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Judgment: approved by the Court for handing down | *Delivered:* **27/02/08**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY STELLA OFORDU FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

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GILLEN J

The application

[1] In this matter the applicant who is a Nigerian national, applied for judicial review of a decision by the UK Immigration Service (the respondent) to declare her an unlawful entrant and to detain her on or about 2 October 2007.

Background

[2] The applicant applied for and obtained a two year multi-entry visa on 23 January 2007. She had previously come to the United Kingdom (UK) with her daughter Chiamanda. This child was born in the Mater Hospital in Belfast in May 2006 with a ventricular septal defect. That condition still requires medical treatment. On two occasions the applicant had applied for and obtained six month medical visitor visas for her daughter to come to the UK for private medical treatment. Her medical visa expired in April 2007. Following the expiry of that visa the applicant applied for and obtained another one on her behalf, the stated purpose of the visa being to access private medical care in the UK in August 2007. The applicant accompanied her from Nigeria to the UK on 29 July 2007.

[3] In an affidavit (the first affidavit), the applicant indicates as follows at paragraph 19:

> "When I entered the UK on 29 July I was asked my purpose for my visit to the UK by an Immigration Officer. I stated honestly that it was to obtain medical treatment for my child. I believe that I also said that I intended to do some shopping while I was here.

> 20. When I entered the UK on this date I believed that I was nineteen weeks pregnant. I intended to return to Nigeria on 15 September. It was my belief that on this date in September I would have been 26 weeks pregnant."

[4] It is the respondent's case that the applicant had engaged in deception in securing her visa to travel to the United Kingdom and in her interactions with immigration officials on the basis that she was pregnant and planned to travel to Belfast to give birth to her second child.

[5] The applicant had in her possession a letter purporting to come from a doctor in Nigeria dated 25 July 2007 which recorded as follows:

> "To whom it may concern:
>
> I write to inform you that the above-named 18+ weeks old pregnant woman …. is 'B' rhesus 'D' positive. She has been investigated and however confirmed medical fit to travel."

[6] It is common case that this medical was obtained in order to facilitate travel by aircraft on British Airways. I was referred to British Airways health and medical information which records that a passenger can travel up to 36 weeks for single pregnancies and 32 weeks for twins. A doctor's certificate is necessary after 28 weeks confirming the estimated date of delivery and that there are no complications so that the passenger is fit to fly. A not dissimilar arrangement is contained in the terms and conditions of Easyjet save that when travelling between 28-35 weeks of pregnancy a medical certificate is required.

[7] Subsequent to the applicant arriving in the UK on 29 July 2007 she attended at the Maternity Unit at Whipps Cross Hospital ("the hospital") on 26 August 2007. The applicant did tell the immigration authorities in October 2007 at Belfast that she had attended there on 7 August 2007 but there are no records of such a visit and I consider it probably does reflect a simple mistake on the part of the applicant. A hospital document records in a written note "Late booker 32/40. Unsure re dates." Mr McGleenan, who appeared on behalf of the respondent, reminded the court that this entry of 32 weeks pregnant had been taken before any scan had been carried out. He submitted that this pointed to the applicant having knowledge that she was 32 weeks pregnant and not 22 weeks as would have been the case had she only been 18 weeks pregnancy on 25 July 2007 as recorded in the original note. A further entry records that she is 35 weeks pregnant on 17 September 2007. For the removal of doubt however, I make it clear that whilst I am suspicious as to

how the medical certificate emanating from Nigeria could have been so inaccurate in terms of the stage of her pregnancy and I am unclear as to how without the benefit of a scan and in the absence of information from the applicant, the initial record on 26 August 2007 at the hospital could have unequivocally asserted that she was unequivocally 32 weeks pregnant, the suspicions thereby engendered would not have by themselves have been sufficient to convince me to the necessary standard of proof that she was an illegal entrant.

[8] It is clear that the applicant did attend at the Ultrasound Department of Whipps Cross Hospital on 28 August 2007 and was assessed as being at 32 weeks gestation.

[9] It is common case that the applicant's elder daughter, who had come to the United Kingdom for medical treatment, had returned to Nigeria after her treatment but the applicant, whose return ticket was booked for 12 September 2007, had decided to stay on. In the course of her first affidavit, the applicant alleges that she was surprised to discover on 26 August 2007 that she was 32 weeks pregnant and she declared:

> "I was surprised that this meant that I had conceived at the end of January/early February and that I had menstruated for two months following conception. It also meant that my baby was due quite soon. The medical staff are absolutely certain of the date and they knew that it had to be true.
>
> 23. Given that my flight was due to take me back to Nigeria my 36th week of pregnancy I decided I would remain in the UK until after the birth of my baby.
>
> 24. I felt perfectly happy about this. My daughter Chiamanda was born here. She receives wonderful health care here. Also I did not know if my second child would share the same health difficulties as Chiamanda. Nigerian health care is very poor. My good friend died in childbirth in Nigeria. I knew that I could stay for a further five months on my visa. I knew that by having my baby here I was not breaching any condition of my visa. I knew that I was not intending to burden the health service as I have always paid for any health care that I or my daughter has received here.

> 25. I made arrangements to stay in Northern Ireland. I made arrangements for a friend of mine to flight back to Nigeria with Chiamanda so that she could be with her father whilst I was here in hospital. I cancelled my flight for 15 September."

[10] Accordingly her daughter flew from London to Nigeria on 1 October 2007 and the applicant then flew to Northern Ireland on 2 October 2007.

[11] The interview that took place between Mr Ian Dower of the Liverpool Border and Immigration Agency at Belfast International Airport on 2 October 2007 following her arrival from London is, I consider, an important element in this case and I shall deal with that at some length. Before doing so however I record that judicial review is rarely a suitable forum for resolving disputed matters of fact. There is a conflict between Mr Dower's account of this interview and that of the applicant. Mr Lavery, who appeared on behalf of the applicant, however recognised that where there is such a dispute, in the absence of cross-examination or oral evidence, it is difficult to resolve that dispute in favour of the applicant save insofar as it is self-evidently correct .

[12] At paragraph 5 of his affidavit Mr Dower records:

> "Following production of her passport, I asked the applicant why she was travelling to Northern Ireland and she replied that she was going to do some shopping and stay with a friend for about one week. I noted that the applicant appeared heavily pregnant."

In response the applicant in her second affidavit made on 14 January 2008 denies saying anything about having her baby at that stage but she claims she was not asked. I find this a disingenuous answer because if her intention was to come to Belfast to have her baby I cannot understand why she did not tell Mr Dower that when asked what she would be doing in Belfast. Mr Dower at paragraph 6 of his affidavit claims that he asked her again for the purpose of her visit to Belfast and she repeated that she was going to stay with a friend, do some shopping and remain for about a week. She also indicated that after her shopping trip she would be returning to Nigeria to have the baby. The applicant's second affidavit provides no denial of that statement and certainly no explanation.

[13] Mr Dower goes on to explain that having carried out a search of the applicant's suitcase, her bag contained a number of items for a newly born baby including clothing and nappies. The applicant, according to him, stated that these were for a friend who she was going to meet in Belfast and had been given to her by an unknown person who she had met while shopping in

Asda, although she could not provide the details of who had given them to her or the person to whom she was to give the items. In her second affidavit the applicant does not deny that she was carrying items for a newly born baby but asserts that Mr Dower is misrepresenting what she told him in that she did not state she had received the items from a stranger in Asda but rather from a woman in Asda who was doing a promotion.

[14] According to Mr Dower it also emerged during questioning that the applicant had made a number of visits to Whipps Cross Hospital "and the invoices showed that she had left the hospital without paying for her care". The case is now made that subsequently those bills have been paid albeit there is no evidence about payment of a bill of £307.50 for maternity services because, Mr Lavery informed the court, the applicant's solicitors had no instructions on that matter.

[15] Mr Dower goes on to assert that during discussions between himself and the applicant about the medical documentation, the applicant insisted that she was going to return home to Nigeria in a week to have the baby.

[16] Thereafter Mr Dower having consulted with the Chief Immigration Officer Peter Bradshaw conducted an interview under caution with the applicant. In his second affidavit of 29 January 2008 Mr Dower avers that these interview notes were subsequently read back to the applicant in their entirety, she was left to read the notes, requested to sign each page of the notes if she agreed that the content was a true and accurate record and the applicant then signed each page. The applicant, in the course of her second affidavit, asserts that the interview notes do not reflect the questions that she was asked or the answers that she gave. While she concedes that they are initialled by her, she asserts that no reliance should be placed on them because she was pregnant, tired and really scared.

[17] I have had the benefit of reading the notes of this interview, the pages of which are each initialled at the bottom by the applicant. In the course of those written notes, Mr Dower asks the applicant where she planned to have the baby and her response was "hopefully in Nigeria". The applicant asserts that she did not state this but rather indicated that "I had hoped to have my baby in Nigeria". I reject that explanation because it does not fit in with the following question and answer which was:

> "When are you going to go to back to Nigeria to have this baby?
>
> I am not certain."

I have no doubt that had the applicant informed Mr Dower that she was intending to have the baby in Belfast and was not intending to return to

Nigeria for the birth of the child, this would have emerged at this stage. That she clearly was deceiving Mr Dower about the purpose of her visit to Belfast emerges from a subsequent question and answer:

> "Why have you not returned to Nigeria when your ticket was booked for …..?
>
> Answer – I have not finished shopping yet.
>
> Is it safe for you to fly in this condition?
>
> Answer – I think it is."

Later in the interview the following question and answer appears:

> "Do you plan to give birth here in Belfast?
>
> Answer – I told you I want to give birth in Nigeria but if I am here I will give birth and pay."

The applicant was asked why she had sent her daughter back to Nigeria after receiving treatment with a friend. Mr Lavery indicated to me that the reason of course that she had not returned with her daughter was because she intended to have her baby in Belfast. It is self-evident that this was not revealed to Mr Dower.

[18] Mr Dower records that subsequent to the interview as the applicant was leaving the arrivals area, "she made a significant statement to the effect that she had planned to give birth in Belfast at the Mater Hospital and she had done this in the interests of the baby." The applicant's version of this is that Mr Dower was aggressive to her and informed her that if she did not leave following the birth of the baby they would forcibly remove her. She asserts that she told Mr Dower that she had had no choice in the circumstances but to look after the interests of her child and to have her baby here. She had not intended this but that the Mater Hospital would definitely be paid for any treatment she received. I remain unimpressed by the applicant's assertion in her affidavit of 14 January 2008 that her later answers unequivocally informed Mr Dower that she was going to have her baby in Belfast. Insofar as they betray an admission to remain in Belfast to have her baby, I consider that they more likely reflect an all too late recognition that her earlier answers were manifestly implausible and they carry a hint of resignation to her fate

<u>Legislation governing this application</u>

[19] An "entrant" is defined in Section 33(1) of the Immigration Act 1971 as a person entering or seeking to enter the United Kingdom and an "illegal entrant" as a person unlawfully entering or seeking to enter in breach of a deportation order or of the immigration laws, or entering or seeking to enter by means which include deception by another person. These include a person who has entered as mentioned above.

[20] The 1971 Act provides in Section 24A(1) that:

> "(1) A person who is not a British citizen is guilty of an offence if, by means which include deception by him –
>
> (a) He obtains or seeks to obtain leave to enter or remain in the United Kingdom."

[21] In order to obtain leave to enter the United Kingdom as a visitor, it is necessary to satisfy the requirements contained in paragraph 41 of the Immigration Rules (HC395) ("the Rules"). Rule 41 states as follows:

> "41. The requirements to be met by a person seeking leave to enter the United Kingdom as a visitor are that he:
>
> (i) Is genuinely seeking entry as a visitor for a limited period as stated by him, not exceeding six months; and
>
> (ii) Intends to leave the United Kingdom at the end of the period of the visit as stated by him; and
>
> (iii) Does not intend to take employment in the United Kingdom; and
>
> (iv) Does not intend to produce goods or provide services within the United Kingdom, including the selling of goods or services direct to members of the public; and
>
> (v) Does not intend to study at a maintained school; and
>
> (vi) Will maintain and accommodate himself and any dependants adequately out of resources available to him without recourse to public funds or taking employment; or will, with any dependants, be

maintained and accommodated adequately by relatives or friends; and

(vii) Can meet the cost of the return or onward journey."

[22] In order to obtain leave to enter as a visitor for private medical treatment it is necessary to satisfy the requirements at paragraph 51 of the Rules which provides:

"**Requirements for leave to enter as a visitor for private medical treatment**

51. The requirements to be met by a person seeking leave to enter the United Kingdom as a visitor for private medical treatment are that he:

(i) Meets the requirements set out in paragraph 41(iii)-(vii) for entry as a visitor; and

(ii) In the case of a person suffering from a communicable disease, has satisfied the Medical Inspector that there is no danger to public health; and

(iii) Can show, if required to do so, that any proposed course of treatment is of finite duration; and

(iv) Intends to leave the United Kingdom at the end of his treatment; and

(v) Can produce satisfactory evidence, if required to do so, of:

(a) the medical condition requiring consultation or treatment; and

(b) satisfactory arrangements for the necessary consultation or treatment at his own expense; and

(c) the estimated costs of such consultation or treatment; and

(d) the likely duration of his visit; and

(e) sufficient funds available to him in the United Kingdom to meet the estimate costs of his undertaking to do so."

Legal principles governing this application

[23] Recently In the Matter of an Application by Manjur Alam for Judicial Review (unreported GIL7093) and hereinafter referred to as" Manjur's case") I set out the principles contained in the leading authority of Reg v Home Secretary, Ex P Khawaja (1984) 1 AC 74 ("Khawaja") which governs cases of illegal entry. I relied on the interpretation of that case by the Court of Appeal in Northern Ireland in Paul Udu and Veltin Nyenty (unreported CAMF5983) ("Udu's" case). I therefore shall set out the principles that I relied on in Manjur's case at paragraphs 14-16:

> "[14] In Udu's case, Campbell LJ succinctly analysed the effect of Khawaja's case at paragraph 13 et seq as follows:-
>
> > '(i) There is an onus on the immigration officers to prove by a preponderance of probability to the satisfaction of the court that leave to enter was obtained by deception.
> >
> > (ii) In judicial review it is the function of the courts, including an appellate court to go beyond inquiring only if the immigration officer had reasonable grounds for his belief and to decide if the applicant is an illegal immigrant.
> >
> > (iii) A duty approximating to uberrima fides is not imposed on a person seeking entry.
> >
> > (iv) Deception may arise from silence as to a material fact in some circumstances.'
>
> [15] At paragraph 20 et seq the judge continued:
>
> > '(20) Lord Fraser in his speech in *Khawaja* considered the function of the

courts when dealing with removal cases and he agreed with Lord Bridge and Lord Scarman "that an immigration officer is only entitled to order detention and removal of a person who has entered the country by virtue of an ex facie valid permission if the person is an illegal entrant." This is a "precedent fact" that has to be established and on review the court has to decide if the entry was obtained by deception. This is the task not only of the High Court but also of an appellate court as was stated in *Khawaja*.

(21) In *R v Secretary of State for the Home Department ex parte Al-Zahrany* [1995] 1mm AR 510, a decision of the Court of Appeal in England and Wales, Stuart-Smith LJ (with whom Waite and Millett LJJ 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."

In *R (Zahide Awan) v Secretary of State for the Home Department* [1996] Imm AR 354, Buxton J, sitting at first instance, 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."
>
> We agree that a representation may be implied from the silent presentation of a passport that the holder is seeking entry for the purpose for which the visa which has been obtained arid no other.'

[l6] To these principles, for the purposes of this case, I add three other matters arising from *Khawaja* -

(a) on an application challenging the decision of an Immigration Officer the respondent should depose to the grounds on which the decision to detain and remove was made setting out the essential evidence taking into account and exhibiting documents necessary to enable the court to carry out their functions of review;

(b) the court should appraise the quality of the evidence and decide whether that justifies the conclusion reached.

(c) if the court is not satisfied with any part of the evidence it may remit the mailer for reconsideration or itself or receive further evidence. It should quash the detention order where the evidence was not such that the authority should have relied on it or where the evidence received does not justify the decisions reached by serious procedural irregularity (see

> Girvan J in Re Paul Udu and others (2005) NIOB 81 at paragraph 11)."

[24] A similar issue arose in the present case as had arisen in Manjur concerning what amounts to effective deception. The instant case and that of Manjur were heard literally days apart and therefore I have decided to set out the principles I determined in Manjur's case dealing with that issue at paragraphs 18-22 as follows:

> "[16] An issue arose in this case as to what amounts to an effective deception. I remind myself that the binding authority of Khawaja is crystallised in the words of Lord Bridge at p 118 F where he said:
>
> > 'If the fraud was a contravention of section 26(1)(c) of the Act, the provisions of which I have already quoted, and if the fraud was the effective means of obtaining leave to enter - in other words if, but for the fraud, leave to enter would not have been granted - then the contravention of Act and the obtaining of leave to enter were two inseparable elements of the single process of entry and it must inevitably follow that the entry itself was "in breach of the Act".' -
>
> [17] In R v. Secretary of State for the Home Department ex p Jayakody (1982) I WLR 405 ("Jayakody") the Court of Appeal held that the fraud must be decisive *(my emphasis)* of the application i.e. in all probability the leave would have been refused but for the deception. Thus in that case failure to tell an Immigration Officer that a spouse was resident in the UK might not be decisive of the grant or refusal of leave to enter.
>
> [18] Subsequent authorities however have clearly diluted the effect of the assertions in Jayakody. In Durojaiye v. Secretary of State for the Home Department (1991) 1mm AR 307 posed a different test in the following terms:
>
> > 'The fact is that the question which the Home Office asked Mr Durojaiye was, what his hours of attendance had been; and that was the question which he

> answered. Plainly his answer was material in the sense that it was likely to influence their decision whether to find that he was qualified. If his answer had been "I have attended for less than 15 hours per week, but I have studied at home as my course required", it is likely that more questions would have been asked and further enquiries made.'

The test therefore was one of materiality in the sense that it was likely to influence the decision.

[19] In R v. Secretary of State for the Home Department, ex p Ming (1994) Imm AR 216 Laws J held that the representation was material if, on the revelation of the truth, "at the very least further enquiries were to be made".

[20] In the instant case Mr McGleenan, who appeared on behalf of the respondent, relied on Kaur v. Secretary of State for the Home Department (1998) 1mm AR 1("Kaur's case"). This was an appeal against refusal of leave to enter on the ground that material facts were not disclosed for the purpose of obtaining a visa. Dealing with Jayakody's case, Ward J said at page 8:-

> 'I agree that the time has come when we should put that test to rest. It seems to me quite inconsistent with a line of authority which has received approval in this court and above. I refer to the decision of the House of Lords in R v. Home Secretary ex parte Bugdaycay (1987) 1 AC 514. There Lord Bridge at page 525 stated he could not improve on the reasoning of Neill U in the court below when he said:
>
> > "In my judgment it is impermissible to extend the concept of material facts so as to allow an intending entrant to seek leave to enter for a

> particular purpose on the basis of a statement of particular facts and then later, on admitting that the purpose had been misrepresented and the facts had been misstated, to contend that he was not an illegal entrant because if he had told a different story and had put forward a different reason for his visit he might well have been given leave."
>
> Mr Stockman, who appeared on behalf of the applicant, urged that I should continue to adopt the approach laid down in Jayakody on the basis that this was, like the present case, an instance of illegal entry which carried with it criminal sanctions where as Kaur's case was an instance where leave to enter was being refused or revoked leading to a refusal of entry to the UK.'

[21] I consider that the proper approach to be adopted in such cases is that advocated by Mr Ian Macdonald QC in his textbook "Macdonald's *Immigration Law and Practice* 6th Edition where he frames the test in these terms:

> 'However, Khawaja is still binding authority, and, by bedding Jayakody, the court in Kaur cannot have intended to substitute "mere materiality" for "effective means" as the proper test for establishing the causal connection between the deception practised and the leave to enter granted by the Immigration Officer. That would be too much of a watering down. What is clear, however, is that the wording of the section 24A offence, inserted into the IA 1971 in 1999, endorses the view put forward in Khawaja that the deception

> employed need only have been one of the factors leading to the grant of leave to enter, an effective but not necessarily decisive one.'
>
> [22] In my view the test still continues to be that laid down in Khawaja namely that the deception or fraud must be the effective, or one of the effective means, of obtaining leave to enter. This does not necessarily mean decisive but in my view means more than "mere materiality". In essence the test therefore still remains that the deception must have been one of the effective means of obtaining leave to enter."

Conclusion

[25] I have come to the conclusion that the applicant in this case did engage in deception both in securing her visa to travel to the United Kingdom and in subsequent interactions with immigration officials. Her failure to reveal that at least part of her reason for coming to the UK was to give birth to her child in the UK amounted to a deception arising from silence as to a material fact. It amounts to an effective deception. I am satisfied therefore that she was properly deemed an illegal entrant. In coming to this conclusion I am conscious that this is a precedent fact where the onus is on the immigrations officers to prove by a preponderance of probability that illegal entry was obtained by deception. In coming to this conclusion I recognise that I must be satisfied beyond mere suspicion. I have gone beyond enquiring only if the immigration officer had reasonable grounds for his belief and I have decided that the applicant is an illegal entrant. I also confirm that the test which I have applied is whether or not the deception was the effective means of obtaining leave to enter and that it was one of the factors leading to the grant of leave to enter.

[26] I have determined that the evidence before me clearly points to this applicant intending from the outset to come to the United Kingdom, and Northern Ireland in particular, for the purpose of giving birth to her second child in the same manner as she had done with her first child albeit an additional reason for entering the UK was to obtain medical treatment for her other child. I do not accept that the birth of the child in Belfast was simply an event that occurred outside her original intention when she had applied for her visa to travel to the United Kingdom and when she entered the UK. If this had been the case, I can conceive of no reason why she would not have been forthright and truthful with Mr Dower when she was interviewed by him at Belfast International Airport. I am satisfied on the balance of probabilities that she wilfully attempted to disguise from him that she intended to travel to Belfast to give birth to her child and this echoed the

deception she had practised when obtaining her entry visa. I can think of no other reason why she failed to immediately declare the case that she now makes before namely that she was coming to Belfast to have the child but that this had been a decision taken only after she had arrived in the United Kingdom. Instead, she sought to mislead this official by asserting that she only intended to stay for about one week for the purpose of shopping before returning to Nigeria to have her baby.

[27] That she was clearly planning to have this baby in Belfast for some time is evidenced in my view by the fact that her suitcase contained a number of items for a newly born child including clothing and nappies. Once again I am satisfied that she told lies about this to Mr Dower asserting that these were for a friend that she was going to meet in Belfast and had been given to her by an unknown person. I believe that the presence of these clothes indicates that she had carefully planned to have this child in Belfast and had bought clothing in advance of coming here in order to prepare for the birth. The fact that she denied this does not in my view smack of panic but rather of someone who was attempting to conceal her true intentions.

[28] Mr Lavery on behalf of the applicant asserted that the reason she did not accompany her daughter back to Nigeria was because she was at such an advanced stage of pregnancy. That is not the reason she gave to Mr Dower. On the contrary she indicated that she would have been fit to fly back. I accept the evidence of Mr Dower that she could offer no credible explanation why she had not returned to Nigeria with her daughter. I am satisfied that this was because she fully intended to remain after her daughter had returned in order to give birth to her child in Belfast.

[29] The absence of a return ticket to Belfast or for that matter an alteration or extension of her return ticket to Nigeria is further indication of someone who had careful plans to wait in Belfast as long as it was necessary until her child was born.

[30] I recognise that it was unnecessary for her merely to declare her pregnancy on arrival in the United Kingdom. I can see no basis upon which someone who has obtained a visitor's visa, and then becomes pregnant is required to make such an intimate disclosure. Indeed had she entered the UK with no intention to have a baby in this jurisdiction and then changed her mind there would have been no need to return to the immigration authorities It is my view however, that what should have been disclosed to immigration authorities when she was obtaining her visa and when she was entering the UK, was that she intended to give birth to her child in Northern Ireland. I am satisfied that is what her intention actually was. Mr Lavery asserted that this would have been an admission of no consequence because either she could have obtained a medical visa under Rule 51 or the immigration officer would have in any event permitted her to continue on her way notwithstanding

such an admission. I reject his submission. Rule 51 makes it perfectly clear that where a visitor seeks to enter or remain for private medical treatment, careful and searching enquiries will be made including the nature of the medical condition, whether satisfactory arrangements have been made for the necessary consultations or treatment, the estimated costs of such consultation or treatment, the likely duration of the visit and whether sufficient funds were available. Rule 41(6) makes clear that such a visitor would have to have satisfied the immigration authorities that resources were available without recourse to public funds and that she could meet the costs of the return or onward journey.

[31] Lack of finance could well be a motivation for withholding such information. In the event in this case, it is clear from the documents before me that the applicant incurred costs totalling just under £1,000, i.e. £630 for maternity services per the invoice of 19 October 2007 and £307 per the invoice of 5 December 2007. When questioned by Mr Dower about her funds, she told him that she had a bank account of £220 in the United Kingdom and about £250 in cash. She thereafter indicated that her ticket back to Nigeria for her and her baby would be about £800 albeit she could change the ticket that she came in on for a total of about £220. Irrespective of the precise arithmetic involved, I am satisfied that there was at least a measure of doubt as to whether or not she had sufficient funds to be able to pay for a private medical service. When Mr Dower spoke to her no bills had been paid although I am subsequently informed that the figure in excess of £600 has been paid for medical expenses. There is no evidence about the outstanding invoice of £307. Thus these are matters which would have occasioned further enquiries to be made before the visa was granted or entry permitted pursuant to Rules 41 and 51. I can conceive of no circumstances where a visa would have been granted or entry permitted had she disclosed this information at the relevant periods without full and searching enquiry.

[32] Even had I been satisfied that entry probably would have been granted if she had told the truth the *Bugdaycay* case is authority for the proposition that deception is still sufficient to render her an illegal entrant .

[33] In the circumstances therefore I have come to the conclusion that the applicant is an illegal entrant and I must refuse the application in this case. I shall invite counsel to address me on the issue of costs.