

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

Delivered:	30/10/08
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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

**IN THE MATTER OF AN APPLICATION BY GODWIN EMIKO FORSON
FOR JUDICIAL REVIEW**

GILLEN J

[1] The applicant in this matter is a Nigerian national. The Respondents are the Secretary of State for the Home Department and an Immigration Officer from the UK Borders and Immigration Agency carrying out statutory functions.

[2] Mr Forson was detained by Immigration Officers at Belfast International Airport on 16 February 2008 when disembarking from a flight from London Stansted. After questioning and interview by Immigration Officers, he was detained and served with a decision by the Immigration Officers that he was an illegal entrant into the United Kingdom. Under the terms of s33(1) of the Immigration Act 1971 ("the 1971 Act"), he was informed that he was liable to removal on the grounds that (sic) "you were silent in your statement to the on entry Immigration Officer as to material facts in that you were returning to the UK from Nigeria having married a Nigerian female resident in the RoI with whom you had a child yet you had obtained status in the UK on the basis of marriage to a British citizen that is no longer subsisting."

[3] The applicant now seeks to quash that decision and invites this court to order that the Respondents should cause to be deleted any endorsement on the applicant's passport to the effect that he is an illegal entrant to the UK.

Background

[4] Certain dates and events are common case in this matter. The applicant had initially come to the UK as a student in or about February 2005. On 7 April 2007 he applied for an extension of stay in the UK as a partner of a

person present and settled in the UK. Section 3 of the application form required the applicant to give details "if you have any children under 18 living in the UK who are applying for an extension of stay as your dependants". No declaration was made by the applicant although it is accepted at the time he had a UK born child to "DA". The applicant contends that he did not declare this child because she is a child from an earlier relationship before his current marriage and is not dependent on him.

[5] On 10 April 2007 the applicant was issued with a two year residential permit as a spouse of "PKV" a British national. The marriage had taken place on 30 March 2007. In the course of these proceedings Mr Forson exhibited, inter alia, a copy of a certificate for approval of marriage, a marriage certificate with PKV, marriage photographs, a tenancy agreement for himself and PKV at an address in London for six months from the 28 September 2006, a driving test application and Visa credit form at the same address. There is also before me an affidavit from PKV asserting that the marriage is subsisting. The applicant has also filed an affidavit asserting that prior to the marriage to PKV he was in a relationship with a Nigerian national namely DA and that in the course of their relationship DA became pregnant. He contends that this relationship ended before he knew of the pregnancy.

[6] On 28 September 2007, Mr Forson entered the UK at Gatwick airport from Nigeria on foot of the leave to remain residence permit. The circumstances of his trip to Nigeria from which he was returning, and his passage through immigration with his passport upon arrival at Gatwick London were crucial issues in this case as emerged during his interview at Belfast Airport on 16 February 2008.

[7] It is the applicant's case that his visit to Nigeria prior to his return to the United Kingdom on 28 September 2007 was for two purposes. First to attend the wedding of his youngest sister on 21/22 September 2007. Secondly to go through a ceremony known as "Igiebe" to acknowledge paternity of his child from the relationship with DA in order to resolve problems between his family and the family of the mother of the child. He contends he did not himself marry in Nigeria in the course of his visit. For reasons to which I shall shortly turn, I believe there was overwhelming evidence to justify the immigration authorities in rejecting this explanation for his visit to Nigeria and for their belief that his real reason for visiting Nigeria had been to marry DA notwithstanding his having gone through a marriage ceremony with PKV in the UK in March 2007.

[8] It emerged during the course of the hearing by way of an affidavit from John Harrison of the UK Border Agency, Liverpool Immigration Service, dated 6 May 2008 that following research on the UK Border Agency database, he had come across an immigration service minute sheet dated 29 January 2008. The sheet referred to a joint encounter by the UK Border Agency and

the police with DA at a bus stop in Lewisham, London on 29 January 2008. She had given her name to the authorities as DA with an incorrect date of birth. She was arrested on suspicion of illegal entry into the UK.

[9] Following her arrest DA offered to take the Immigration Officers to her home address. Mr Forson asserts that this address was the address shared by himself and PKV. DA informed the Immigration Officers that the purpose of returning to her home was to retrieve her passport together with an indefinite leave to remain in the UK stamped thereon.

[10] Upon arrival at this address in Lewisham, the Immigration Officer's sheet records that the applicant in this matter was there as was the daughter of the applicant and DA. DA also claimed to be two months pregnant. The note goes on to record as follows:

"On arriving I found the premises to also contain her boyfriend Godwin Emiko Forson and their daughter, T. The subject was also claiming to be two months pregnant. When asked to present both their PPTs Godwin handed over a NGAPPT for himself which showed LTR as the spouse of a settled person expiring 2009. Godwin then presented DA's PPT, an NGA PPT which showed her to be an over stayer as of 29 October 2005 and her date of birth to be 23 June 1981 . . ."

[11] The applicant's account of this event is contained in an unsworn affidavit he filed during the course of these proceedings. In it he claims he was living at the address in Lewisham with his wife PKV and had lived there since December 2005. He relates that when the Immigration Officers arrived with DA in January 2008, he told the Immigration Officers that he longer had a relationship with DA, that he was living with his wife albeit DA also lived there in a separate room. He asserts, contrary to the contents of the sheet, that he was not asked if he was the boyfriend of DA. He also denied knowing that DA was two months pregnant. He goes on to contend that he discovered on 2 February 2008 that DA and her daughter had now left the house without telling him.

[12] I pause to observe that I find his account wholly implausible. As with the conversations to which I shall shortly turn with the Immigration Officers in Belfast, he asserts that the Immigration Officers are telling lies about him and have incorrectly recorded information. I can think of no reason why the Immigration Officers in Lewisham, who were not investigating him after all, would have failed to record that he was living there with his wife if he had so told them and instead falsely made up a story that he was the boyfriend of DA. I also find it extremely troubling that he had not disclosed this meeting earlier

in the case prior to Mr Harrison's affidavit and offered an explanation only when Mr Harrison raised the matter. I had before me also an affidavit from PKV in which she makes no reference whatsoever to this visit of the Immigration Officers with DA or to any explanation of these events given to her by the applicant other than to say -

"At the beginning of February 2008, DA left the flat with her child and we did not know where they had gone"

I regard this incident as bearing the hallmarks of a contrived relationship between the applicant and PKV in order to frustrate the purposes of the immigration legislation and adds weight to my conviction that the plaintiff is married to DA and that his marriage to PKV is merely a sham which I shall outline in later paragraphs in this judgment.

[13] On 16 February 2008 the applicant was detained at Belfast International Airport by Mr Harrison. Mr Harrison made an affidavit on 27 February 2008 dealing with that encounter. Paragraph 9 et seq of that affidavit records as follows -

"8. The applicant stated that he had travelled to Belfast to see a friend for the weekend and that he would be collected by his friend's partner, namely Amanda Crowe. When asked by me about the whereabouts of his wife, [PKV] the applicant was evasive.

9. At 10.45 am I conducted a voluntary search of the applicant's baggage. That revealed him to be in possession of photographs of himself with a West African female and pictures of her with a child and a Barclay's Bank (Family Investments) bank card in the name of [T] . . . The applicant at this point stated that he had an additional wife, [DA]..., a Nigerian national who was living in the Republic of Ireland with their child [T]..., born in the United Kingdom. He stated to me that he had travelled to Belfast with the intention of passing on clothes to both his wife and child."

[14] The affidavit then records that having checked with the police authorities in the Republic of Ireland Mr Harrison discovered there was no positive trace of DA having any lawful basis to stay in the Republic of Ireland. She was in fact an over stayer in the United Kingdom and liable to removal. The affidavit also records that Mr Harrison telephoned Amanda Crowe who

confirmed to him that the applicant had a wife and child in Dundalk and that he would be visiting them over the weekend.

[15] Mr Harrison then went on to conduct an interview under caution with the applicant. He deposed that he had advised the applicant he was not under arrest, that he could leave at any time and obtained his consent to being interviewed without having taken legal advice. I observe at this stage that I am satisfied that this was part of the investigatory process in the context of administrative powers and accordingly Article 6 of ECHR is not engaged. (See Maaouai v. France, Ullah [2003] EWHC 679).

[16] This interview was of crucial importance in this case and I therefore shall set out verbatim extracts from the interview where relevant with Mr Harrison being described as "Q" and the applicant being described as "A" -

"Q - Where are you travelling to today?

A - Somebody is coming to Belfast to pick me up and take me to Ireland.

Q - Whereabouts in Ireland are you being taken to?

A - I know it's near the border, Dundalk.

Q - Why are you travelling to Dundalk?

A - I was hoping to see my wife and child.

Q - Who is collecting you from the airport today?

A - Its Amanda. She's my friend's wife.

Q - How long are you intending to see your wife and child for?

A - I am going back on Monday.

Q - Do you have a return ticket from Belfast?

A - Yes.

Q - Do you have a visa for the Republic of Ireland?

A - No, No.

Q - What is your wife's name, date of birth and nationality?

A - D . . . A, *[Date of birth redacted]* she is from Nigeria.

Q - What is your child's name, date of birth, nationality and place of birth?

A - [T], *[Date of birth redacted]* She was born in London.

Q - When/where did you marry [DA].

A - In September 2007 in Nigeria.

Q - How was the marriage formalised?

A - It was the two families coming together.

Q - How long has your wife been in Dundalk?

A - I am not sure may be six months.

...

Q - When/where did you last see your wife and child?

A - In London early this year.

...

Q - On what date did you last enter the UK?

A - 20 September 2007.

Q - Where did you arrive in the UK?

A - It was Gatwick actually".

[17] According to the interview notes the applicant then went on to record that his visa for two years for the UK had been issued in Croydon based on his marriage to PKV after their marriage at a registry in March 2007 in Southwark. He said he last saw PKV on 5 February when she came to see him. The questioning then went on -

“Q - Are you living together?

A - No.

Q - Given that you have a child with a Nigerian female and are now married to this lady, are you telling me you married a British citizen purely to maintain your immigration status?

A - Yes.

Q - Did you see an Immigration Officer when you arrived in the UK last at Gatwick?

A - Yes.

Q - What did you tell the Immigration Officer was the purpose for your travel to the UK?

A - They didn't ask me that question, just asked me if I lived here that's all.

Q - Did you advise the officer that you were returning from Nigeria having married a Nigerian female resident in the Republic of Ireland with whom you had a child?

A - No because he didn't ask me that question.”

[18] This deponent then refers to the applicant having in his possession a DVD which he became aware of after the conclusion of the interview and the service of illegal entry papers upon the applicant. According to Mr Harrison, this DVD was labelled “Marriage ceremony of Godwin Forson and DA” and was dated 28 September 2007.

[19] In an affidavit from Peter Bradshaw, Chief Immigration Officer employed by the Border and Immigration Agency of the Home Office who had also been present at Belfast International Airport on 16 February 2008, he records Mr Harrison having recommended that it would be appropriate to serve papers on the applicant as an illegal entrant having practised verbal deception contrary to section 26(1)(c) of the Immigration Act 1971 and an offence under section 24(a)(1)(a) of the same Act. Mr Bradshaw records having agreed with that recommendation and authorised the service of papers on the applicant as an illegal entrant having practised verbal deception. Mr Bradshaw goes on to depose that he was satisfied that this was not a case where it would be appropriate to exercise discretion in favour of the applicant given the scale

of the deception used in his failure to declare to the Border and Immigration Agency the contracting of an unlawful marriage in Nigeria to a female who held no lawful immigration status in either the UK or the Republic of Ireland. He authorised the detention of the applicant pending arrangements for his substantive removal from the United Kingdom to Nigeria.

[20] Mr Bradshaw further records that he had sight of the DVD which was marked "Marriage Ceremony of Godwin Forson and DA". He asserts that he asked the applicant for an explanation "to which he made no reply".

Statutory and regulatory framework

[21] Section 24A(1)(a) of the 1971 Act provides that a person who is not a British citizen commits an offence if "by means which include deception by him", he "... obtains or seeks to obtain leave to enter or remain in the United Kingdom..."

[22] Section 26(1)(c) makes it a summary offence if, upon examination by an Immigration Officer under Schedule 2, "... he makes or causes to be made to an Immigration Officer or other person lawfully acting in the execution of "a relevant enactment" a return, statement or representation which he knows to be false or does not believe to be true.

[23] Section 33(1) of the 1971 Act defines an illegal entrant as "... a person entering or seeking to enter the United Kingdom," being a person "(a) unlawfully entering or seeking to enter in breach of a deportation order or of the immigration laws, or (b) entering or seeking to enter by means which include deception by another person".

[24] Under paragraph 2 of schedule 2 of the 1971 Act, an Immigration Officer is authorised to examine any person who has arrived in the United Kingdom for the purpose of determining, inter alia, whether such person is a British citizen and whether a non British citizen may enter the United Kingdom without leave. Paragraph 2 of the 1971 Act provides that -

"An Immigration Officer may examine any persons who have arrived in the United Kingdom by ship or aircraft for the purpose of determining -

(a) whether any of them is or is not a British citizen; and

(b) whether, if he is not, he may or may not enter the United Kingdom without leave; and

(c) whether, if he may not -

- (i) he has been given leave which is still in force,
- (ii) he should be given leave and for what period or on what conditions (if any), or
- (iii) he should be refused leave.

[25] Under paragraph 2A of schedule 2 of the 1971 Act, a person who has arrived in the UK with leave to enter which is in force but which has been given to him before his arrival, may be examined by an Immigration Officer for the purpose of establishing -

- “(a) whether there has been such a change in the circumstances of his case, since that leave was given, that it should be cancelled;
- (b) whether that leave was obtained as a result of false information given by him or his failure to disclose material facts . . .”

[26] Paragraph 8 of schedule 2 of the 1971 Act empowers an Immigration Officer to make directions for the purpose of removing an individual concerned from the United Kingdom.

[27] Paragraph 16(2) of schedule 2 of the 1971 Act provides that an Immigration Officer can detain a person where he possesses “reasonable grounds for suspecting” that the detainee may be the subject of removal directions under paragraphs 8-10.

[28] Paragraph 9 of schedule 2 of the 1971 Act provides that the Immigration Officer is the official responsible under the statute for the decision that a person is to be treated as an illegal entrant and removed.

[29] Until the amendments brought about by the Immigration and Asylum Act 1999 (“the 1999 Act”), a person’s leave to enter or remain in the UK lapsed on his or her leaving the common travel area. The provisions of the Immigration (Leave To Enter And Remain) Order 2000, made under the 1971 Act, have put an end to this absurdity. Leave to enter or remain does not lapse when the holder goes abroad if it was conferred by an entry clearance (other than a visit visa) or by an Immigration Officer or the Secretary of State for more than six months. Section 10 of the 1999 Act makes provision that -

“(1) a person who is not a British citizen may be removed from the United Kingdom, in accordance with directions given by an Immigration Officer, if -

...

(b) he has obtained leave to remain by deception

...”

[30] Article 13(2) of the Immigration (Leave To Enter And Remain) Order 2000 provides that where a person has leave to remain which is in force and which was -

“(a) conferred by means of an entry clearance (other than a visit visa) under Article 2; or

(b) given by an Immigration Officer or the Secretary of State for a period exceeding six months, such leave shall not lapse on his going to a country or territory outside the common travel area”.

[31] Article 13(5) of the 2000 Order provides -

“For the purposes of paragraphs 2 and 2A of schedule 2 to the Act (*the 1971 Act*) (Examination By Immigration Officers and To Medical Examination), leave to remain which remains in force under this article shall be treated, upon the holder’s arrival in the United Kingdom, as leave to enter which has been granted to the holder before his arrival.”

[32] Khawaja v. Secretary of State for the Home Department [1984] AC 74 is an often cited case in which the House of Lords discussed the concept of an “illegal entrant”. The burden of proving there was an illegal entry falls on the Home Office and in any judicial proceedings the court will enquire whether the facts precedent to the exercise of the administrative power have been proven. The essential test is one of materiality and the alleged deception must be material in the sense that it is a factor which precipitated the decision granting leave to enter: see also Kaur v. Secretary of State for the Home Department [1998] Imm AR 1) where it was held that the test of materiality is whether the deception was likely to influence the decision.

[33] The Immigration Rules (HC 395) at paragraph 287 lay down requirements for indefinite leave to remain for the spouse or civil partner of a person present and settled in the United Kingdom. These include that -

“The applicant is still the spouse of the person he or she was admitted or granted an extension of stay to join and the marriage is subsisting”.

[34] Entry clearance of leave to enter the United Kingdom is to be refused under paragraph 20 of the Immigration Rules where there is a failure “to satisfy the Immigration Officer, in the case of a person arriving in the United Kingdom . . . with the intention of entering any other part of the common travel area, that he is acceptable to the immigration authorities there.” Thus a person who is a non British citizen intending to travel to the Republic of Ireland via Northern Ireland is an illegal entrant.

The Applicant’s case

[35] In the course of well marshalled and creative submissions Mr Stockman contended that the Khawaja case and the Northern Ireland authorities of Re Udu and Nyenty [2007] NICA 48 and Re Alem [2008] (Gillen J (unreported)) are all cases about leave to enter whereas this is a case where the applicant did not require leave to enter, having already obtained leave to remain. He emphasised that the purpose and effect of the provisions of the 2000 Order were to obviate the need for repeated scrutiny on each return to the UK of those whose applications for entry to or stay in the UK has previously been approved by an Immigration Officer. Such persons may still be examined at the port on re-entry, but they do not have to establish a case for re-entry. The object of the Immigration Officer’s examination on re-entry is to establish whether leave previously granted is still in force and if so whether there has been a change of circumstances such that it should be cancelled (see schedule 2 paragraph 2A of the 1971 Act). A person may be required to submit to further examination in which case the ordinary powers of detention and temporary admission apply. It was Mr Stockman’s case that the applicant was not asked any questions other than the perfunctory issue of where he lived when he returned to Gatwick on 29 September 2007. The power to examine had therefore not been invoked.

[36] In any event if leave had been cancelled through the provisions of s10 of the 1999 Act, the only path open to the Respondents in counsel’s argument, the applicant would have had an in country right of appeal against cancellation under the provisions of schedule 2 paragraph 2A(9) of the 1971 Act read with the Nationality Immigration and Asylum Act 2002, SS 82(2)(a) and 92(3)(a).

[37] Mr Stockman also argued that the Respondents were attempting to alter the grounds on which they were relying. No mention had been made in the decision about the alleged deception in April 2007. The Respondents had relied entirely on the alleged deception of September 2007.

[38] Factually Mr Stockman submitted there was ample evidence to support Mr Forson's contention that his marriage to PKV was subsisting, that he was not married to DA, that the relevant Immigration Officers were perjuring themselves in their affidavits and the Respondents had failed to prove the necessary precedent facts to a high degree of probability.

Conclusions

[39] I am satisfied on the facts in evidence before me that the Immigration Officers have established to a high degree of probability that this applicant has been guilty of deception in dealing with the immigration authorities on a number of occasions. He has been deceitfully silent about a number of material facts including that he went through a ceremony of marriage with PKV only to achieve immigration status and did not intend it to be a subsisting relationship, that he had a dependant child to a different partner at the time he applied for his right to remain, that in any event he was no longer in a subsisting relationship with PKV in September 2007, that he was married to DA, a non British citizen, in Nigeria in September 2007, and that he was using his leave to remain stamp on his passport to effect an entry into the Republic of Ireland in February 2008.

[40] I see no reason to question the content of the detailed notes of the interview freely entered into by the applicant with Mr Harrison in Belfast on 16 February 2008. The notes were signed by Mr Forson. His assertions in his affidavit, paragraph by paragraph, that Mr Harrison has fabricated these replies seem to be highly implausible. I can think of no reason why this Immigration Officer would make up such matters never having had any previous experience with Mr Forson and I can conceive of no reason why Mr Forson would have signed them. The alleged evasiveness of the applicant at the airport, the presence of the DVD which referred to the marriage in Nigeria with DA, his refusal to comment on it to Mr Bradshaw, the conversation with Amanda Crowe where she indicated he had a wife in Dundalk and her refusal to swear an affidavit denying it, the contents of the immigration minute sheets dated 29 January 2008 and 11 March 2008 and the inherent implausibility of the applicant's assertions in face of such evidence all serve to underline my belief that Mr Harrison has correctly recorded the terms of the interview. In short I believe that this applicant has consistently been less than candid with the court.

[41] The Respondents have satisfied me to a high level of probability that this man never saw his marriage to PKV as anything other than a means of acquiring leave to remain in the UK and never intended it to be a subsisting relationship. Hence he has sought to conceal his relationship and indeed his marriage to DA at relevant times together with the fact that he has a child to her I regard Mr Forson as a cunning manipulative man who has woven a web of deceit to mislead the immigration officials and this court. Accordingly the steps he took to create the appearance of a subsisting relationship with PKV as

outlined in paragraph 5 of this judgment did not surprise me. His undoing was his marriage to DA and the inevitable revelation of that when he arrived in Belfast in February 2008.

[42] I reject Mr Stockman's submission that the only avenue open to the Respondents, once the applicant had obtained leave to remain, was cancellation of the leave to remain and compliance with the provisions of section 10 of the 1999 Act.

[43] In my view section 10 of the 1999 Act would be the avenue to be followed by the Respondents if, having obtained leave to remain by deception, he had not left the country. Being in the country, he would not be an illegal entrant.

[44] However this applicant had left the UK and had re-entered in September 2007. In my view, he had obtained leave to remain in April 2007 by deception. He had done this by asserting he was married and had a subsisting relationship with PKV. I do not believe this to be the case. He has admitted this in terms to Mr Harrison. Secondly at the time he completed the application form I am satisfied that he did have a dependant child despite his assertion that the child was not dependent on him. The child was living in the same house as him and DA in Lewisham in January 2008 and even on his own case had been doing so for some time. I consider that he was intending to visit her and DA in Dundalk in February 2008 when he was stopped at Belfast International airport as evidenced by his admission to Mr Harrison and the contents of his case. This all occurred shortly after the events of 29 January 2008 when the immigration authorities had come upon him living with her at the address in Lewisham .I do not believe that there is no relationship between him and DA or that she left without telling him. Why within days is he travelling to Dundalk via Belfast to see her describing her as his wife to Mr Harrison and now denying the whole thing to this court? This is yet another example of the plethora of lies that I believe this man has presented to the court.

[45] Whilst strictly speaking he can argue that at the time he completed the application form for leave to stay this child under 18 was not applying for an extension of stay as his dependant, this was only because DA was an illegal over stayer and this would have been revealed by his completing the form in relation to his dependant child. I consider that at least he had breached the spirit of this form if not the letter. In any event I regard it as further evidence of his determination to conceal his relationship with DA in order to pretend he was entering into a bona fide subsisting relationship with a British national PKV whereas he had no such intention.

[46] Even if my view that he had obtained his right to remain by deception in April 2007 is incorrect, I am satisfied that by September 2007 he had fundamentally altered his circumstances in that he was not then in a subsisting

relationship with PKV and had now married DA in Nigeria (as I hold he did). By remaining silent on these topics when spoken to by an Immigration Officer at Gatwick and presenting his passport which manifestly did not reflect the true current situation, this rendered him an illegal entrant.

[47] My interpretation of the law on this matter is confirmed by MacDonald's Immigration Law and Practice 7th Edition at paragraph 16.31 where the author, dealing with paragraph 9 of schedule 2 to the Immigration Act 1971, states as follows -

“The paragraph does not, however cover the position of those who entered lawfully, but who subsequently obtained leave to remain by deception. Persons in this category who leave the UK and re-entered are clearly illegal entrants on re-entry with their original leave. Those who have obtained leave to remain by deception and have not left the country since are not illegal entrants, but may be summarily removed under section 10 of the IAA 1999”.

[48] I therefore conclude that whilst Article 13 of the 2000 Order means that leave does not lapse on travel outside the common travel area where the leave is in force for a period exceeding 6 months, this does not prevent the applicant becoming an illegal entrant if there is firm evidence that deception was employed to obtain the grant of leave to remain or if he practised deception when presenting his passport to Immigration officials. I am satisfied that such deception was used in this instance.

[49] Presentation of the passport to the Immigration Officer constituted a statement by him which was wholly untrue i.e. he did not have a subsisting marriage with PKV, he had married a non British citizen in Nigeria and his original obtaining of leave to remain in any event had been obtained by deception. By presenting a passport formulated on the basis that his leave to remain was properly obtained - whereas it was not since he had only gone through the ceremony of marriage to secure an immigration status without intent to carry on a subsisting relationship and had not complied with the spirit of the application form - and that the circumstances justifying the leave to remain continued - whereas they had changed with his marriage to DA - he has carried out acts of deception rendering him an illegal entrant.

[50] In R v. Secretary of State for the Home Department ex parte Al Zahran [1995] Imm AR 510, a decision of the Court of Appeal in England and Wales, Stuart-Smith LJ, with whom Waite and Millett LJ agreed, said -

“In my judgment in proffering a passport which contains a visa valid for the purpose of a visit to this

country and to enable her to become a visitor to this country (and that being the leave to enter which she obtained) she (the applicant) is plainly making, albeit silently, a representation that that is the purpose of her visit”.

[51] In R (Zahide Awan) v. Secretary of State for the Home Department [1996] Imm AR 354, Buxton J, said:

“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”.

[52] That line of authority has been followed by the Court of Appeal in Northern Ireland in The matter of an application by Paul Udo and Valentine Nyenty for Judicial Review [2007] NICA 48.

[53] For the applicant merely to present his passport without any reference to the change of circumstances e.g. that he did not have a subsisting marriage, that he had married an African national, etc not only amounted to a clear deception on the Immigration Officer but also wrongfully and deceitfully deflected him from exercising his powers to examine in order to consider cancelling or revoking the right to remain. In my view, that deception is similar in genre to the person who originally obtains leave to remain by deception and such a person re-entering the UK, as the applicant did at London Gatwick, is an illegal entrant on re-entry notwithstanding that he has, stamped on his passport, leave to remain. As I have already indicated this contrasts with the situation of someone who has not left the country and may be summarily removed under section 10 of the 1999 legislation.

[54] Mr Stockman was therefore correct to draw to my attention the conceptual distinction between a person who has obtained leave to remain and a person seeking a right to enter. Normally a right to remain will preclude the person being an illegal entrant. Moreover Mr Stockman is correct to say that given the presence of a right to remain, normally Immigration Officers are confined to the route of examination on re-entry and cancellation or revocation. Hence I also believe that he was correct in submitting that the right to examine a person who has arrived in the UK already with leave to enter operates within the ambit of paragraph 2A of schedule 2 of the 1971 Act. Accordingly where Article 35 of the 2000 Order refers to leave to remain being treated as leave to

enter for the purposes of paragraphs 2 and 2A of schedule 2 to the Act, this is confined to the circumstances where the person arriving may be examined by an Immigration Officer to establish whether there has been a change in circumstances of his case or whether leave was obtained as a result of false information.

[55] However the correctness of Mr Stockman's assertions as set out by me in paragraph [52] of this judgment, do not avail him in circumstances where the acts of deception which I have adumbrated in this judgment have occurred. In those circumstances I consider that the principles of Khawaja do apply and the applicant can be treated as an illegal entrant provided the precedent facts are proven. For the reasons I have already given in this judgment, I consider that the Respondents on the facts of this case have proven to a high degree of probability that the applicant was an illegal entrant.

[56] Mr Stockman argued that the Respondents had relied in making their decision on the events of September 2007/February 2008 without reference to April 2007 when he was granted his right to remain. In the first place, I consider that he did practise deception in September 2007 irrespective of the argument about April. Secondly in my view the deception practised in April 2007 in order to obtain the right to remain is so inextricably linked with the on going situation in September 2007 that this court, in its reviewing role, is entitled to take into account that aspect also. Thirdly when this matter comes before the court the approach involves not merely reviewing the decision of the immigration authorities but deciding whether the precedent fact has been established that the applicant is an illegal entrant. In this process I am satisfied that I am entitled to take into account such evidence as is available on the issue: see re Makunda Prasad Dahal 2008 NIQB 60 at paragraph 25.

[57] In these circumstances it is unnecessary for this court to determine if the Respondents may rely on the further fact that he was intending to travel onto Dundalk in February 2008 allegedly in breach of paragraph 20 of the Immigration Rules (see paragraph 34 of this judgment) if he had a valid right to remain. The fact of the matter is that he did not have a valid right to remain and therefore was not entitled to travel to Dundalk via Belfast, thus rendering him an illegal entrant.

[58] Finally, judicial review applicants have always been under an important duty to make full and frank disclosure to the court of all material facts. The plaintiff's candour remains a necessary virtue both at the outset and in alerting the court to any key development as the case proceeds. I do not believe that this applicant has made a full and fair disclosure of all material facts relating to his relationship/marriage with DA or for that matter his marriage to PKV. In addition I am satisfied that there is convincing evidence he has attempted to mislead this court in his detailed and implausible denials of his interviews with

Mr Harrison, his account of his encounter with Mr Bradshaw in February 2008 at the airport in Belfast and with immigration officials in Lewisham in January 2008. I do not believe that this applicant has behaved with the candour and integrity which a court should expect. Even had I been persuaded by Mr Stockman's highly technical arguments, the applicant is so lacking in merit or candour that I consider this a proper case for the court in any event to have refused to grant a remedy to the applicant in the exercise of my discretion; see O'Neill's application [1990] 3 NIJB 1.

[59] In all the circumstances therefore I dismiss this application.