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(subject to editorial corrections)*

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY BABATUNDE OLUWAFEMI AIYEGBUSI
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

WEATHERUP J

[1] This application for leave to apply for judicial review concerns a decision of Immigration authorities of 26th February 2007 by which it was determined that the applicant was an illegal entrant who was liable to be detained pending the issue of directions for his removal from the United Kingdom. Mr Stockman appeared for the applicant and Dr McGleenan appeared for the respondent.

[2] The background appears from the affidavit sworn by the applicant's solicitor Martin McLaughlin. At present the applicant is detained in Oakington Immigration Detention Centre in England. He is a Nigerian born on the 20th September 1965 who holds a multiple entry visitors visa for the United Kingdom issued in Lagos on the 3rd November 2004 and valid for 5 years. The visa restricts the applicant to a maximum stay of one hundred and eighty days and prohibits employment and reliance on public funds.

[3] The applicant entered the United Kingdom at Gatwick Airport on the 26th February 2007, having travelled on a flight which departed Lagos on the 25th February 2007. He intended to return to Lagos on the 18th March 2007. Prior to his departure for the United Kingdom he had booked a flight from London Stansted to Belfast International for the 26th February. Accordingly, he arrived at Belfast International on the 26th February 2007 where he was detained. For some time the Immigration authorities in Northern Ireland and the Republic of Ireland have been conducting an operation at the airports and seaports known as "Operation Gull" which is concerned to identify those who seek to gain unauthorised entry to the Republic by first entering the United Kingdom." The applicant's instructions to his solicitor were that he intended to visit family members in the Republic of Ireland,

namely, his wife Debbie and his children, the first born on the 13th November 1999, the second born on the 21st November 2001 and the third on the 22nd November 2004. The applicant's wife Debbie and the children are resident in the Republic of Ireland.

[4] On arrival at Belfast International the applicant was questioned by Immigration officers and he indicated that he was intending to travel to see his wife and children in the Republic. He was then served with notices that he was liable to removal as an illegal entrant and that he was liable to detention. The "Notice to a Person Liable to Removal" states that the Immigration Officer was satisfied that the applicant was a person in respect of whom removal directions may be given in accordance with paragraphs 8 to 10A of Schedule 2 of the Immigration Act 1971 as he was an illegal entrant as defined in Section 33(1) of the 1971 Act. The notice further informed the applicant that he was a person who was liable to be detained under paragraph 16(2) of Schedule 2 of the 1971 Act pending a decision whether or not to give removal directions. At the same time the applicant was served with a "Notice to Detainee - Reasons for Detention and Bail Rights" which stated that he should remain in detention because he was a person likely to abscond if given temporary admission or release and that removal from the United Kingdom was immanent. The decision was stated to have been reached on the basis of two particular factors, first that he did not have close enough ties to make it likely that he would stay in one place, and second that he had used or attempted to use deception in a way that led the authorities to consider that he may continue to deceive.

[5] The Immigration authorities contend that the applicant has been guilty of deception in relation to his entry visa and the applicant's case is that he has not been guilty of any such deception. The House of Lords decision in Khawaja v Secretary of State for the Home Department [1984] 1 AC 74 established a number of propositions in relation to those who seek entry into the United Kingdom. One, there is authority to detain and remove a visa holder if that person is an illegal entrant; two, the Immigration authorities must establish to the highest degree of probability that the applicant in question is an illegal entrant; three, the applicant may become an illegal entrant if he is guilty of deception in relation to his United Kingdom visa; four, 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 in his visa application or in communication with Immigration authorities or by conduct or by silence coupled with conduct.

[6] The application of these principles was considered in this jurisdiction by Girvan J in Udu, Nyenty & Harrison's Application (2005) NIQB 81. Each of the applicants was suspected of using a visitors visa to the United Kingdom as a means of travelling to Belfast and then gaining unauthorised entry to the Republic. Udu was a native of Nigeria who had a multiple entry visa to the United Kingdom and a multiple entry visa to the United States. He was a married man with three children. One of his sons had been born in the United States, 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 United Kingdom and the United States and in the course of those journeys Udu was detained by the Immigration authorities in Belfast. At that time his wife and children were in Dublin. Nyenty was from Cameroon and he too had a visitors visa for the United Kingdom to attend a training course in Wales in June 2004. He travelled to Belfast and was detained by the Immigration authorities. He too had family and friends in Dublin. Harrison was also a Nigerian with a multiple entry visa. He arrived in London and then flew to Belfast and was detained by the Immigration authorities at the airport. He indicated to the officers that he was on vacation, that 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. Later after questioning the applicant admitted that he had entered the United Kingdom with his wife Rita who was then eight months pregnant. Rita had travelled to the Republic where she gave birth to a child in the Republic. It became clear that the applicant's intention was to enter the United Kingdom with his wife, that she would travel to the Republic where a child would be born, that the child would acquire Irish citizenship and that Harrison intended to join his wife and child at a later date.

[7] Girvan J considered whether or not there had been deception by the three applicants. He found there was no deception in relation to Udu or Nyenty. While there may have been suspicions about their intentions in travelling to Belfast and the connections they might have with the Republic and whether they were using their visas to gain entry to the Republic through Northern Ireland, they did not either in their application forms for their visas or in their declarations to the Immigration authorities practice any deception. Hence they were not illegal entrants.

[8] However in the case of Harrison the position was different. He was found to have practised deception and indeed he eventually admitted deception. Harrison and his wife had jointly entered the United Kingdom with a view to his wife going to Ireland to have her baby in order that the child would benefit from Irish citizenship. He had been misleading in several respects, first, that he given the Immigration Officers the impression that he intended to sightsee in London, while that was but a minor part of his plans, second, that he omitted any reference to going to Belfast and gave a misleading impression of his true intentions, third, that by only giving one address on his visa application he was being deceptive as he intended to stay at other address, fourth, that by telling the Immigration authorities that his wife had just finished Law School he was misleading them by suggesting that she was going to be at the Bar in Nigeria rather than having the child in the Republic and fifthly the dishonest conduct of the applicant during the initial interview provided evidence to support his deceptive intentions. Harrison was found to be an illegal entrant.

[9] I turn to look at the circumstances of the present case. As indicated in the applicant's solicitor's affidavit the applicant instructed his solicitor that he intended to visit his wife Debbie in the Republic and that he had three children resident in the Republic. In this case, unlike some of the others referred to, the applicant's application form for his visa has been produced by the Immigration authorities. On

that application form, completed by the applicant on 26 October 2004, questions were asked about the applicant's family. The applicant was asked to disclose whether he was married and whether he had any children. In relation to his marital status the applicant stated that his wife was Ester, he gave her date of birth in 1968, he described her as Nigerian and stated that she was then in Nigeria. The application form then asked if the applicant had any children and the answer stated that he had three children. However three different names of children appear on the application form to those that appear in the affidavit, and three different dates of birth are recited. As agreed by Counsel on behalf of the applicant, the applicant has a wife Ester and three children in Nigeria and he has a wife Debbie and three children in the Republic of Ireland, the youngest of whom was born in the Republic on 22 November 2004.

[10] When the application form was completed on the 26th October 2004 the applicant had two wives and five children. The whereabouts of Debbie and her two children on that date are not known. The application form states that the applicant intended to travel to the United Kingdom for two weeks from the 5th December 2004 for the purposes of shopping and vacation. The applicant's wife Debbie gave birth to their youngest child on the 22nd November 2004 in the Republic.

[11] The issue therefore arises as to whether the application form was misleading and whether this was deception. I am satisfied that the application form was misleading. There was deliberate omission from the application form. If, as now appears to be the case, the applicant had two wives and five children, and when asked about his family he declared one wife and three children and omitted reference to his second wife and a further two children, that was misleading.

[12] The next question is whether the form was misleading in a material respect. That which is material is that which may impact on the grant of a visa. Has there been a material omission for the purposes of the grant of the visa? Undoubtedly the answer must be "yes". The applicant had a second wife and children and their existence clearly may have been relevant in relation to the grant of a visa. Their identity, their dates of birth, their nationality, their residence and their whereabouts must all have been relevant when determining the issue of the visa. A part of the applicant's family probably was, at the date the applicant completed the application form, present in the Republic or at least intending to be present in the Republic for the imminent birth of the child. That the applicant visited the United Kingdom in December 2004, some two weeks after the birth of the child in the Republic, for the purposes of shopping and vacation, as stated in the application form, must be open to serious doubt. There was a material omission from the application form when the existence of part of the applicant's family was not disclosed.

[13] The applicant practised deception in relation to the application for the visa and the Immigration authorities were entitled to issue the Notices that the applicant was liable to be detained and removed from the United Kingdom as an illegal entrant.

[14] There is a further limb to the applicant's case and it concerns the interview with Immigration officers in Belfast on the 26th February 2007. In the course of that interview various answers were given by the applicant to the Immigration authorities and the respondent sought to rely on those answers as further evidence of deception on the part of the applicant. The applicant objects to that information being considered. There are two grounds of objection. First, that interviews in Belfast, rather than the port of entry to the United Kingdom, are not valid in the absence of any specific information about the applicant's status being irregular. The applicant relied on Baljinder Singh v Hammond [1987] 1 WLR 283 where a Divisional Court in England held that an immigration officer might conduct an examination outside the port of entry and on a date subsequent to that persons entry to the United Kingdom provided that the immigration officer had information that caused him to inquire whether the person was a British citizen or a person entitled to enter the United Kingdom with or without leave.

[15] The applicant's second objection is that there was non-compliance by the Immigration authorities with the guidelines that are issued in relation to the questioning of those detained by the Immigration authorities. The Immigration Service Operational Enforcement Manual at paragraph 50.3 deals with "Cautions" and states "Before you caution a person who is not under arrest, whether at a police station or not, tell him that he is not under arrest, he is not obliged to remain but that if he does, he is entitled to legal advice." Counsel for the applicant speculates that the applicant was not under arrest when questioned and that he was not told that he was not obliged to remain with the Immigration authorities and was not told that he was entitled to legal advice for the purposes of the interview.

[16] It is not considered necessary to consider the interviews that took place in Belfast on the 26th February because it has been found that the applicant practised deception in relation to the application form. It is therefore not necessary to address the objections that the applicant has raised in relation to the Immigration interview and I have not taken into account anything that occurred in the course of the Immigration interview.

[17] The issue on an application for leave to apply for judicial review is whether the applicant has an arguable case. I find that the applicant does not have any arguable grounds to set aside the decisions of the Immigration officer to issue the notices to the applicant. I refuse the applicant leave to apply for Judicial Review.