

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

**AN APPLICATION BY MICHAEL ODUNNAYO AJAYI
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**APPLICATIONS BY VEPKHVIA IASHVILI AND SALOME MTIBELASHVILI
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

WEATHERUP J

MICHAEL ODUNNAYO AJAYI

[1] The first application is for leave to apply for judicial review of decisions of the Immigration authorities of 2 September 2007 that the applicant is an illegal entrant to the United Kingdom and that directions will be issued for his removal from the UK. Mr Stockman appears for the applicant and Ms Murnaghan appears for the proposed respondent, the Immigration authorities.

[2] The applicant is a Nigerian national born on 27 March 1967 and he travels on a Nigerian passport. On 10 October 2003 he applied for and obtained from the British High Commissioner in Ghana a multiple entry visa to the UK for five years, being valid until 10 October 2008. He has lived in Ghana since about 2000. He left Ghana on 14 August 2007 to visit the UK and he arrived in the UK on 15 August 2007. He had a return ticket to Ghana for 15 September 2007.

[3] After he arrived in the UK he travelled to Germany on 17 August to visit Düsseldorf and the applicant states that while he was in Germany he decided that he would visit his sister in Northern Ireland when he returned to the UK. His sister, he understood, was a student at the University of Ulster at Jordanstown and he had not seen her for some eight years.

[4] While he was in Germany the applicant asked a friend to book an air ticket from London to Belfast on a Visa card and this was done on 20 August 2007. When

the applicant returned to London from Düsseldorf a further booking was made on 1 September for a return flight from Belfast to London. The applicant arrived in Belfast on Sunday 2 September at 11.40 am and at the airport he was questioned by Immigration officials. Interview notes are available of that interview and record that he was interviewed between 1325 and 1345 on 2 September 2007.

[5] I refer only to some of the questions and answers that appear in the interview notes. He was asked if he wanted to speak to anyone before he was questioned or whether he wanted a legal representative or adviser and he said that that was not required. He was asked what he had said to the Immigration Officer when he arrived in London and he replied that he had told him that he was on holiday for about four weeks and that he was going to be staying with a friend in Dartford in Kent. The interview notes continue:

“Q. What are you doing here in Belfast today?

A. I’m going to visit my sister.

Q. Where does she live?

A. I don’t know.

Q. How are you going to get to see her if you don’t know where she lives?

A. She’s supposed to send someone to pick me up.”

“Q. Have you ever been to see your sister before?

A. No.

Q. Who is the person that has come to pick you up?

A. It was my brother-in-law.

Q. Is he taking you to see your sister?

A. I don’t know. Maybe he has come to take me to a hotel or something. My sister is in school.

Q. Your brother-in-law has told us that he lives in Dundalk and that he has come to pick you up and take you to stay with him, how do you explain this?

- A. I don't know about this. As far as I know my sister is studying at the University of Ulster.
- Q. Your brother-in-law has told us that you have visited her previously in the Republic of Ireland, why has he said this?
- A. I haven't been there.
- Q. When was the last time you spoke with your sister?
- A. Last week.
- Q. What did you say to her?
- A. I told her I was coming to Belfast for about a week.
- Q. Are you aware you need a visa to enter the Republic of Ireland?
- A. I am not going to the Republic of Ireland."

[6] The above exchanges are selective and there were others questions and answers interspersed between those set out above. It is apparent from the exchanges that the Immigration Officers had also interviewed the applicant's brother-in-law. There are notes of that interview and the brother-in-law's name is Lekan Dipo Ibilola. The exchanges with the applicant's brother-in-law include -

- "Q. Why have you travelled to Belfast International Airport?
- A. My brother-in-law. I have come to collect him.
- Q. What is his name?
- A. Michael Ajayi.
- Q. Where are you going to take Michael?
- A. To visit my wife, his sister, Fola Mary Ibilola, in Dundalk, Republic of Ireland.
- Q. When did you make these arrangements?

A. My wife and Michael spoke last week to make the arrangements for today.

Q. How many times has Michael been to Ireland to visit you?

A. Once.”

[7] The grounds of judicial review challenge the finding that the applicant was an illegal entrant and further, in reliance on Article 5 of the European Convention, contend that there has been a breach of the right to liberty by the detention of the applicant on the basis that he intends to enter the Republic of Ireland. Further, there is an objection to the examination of the applicant on the basis that he had lawful leave to enter the UK. Two further grounds which are not any longer in issue relate to a waiver of rights in relation to seventy-two hours notice of directions and the policy regarding deferral of removal in the face of judicial review proceedings.

[8] The essential ground concerns a challenge to the finding that the applicant is an illegal entrant. This issue was considered in Babatunde Aiyegbusi’s Application [2007] NIQB decided on 29 March 2007. From the House of Lords decision in Khawaja v Secretary of State for the Home Department [1984] 1 AC 74 a number of propositions may be stated in relation to those who seek entry into the UK:

1. There is authority to detain and remove a visa holder if that person is an illegal entrant.
2. The Immigration authorities must establish to the highest degree of probability that the applicant in question is an illegal entrant.
3. The applicant may become an illegal entrant if he is guilty of deception in relation to his United Kingdom visa.
4. There is no duty of candour on the part of an applicant. However, an applicant must not mislead the authorities on a material fact and that may occur either expressly on his visa application or in communication with Immigration authorities or by conduct or by silence coupled with conduct.

[9] The application of Khawaja was considered by Girvan J in the case of Udu, Nyenty and Harrison’s Applications [2005] NIQB 81. It was held that the first two applicants had not practised deception but it was found that the third applicant had practised deception and therefore was an illegal entrant. Udu was a native of

Nigeria who had a multiple entry visa to the UK and a multiple entry visa to the US. He was married with three children and one of his sons had been born in the US, one had been born in Dublin and a daughter had been born in Nigeria. He and his wife travelled in various directions between Nigeria, the UK and the US and in the course of these journeys Udu was detained by the Immigration authorities in Belfast at a time when his wife and children were in Dublin. Despite suspicions about why he had come to Northern Ireland and his links with family in the Republic it was not found that he had practised any deception.

[10] Nygenti was from Cameroon and he had a visitor's visa for the UK to attend a training course in Wales in 2004. He travelled to Belfast and was detained by Immigration Authorities who discovered that he too had family and friends in Dublin. Again despite suspicions about why he had come to Northern Ireland and his links with family and friends in the Republic it was not found that he had practised any deception.

[11] Harrison was a Nigerian with a multiple entry visa. He arrived in London and flew to Belfast and was detained at the airport. He indicated to officers that he was on vacation and he was staying at a certain address in London and that his wife had just finished law school and was going to the Bar in Nigeria. However, it later transpired and the applicant admitted that he had entered the UK with his wife, who was eight months pregnant, and she had travelled to the Republic where she had given birth to a child. It became clear that Harrison's intention had been to enter the UK with his wife so that she would travel to the Republic where the child would be born, the child would acquire Irish citizenship and Harrison would join his wife and child at a later date. He was found to have practiced deception and to be an illegal entrant.

[12] In Babatunde Aiyegbusi's Application the applicant arrived in Northern Ireland and questions arose about his links with the Republic. Investigations disclosed that he had made an application for a visa in which he had disclosed that he had a wife and children in Nigeria, but further enquiries revealed that he had two wives. One wife was in the Republic with some children and the other wife was in Nigeria with other children. It transpired that the applicant had two wives and five children and when he was asked about his family he declared one wife and three children and omitted reference to a second wife and a further two children. He had only disclosed the Nigerian family for the purposes of his visa application. It was held that the visa application form was misleading as there had been a deliberate omission and this omission had been misleading in a material respect.

[13] Ms Murnaghan for the proposed respondent refers to R(Zahide Awan) v Secretary of State for the Home Department [1996] Imm AR 354. The applicant was a citizen of Pakistan and had come to the UK under a visitor's visa. The applicant obtained the entry visa with the intention that she would visit the UK for business purposes and also to see her son. However, after she had obtained her entry visa

and because of the circumstances in Pakistan, she formed the view that she might stay in the UK for longer because of the dangers and problems that she was facing in Pakistan. When she arrived in the UK and spoke to the officer at Immigration she did not actually disclose that she was considering the possibility of staying longer because of the threat to her life in Pakistan. The Court found that she was obliged to reveal her true intentions at entry. The applicant had obtained her entrance visa on the strength of her representation that she was visiting for business reasons and to see her son. However, the stated intentions were “very far from representing the whole of her reasons for coming to this country”. Buxton J concluded:

“In my judgment it was clearly incumbent on her to make the change of circumstances clear when she arrived in this country. The presentation of a passport or the presentation of an entry clearance visa that has been formulated on the basis that no longer persists or no longer represents the totality of a person’s intentions or possibilities is and it is clearly held by the authorities to be an act of deception under the guidance given in Khawaja.”

[14] I agree with and adopt the approach of Buxton J. To the propositions set out above as arising from Khawaja I would add the following. While there is no duty of candour it is nevertheless the case that if a visa is obtained on specified grounds and the applicant intends to enter the UK for alternative or additional reasons there is a duty to disclose the full grounds for entry into the country and it is deception to impliedly represent that there has been no change of circumstances to the specified grounds of entry.

[15] The application of this proposition in the context of the present case is as follows. To obtain an entry visa for, say, tourism in the UK and then to present to the UK Immigration authorities, when it was the undeclared intention on both occasions to use the entry visa as an opportunity to travel to Northern Ireland and hence to the Republic of Ireland, is a material deception. The stated reason for entry does not represent the totality of the reasons for entry to the UK. Similarly, if a visa is obtained for a stated purpose and the visa holder later forms an intention to use the entry visa for alternative or additional purposes, that change of circumstances must be disclosed when the visa holder presents to Immigration officers.

[16] The proposed respondent contends that the applicant obtained a visa to visit the UK and intended not only to visit the UK, but to travel to Northern Ireland as a means of entering the Republic. The evidence for that intention is said to be that of the applicant’s brother-in-law who had arrived to collect the applicant and take him to the Republic to visit the applicant’s sister. Further, the applicant’s brother-in-law stated that the applicant had visited his sister in the Republic on one previous occasion.

[17] The applicant disputes both assertions. He states that he was visiting his sister who he thought was a student at the University of Ulster, that he did not know where she lived and that he did not intend to visit the Republic. He had promised his father that he would visit his sister and he had spoken to his sister the previous week to make arrangements for the visit.

[18] I have no reason to reject the brother-in-law's statements in relation to his presence at the airport. I am satisfied that the applicant practised deception. When he presented his passport and his visa in London on 15 August 2007 he impliedly represented that he was entering the UK as a visitor, being the basis on which he obtained the visa, whereas I am satisfied that his intention was to travel to the Republic as his brother-in-law has declared. He must have formed the intended to visit his sister before he arrived in the UK if he made that promise to his father, even if he made the arrangements with his sister after he arrived in the UK.

[19] The applicant's true intentions were a material consideration to his entry to the UK on 15 August. I am satisfied that on that date he had the intention to use his visa to travel to Northern Ireland to gain entry to the Republic. He impliedly represented that he was entering the UK as a tourist in the UK. He failed to disclose his additional intention to use his visa to go to Northern Ireland and to enter the Republic.

[20] In those circumstances I am satisfied that the applicant practised deception in relation to his visa by failing to disclose his full intentions on entry to the UK on foot of the visa and that that was a material matter to his entry to the UK and that he is an illegal entrant.

[21] The applicant relies on the right to liberty under Article 5 and as I am satisfied that the applicant is an illegal entrant Article 5 does not add to the argument. Nor does the applicant's further ground in relation to the right to examine those who have leave to enter the UK add anything to the argument, when the applicant is found to be an illegal entrant.

[22] Other points were mentioned by Mr Stockman, but they are not relied on in the Order 53 Statement so I do not propose to examine any other issues. I am satisfied that the applicant was an illegal entrant for the reasons that I have given. I agree with the conclusion reached by the Immigration authorities. There is no arguable case. Leave to apply for judicial review is refused.

VEPKHVIA IASHVILI AND SALOME MTIBELASHVILI

[23] The second application involves different circumstances. The applicants are husband and wife and they apply for leave to apply for judicial review of decisions of the Immigration authorities of 3 September 2007 that they are illegal entrants and that directions will be given for their removal. Mr Stockman appears for the

applicants and Mr Coll appears for the proposed respondent, the Immigration authorities.

[24] The applicants are Georgian nationals and were born on 1 October 1971 and 19 December 1979. They have two children aged two and four who are currently staying with grandparents in Georgia. The husband is a self-employed businessman. The wife is employed in a pharmacy in Georgia. The applicants obtained visitors' visas to enter the UK as tourists. They travelled from Tbilisi to Amsterdam on 29 August 2007 and arrived in London on that day. They planned to fly back to Amsterdam and Tbilisi on 24 September and had purchased return tickets.

[25] The applicants stayed with friends in London for some days after their arrival and they then travelled by a National Express Coach to Northern Ireland via the Stranraer Ferry from Scotland. Return coach tickets brought them to Northern Ireland on 3 September and they were scheduled to return to London on 7 September. When they arrived at the port they were detained by Immigration Officers and interviewed. The notes of interviews are available.

[26] The wife was interviewed between 0805 and 0840 on 3 September. I select some of the questions and answers from the notes:

“Q. Where are you travelling to today?

A. We're going to Dublin.

Q. Why are you going to Dublin?

A. To live. We have no money in Georgia. My husband will find work.

Q. Who are you travelling with?

A. My husband.”

(and then she identifies the other applicant as being her husband)

“Q. Did you declare that you intended to travel to the Republic of Ireland?

A. No.”

(that being a question relating to the visa application)

“Q. Did you see an Immigration Officer when you arrived in the UK?

A. Yes.

Q. What reason did you give the entry Immigration Officer as to the purpose of your travel to the UK?

A. We said we were tourists."

[27] The other matter relied on by the proposed respondent is a bus timetable that was in the possession of the applicants. It contained the bus times for Dublin and other cities in the Republic. The wife explained how she came by the bus timetable -

"I picked up this document when my husband and I purchased bus tickets in London at Victoria Coach Station. Initially my husband and I mistakenly bought tickets for Dublin and the brochure relates to that journey. Because we have no English we mistakenly purchased these tickets, however, we returned them and bought tickets for Belfast."

[28] The husband was also interviewed, but he did not make any admissions. The evidence against the applicants involves the statements made by the wife and possession of the bus timetables for the Republic.

[29] The judicial review grounds are the same as those relied on in the first application of Ajayi. The applicants had visas as tourists and on obtaining those visas and at entry to the UK declared themselves to be tourists. If at that time they intended to visit Northern Ireland to gain entry to the Republic in order that the husband might find work, that would constitute deception. Mr Stockman for the applicants does not contend otherwise, if that was indeed their intention, but he joins issue with the conclusion that it was their intention.

[30] The proposed respondent contends that the relevant evidence is that of the wife supported by the bus details. The wife in her affidavit challenges the record of the interviews. She states that when asked "Where are you travelling to today?" she did not reply "We're going to Dublin". She states that she replied that she was going to Belfast. Further she states that she was not asked "Why are you going to Dublin?" and that she did not say that they were going there to live, or that they had no money or that her husband would find work. Thus the wife denies the key parts of the evidence of the interview notes.

[31] Further, the wife challenges the role of the interpreter who was used in order to conduct the interview (this being done over a telephone line to a Georgian interpreter). She complains in her affidavit that she was very much of the opinion that the interpreter took the side of the interviewing officer when putting questions. I do not doubt that she did get that impression because I would expect that when the

interviewing officer asked a question the interpreter translated the question to her as it was asked. That was what he was supposed to do as an interpreter but the wife may well have felt that she was being interrogated by the interpreter. However she goes further than that because her complaint is that she was being bullied by the interpreter and not just asked questions. She suggests that the interpreter had said to her that until she said that she was going to Dublin they would ask all these questions and she would be kept overnight and it would be better to say that she was going to Dublin so that the process could finish.

[32] Had the wife stated that she had told the interviewer that she was going to Dublin, but that she had only said that because she was being bullied, there may have been reason to question whether or not she answered the questions in an accurate way. However she does not say that. She alleges that she was bullied, but denies that she told the interviewer that they were going to Dublin. Rather, she asserts that she told the interviewer that they were going to Belfast. Any bullying did not produce the result that the bully was said to have wanted, namely that she was to admit she was going to Dublin. The wife denies that she said that and maintains that she said that they were going to Belfast. So if any pressure was applied to her, as she alleges, she does not contend that it led her to make any admissions.

[33] There are other questions and answers that the wife denies. She concludes:

“When applying for my tourist visa to the UK in Georgia it was never my intention to travel to the Republic. When I arrived in the UK and when I spoke to the Entry Clearance Officers it was not my intention to travel to the Republic. I have never planned to travel to the Republic and it has been my sole intention to holiday in the UK as a tourist.”

[34] The husband states the same in his affidavit in relation to his intentions.

[35] In this application there are no grounds on which to suppose that the Immigration officers have made-up the interview notes, which is in effect what the wife contends. I am satisfied that the intention of the applicants when they applied for the visas and when they entered the UK was to make their way to the Republic so that the husband might find work. Accordingly I am satisfied that the applicants practised deception in obtaining the visas and obtaining entry to the UK on foot of the visas. I am satisfied that the deception was a material matter in relation to entry to the UK and that they, by their deception, are rendered illegal entrants.

[36] There were other grounds referred to by Mr Stockman which are not relied on in the Order 53 Statement and are matters which I do not consider. I am satisfied that the applicants were illegal entrants for the reasons that I have given. I agree with the conclusion reached by the Immigration authorities. There is no arguable case. Leave to apply for judicial review is refused.