are made out, arguable error arises. The respondent therefore at the second stage consideration must demonstrate that those documents were filed averred in the application.
4. The First-tier Tribunal Judge found that by the end of the hearing it was no clearer why the respondent suspected the Ghanaian stamps in the first appellant's passport were false or why Mr Ayel ticked the box he did on the forgery assessment form.
5. The respondent's grounds of appeal state the following. The appellants were refused leave to remain under paragraph 321 (a) of the Immigration Rules. The respondent served a bundle in compliance with s108 of the 2002 Act. Although reference is made at paragraph 5 of the determination to the respondent's bundle, it is clear that the Judge did not have regard to this particular bundle. As a result the Judge's decision was not based on the full range of evidence behind the decision. Therefore the Judge's conclusion is unsafe and the decision will need to be remade.
6. The appellant's Rule 24 response states the following which I summarise. The grounds of appeal advance no material arguable errors of law that would be considered capable of having a material impact on the outcome of the appeal and is merely an attempt by the respondent to re-argue and submit further evidence under s108 of the 2002 Act for her failed decision. The Judge gave himself the appropriate self-direction and properly considered the evidence before him and it was properly open to him to find that the respondent has failed to discharge the burden of proof to the requisite standard to show that the appellant's Ghanaian stamps are forged under s108 of the 2002 Act. The appellant's representative enquired from the respondent before the hearing whether he will be making an application under s108 but the respondent replied that he is only arguing the case and he was not instructed to argue s108. This was also mentioned at preliminary hearing in which the respondent maintained his decision that he is not making an application under s108.
7. At the hearing, the representatives of the parties presented submissions on whether the determination of the Immigration Judge involved the making of an error on a point of law.
8. Ms Sujad said in her submissions that she was present at the previous hearing and The Home Office Presenting Officer said she is not making a s108 application. She said that the Judge did not have before him the fraud report which has been produced by the respondent today at the hearing. She said that the Judge only had a form where the fraud re-expert Mr Ayel, ticked the box he did on the forgery assessment form but there were no explanation because the full report was not before the Judge.

9. Miss I Sherwood said in her submissions said she is not able to comment why the Home Office presenting officer did not make of s108 application but nevertheless said that the determination is a sound and the Judge made appropriate findings.
10. It is not clear why the respondent did not make an application pursuant to s108. It would appear that the s108 report was not before the Judge and therefore he cannot be criticised for not taking it into account and was entitled to say under the circumstances that no reasons have been advanced by the respondent that the stamps in the appellant's passports are counterfeit.
11. At the hearing the report was provided that it gives clear reasons for why the stamps in the appellant's passport are deemed to be counterfeit. I found therefore that the Judge's determination can no longer stand because having had sight of the report, it was proper that the matter be considered again to make proper findings on the forgery report.
12. I therefore set aside the determination.
13. Mr Sujad on behalf of the appellant said that she would like an opportunity to provide independent expert evidence about Ghanaian immigration stamps and an opinion whether the stamps in the appellant's passports are counterfeit. She asked that I remit the appeal to the First-Tier Tribunal and allow the appellant the opportunity to provide expert evidence to counter that of the respondent's expert evidence. In the interests of fairness, I was of the view that the appellant's should have this opportunity given that the consequences of a finding of fraud would have substantial consequences for the appellants.
14. I therefore direct that the appeal be remitted to the First-tier Tribunal and be placed before any Judge other than First-tier Tribunal Judge A.J. M. Baldwin to be heard again on the first available date.

**Decision**

The appeal be remitted to the First-tier Tribunal

Dated this 14<sup>th</sup> day of July 2015

Signed by

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A Deputy Judge of the Upper Tribunal  
Mrs S Chana