

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEENS BENCH DIVISION (JUDICIAL REVIEW)

Keru's (Kasumu Tunde) Application [2010] NIQB 98

**IN THE MATTER OF AN APPLICATION BY KASUMU TUNDE KERU
FOR JUDICIAL REVIEW
AND IN THE MATTER OF A DECISION BY AN IMMIGRATION
OFFICER**

MORGAN LCJ

[1] The applicant challenges a decision by the respondent on 31 August 2008 that he is an illegal entrant to the United Kingdom as a result of which he was detained. He seeks the cancellation of any endorsement on his passport and a rectification of any other documents as well as damages. The applicant was represented by Mr Stockman and the respondent by Ms Murnaghan. I am grateful to both counsel for their helpful written and oral submissions.

Background

[2] The applicant is a Nigerian national. He flew to London on 31 August 2008 and entered on foot of a multiple entry visitor visa issued by the British High Commission in Lagos and valid for the period from 26 April 2006 to 26 April 2011. He then purchased a single ticket for a flight to Belfast and was interviewed by an immigration officer on arrival. Although he has no recollection of being cautioned he accepts that the content of the interview is broadly correct.

[3] The applicant is an experienced traveller. At the time of his arrival in Belfast he held a visa for entry to the United States of America and a business visa for the Republic of Ireland valid from 25 August 2008 until 24 November

2008. He had previously held visitor visas for the United Kingdom and had previously travelled on foot of these visas to the United Kingdom.

[4] The applicant is a Muslim and as permitted by his religion and culture has 3 wives. In his affidavit he explains that he married his first wife in 1983/84 and has four children with her. She resides in Lagos with him. He married his second wife, Fausat, in 1984 and they have six children. The eldest is 24 and the youngest is an eight-year-old boy. His third wife has two children and also lives with him in Lagos.

[5] The applicant says that he had marital difficulties with Fausat from 1999/2000 around the time that he made his first visit to the United Kingdom. While he was on that visit he claims that Fausat independently travelled to the Republic of Ireland where the youngest child was born. That child accordingly has Irish citizenship. The mother and child subsequently returned to Nigeria but travelled back and forward to Ireland. The applicant says that the marital difficulties became worse in 2005 and in 2006 Fausat decided to return to Ireland permanently with her four youngest children. The applicant denied any further contact with her and says that he has instructed a lawyer to institute divorce proceedings. He says that he has no wish to see his children.

[6] In his affidavit the applicant indicated that he is the sole director and chief executive officer of a road construction and civil engineering company. In order to reduce costs he imports used vehicles and equipment from Europe and the United States. He obtained his business visa for the Republic of Ireland in order to investigate the purchase of a road grader from Ballytrain Plant and Commercial Sales Ltd in Monaghan. He had brought with him a cash sum of 20,000 euro.

[7] When interviewed on the afternoon of 31 August 2008 he was asked for his wife's name, date of birth and nationality. He gave the name and date of birth of Fausat but did not mention his other wives. He said that he believed that she was in Dublin with the children and that one of the children had been born in the Republic of Ireland. He said that he understood that he had an immigration problem. He said that it had been a long time since he had seen his wife and children. He denied that he intended to visit them in the Republic of Ireland. He explained that he had a visa for the Republic of Ireland for the purpose of buying machinery. In his third affidavit the applicant stated that it was in fact the immigration officer who raised Fausat's name. I do not place weight on that assertion. The reference to Fausat occurred in the course of the interview and in his first affidavit the applicant made no assertion that it was the immigration officials who had first raised her position.

[8] He was asked what place of residence he had given for his wife when he made his visa application in 2006. He said she was in Lagos. He said that he had not declared that his wife and children had travelled to the Republic of Ireland in 2000. He said that he told the immigration officer at Heathrow that he had travelled to the United Kingdom for business and a holiday. He said he told the immigration officer that he would be staying in London and did not tell him that he intended to travel to Belfast or that he had a wife and six children who were asylum seekers resident in the Republic of Ireland. He said in his affidavit that after going through customs he checked some information for purchase of trucks in Belfast and decided to purchase a ticket to fly to Belfast.

[9] The immigration officer checked the applicant's wife's name against the UK database and established that she had been removed from the United Kingdom to Ireland following illegal entry into the United Kingdom on 13 August 2006. He then checked with his counterparts in the Republic of Ireland and established that she held residency in Ireland on foot of her Irish born child but that status had expired and enforcement action was due to occur to effect her removal from Ireland on 23 August 2008.

[10] Having considered the available information the immigration officer concluded that the applicant had entered by deception in that he was silent about the fact that his wife and children were unlawfully resident in the Republic of Ireland and that his wife had an adverse United Kingdom immigration history. The Chief Immigration Officer agreed with that assessment and considered it appropriate to treat the applicant as an illegal entrant. He was detained for removal.

Consideration

[11] This is a case in which the issue is whether the applicant was guilty of deception either at the time of making his visa application or on entry into the United Kingdom. In Razak's Application [2007] NIQB 41 Weatherup J derived the following propositions after consideration of the leading decision of the House of Lords, Khawaja v Secretary of State for the Home Department [1984] 1 AC 74.

- "i. The immigration authorities do have authority to detain and remove a visa holder if that person is an illegal entrant.
- ii. The immigration authorities have to satisfy the Court to a high degree of probability that the applicant is an illegal entrant, that is the status of illegal entrant is a precedent fact to removal.

iii. The applicant may become an illegal entrant by being guilty of deception in the application for a visa or the information furnished on entry to the UK.

iv. The deception must be effective in securing entry to the UK.

v. There is no duty of candour on the part of an applicant. However, the authorities must not be misled on material facts that are effective in securing entry, whether on the visa application or in communication with the immigration officials and whether by what is said or by conduct or by silence coupled with conduct.

vi. In the light of the decision of the Court of Appeal in Northern Ireland in Udu and Nyenty's Applications [2007] NICA 48, where 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 and it amounts to deception to impliedly represent that there has been no change of circumstances to the specified grounds of entry by producing the visa for the specified purpose and not stating the true purpose."

I am happy to adopt and rely on those propositions.

[12] Subsequent to the applicant's detention each party sought to adduce further information supporting their position. While he was in custody the applicant arranged for documentation in relation to his business, his banking accounts and receipts for the money he had in his possession to be faxed to the United Kingdom. There are issues in particular about the form and numbering of the receipts which raise questions about their authenticity.

[13] In the course of investigations contact was made with the owner of the machinery business in Monaghan. He advised representatives of the respondent that he had no contact with the applicant and had not provided him with the documentation inviting the applicant to his premises. The respondent relied upon this as evidence that the intention of the applicant was to visit his wife and children in the Republic of Ireland rather than to engage in a business transaction. Despite what was said to the authorities in Northern Ireland there was subsequently e-mail traffic between the applicant's solicitor and the owner of the business in which the owner confirmed not only that he provided the invitation but that he had also previously done business with the applicant.

[14] The respondent made further inquiries in relation to the applicant's business visa for the Republic of Ireland. It was established that in his application the applicant referred to his first wife and their four children but

did not refer to Fausat or her 6 children. The application form requires the applicant to state whether he had any family members living in Ireland and he said that he had none. The authorities in the Republic of Ireland have indicated that if he had disclosed the position in relation to his wife and children this would have materially affected the decision to give him a business visa.

[15] It is not, of course, the function of this court to decide how this issue affects the validity of the business visa issued by the authorities in the Republic of Ireland. The significance of this material is that it is considerable evidence demonstrating that the applicant is a person who is prepared to use deceit in order to achieve a particular immigration status.

[16] The respondent has been able to obtain details in respect of the applicant's application for a visitor's visa made on 1 April 2006. That application demonstrates that he declared his wife as being Fausat. In his interview he accepted that since 2000 Fausat and the older children with her have been asylum seekers in the Republic of Ireland. The applicant seeks to explain this on the basis that the information held has probably been retained from when it was first entered in 2000 when he first sought to obtain a visitor's visa. In his interview he said that no questions in relation to the immigration status of Fausat were asked.

[17] Even if one accepts this explanation as accurate the fact that the applicant used deception in relation to his Republic of Ireland visa indicates that the applicant was aware that the immigration status of his wife and children was likely to be material. At the very best from his point of view he chose not to mention it either at the time of making his visa application in 2006 or on his entry into the United Kingdom in 2008. I am satisfied that his silence on the issue of the immigration status of Fausat and the children was designed to deliberately hide the change which had occurred since 2000 and that he rightly knew that if this material had been disclosed it would have materially affected the outcome of his visa application.

[18] I express no view about the circumstances in which he obtained the money in his possession nor do I need to come to any conclusion in relation to his intention to visit Monaghan. Similarly I make no finding in relation to whether it was in fact his intention to meet up with Fausat and the children. I am, however, satisfied to the necessary standard that his silence amounted to deception on a matter which was effective in relation to his securing entry to the United Kingdom.

[19] In the circumstances that this judicial review application must be dismissed.