



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/16447/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 19 May 2017

Promulgated

On 19 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**MS OLUBULNI FUMMILAYO OGUNRINDE
AKA MS OLUBULNI FUMMILAYO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Al-Rashid of Counsel instructed by David A Grand Solicitors

For the Respondent: Mr P Nath, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Mulholland sitting at Taylor House on 12 September 2016. The Appellant had appealed against the Respondent's decision to refuse him Indefinite Leave to Remain based on the 20 year long residence Rules. Paragraph 276 and other grounds were rejected. The Judge had concluded that there was insufficient evidence and she set out in some detail why she thought the Appellant's account could not be believed.

2. Permission was sought on various grounds which were succinctly set out. Permission to appeal was granted by First-tier Tribunal Judge Kelly by way of a decision dated 20 April 2017 when it was said at paragraph 2:

“It is arguable, as the applicant contends, that the Tribunal erred in law by failing to (i) have regard to relevant documentary evidence, (ii) make a specific credibility finding in relation to the uncorroborated testimony of a supporting witness, (iii) give reasons for not accepting the appellant’s explanation for the absence of documentary evidence for 1998/99, (iv) consider the evidence (including that of her General Practitioner) in the round rather than compartmentally. Permission to appeal is accordingly granted.”

3. In the submissions before me today Mr Al-Rashid said that he had had the opportunity to have a discussion with Mr Nath and that there was a measure of agreement. The position, in particular in respect of Nationwide Bank statements, was highlighted. It was said that the Judge had noted at paragraph 4 of her decision that,

“I have considered the appellant’s bundle which consists of her witness statement, witness statement of Kasimu Lawal, letter from Dr Chaudhry (locum GP) 3 September 2013, certified duplicate Nationwide statements for the period from 2000.”

whereas in her findings of fact section at paragraph 16 the judge said:

“The appellant has produced duplicate statements from the Nationwide Building Society. These were submitted with the application form however were not certified and accordingly the respondent refused to consider them. The appellant tries to distinguish between ‘duplicates’ and ‘copies’ however I am satisfied that they are not originals and as such require certification. I am not prepared therefore to take these statements into account as they are not certified...”.

4. It has been explained by Mr Al-Rashid, who also appeared before the First-tier Tribunal Judge that a bundle of documents was relied upon and that had included the certified duplicate bank statements. I have seen Mr Al-Rashid’s copy of that bundle, as has Mr Nath. It is very clear from the documents that there is indeed an endorsement on them in the bottom right hand corner of each. There are some 93 pages and each page is similar. Mr Nath agrees that in the circumstances, if this bundle was indeed before the Judge, (there is no doubt that it must have been firstly because Mr Al-Rashid of Counsel says it was but in any event the Judge herself at paragraph 4 of her decision refers to it) then it indeed was an error of law for the Judge to have made the findings that she did. I therefore agree with both parties that the Judge did materially err in law. That is because, on one hand she had the certified copies of the Nationwide Bank account statements, but on the other she then said that they were not in front of her. I note that the Judge sought to make an

alternative finding at paragraph 16 but in my judgment the damage was done. As a consequence it means it is not necessary for to consider the other grounds of appeal which have also been raised because this particular aspect shows a fundamental deficit in the findings of the Judge such as to mean that the whole decision is infected and thereby flawed.

5. I canvassed with the parties as to the appropriate way forward having found that error of law. Mr Al-Rashid was initially of the view that there could be a further consideration of the case before me today. Mr Nath was of the opinion that the appropriate place for rehearing was at the First-tier Tribunal. In my judgment, in view of the other findings made by the Judge including references that the Tribunal will be assisted by having other evidence, then the appropriate course therefore is for there to be a *de novo* hearing before the First-tier Tribunal. That will enable the Appellant, if so advised, to produce such other evidence as she considers necessary and indeed to enable her to present her case once again to the First-tier Tribunal. The whole of the decision of the First-tier Tribunal is set aside. There will be a rehearing and there will be further directions from the First-tier Tribunal at Taylor House.
6. I note for completeness sake that the Appellant's bundle was not before me and was not in the Upper Tribunal file, but that is not unusual. It may well be that that file is elsewhere but in any event, it appears Mr Al-Rashid has copies of the Appellant's bundle and no doubt that can be produced in due course at Taylor House.
7. For the reasons outlined I allow the Appellant's appeal and I remit the matter to the First-tier Tribunal.

Notice of Decision

There is a material error of law in the First-tier Tribunal's decision and is therefore set aside.

There shall be a rehearing at the First-tier Tribunal.

Signed

Date: 19 May 2017

Deputy Upper Tribunal Judge Mahmood