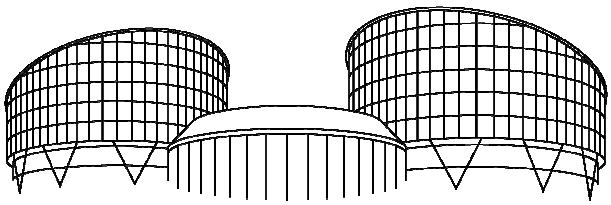

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FOURTH SECTION

DECISION

**AS TO THE ADMISSIBILITY OF**

Application no. 46263/06
by Joseph Adesola ANDREWS
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 29 September 2009 as a Chamber composed of:

Lech Garlicki, *President*,
Nicolas Bratza,
Giovanni Bonello,
Ljiljana Mijović,
Päivi Hirvelä,
Ledi Bianku,
Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having regard to the above application lodged on 14 November 2006,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mr Joseph Adesola Andrews, is a Nigerian national who was born in 1967 and lives in Lagos. The United Kingdom Government

("the Government") were represented by their Agent, Ms E. Willmott of the Foreign and Commonwealth Office.

## A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant arrived in the United Kingdom in July 1991. He was granted leave to enter for a period of six months. In October 1991 he applied for leave to remain as a working holidaymaker. He was granted leave to remain until December 1993.

In 1991 he began living with his partner, who is a British citizen. On 17 August 1993 their daughter was born.

On 22 November 1993 the applicant claimed asylum. The application was refused by the Secretary of State for the Home Department on 13 May 1994 on the ground that there was no evidence to substantiate the claim. The applicant remained in the United Kingdom without leave.

On 27 May 1994 he was sentenced to twelve months' imprisonment following his conviction of three counts of burglary and a breach of a probation order. On 13 June 1994 he was sentenced to fourteen days' imprisonment for driving whilst disqualified and driving without insurance.

On 26 April 1995 the applicant and his partner married. On 27 April 1995 the applicant applied for leave to remain on the basis of his marriage to a British citizen. On 7 September 1995 he was granted twelve months' leave to remain on the basis of the marriage.

On 6 September 1996 his leave to remain expired and he made no application for an extension.

On 7 September 1997 he was convicted by a Crown Court of two counts of conspiracy to defraud and was sentenced to four years' imprisonment.

On 18 August 1998 the applicant was served with notice of a decision to deport him.

On 19 August 1998 his application for indefinite leave to remain as the spouse of a British citizen was refused and the Secretary of State for the Home Department made a deportation order against him.

On 14 October 1998 the applicant was released from custody on licence. On 22 July 1999 he was convicted by a Magistrates' Court for possession of a false instrument. He was sentenced to a total of fifteen months' imprisonment. He was released on 10 March 2000.

On 20 November 2000 he was sentenced to three years' imprisonment for significant offences of dishonesty (including possession and use of a false instrument and attempting to obtain a money transfer by deception). His sentence came to an end in January 2002 but he remained in immigration detention until 25 November 2002, when he was granted bail by the Immigration Appeal Tribunal.

On 4 April 2003 the applicant's appeal against the decision to deport him was dismissed by the Immigration Appeal Tribunal, which found that in view of his criminal conduct and the separation that had already taken place between himself and his family due to his imprisonment, his deportation would not be a disproportionate interference with his right to respect for his family life. The Tribunal accepted, however, that the applicant's wife was a United Kingdom citizen of Jamaican origin; that she would not relocate to Nigeria with the applicant if he were deported; that her mother was in poor health, requiring her to visit her three to four times each week; that she was in part-time employment in the United Kingdom; and finally, that she had not known that the applicant had no leave to remain when she married him.

On 13 May 2003 the applicant made a fresh claim to remain in the United Kingdom on human rights grounds, namely Article 8. This was refused by the Secretary of State by letter dated 8 July 2003. He appealed to an Adjudicator. The Adjudicator dismissed the appeal on 17 December 2003, finding that the interference with the applicant's family life was proportionate in view of his criminal conduct.

On 22 November 2004 the Immigration Appeal Tribunal allowed the applicant's appeal against the Adjudicator's decision on the ground that the Adjudicator had misdirected himself on the appropriate standard of proof for a human rights claim and accordingly his determination was "fatally flawed". The appeal was remitted to another Adjudicator to be considered afresh.

On 11 February 2005 a second Adjudicator dismissed the applicant's appeal against the refusal of his human rights claim.

On 28 June 2005 his application for reconsideration was refused by a Senior Immigration Judge on the ground that the Adjudicator's decision disclosed no error of law. On 10 October 2005 the High Court also refused the applicant's application for reconsideration of the decision.

In May 2006 the applicant's daughter issued an application for judicial review challenging the decision to deport him. The application was based on a breach of domestic policy rather than Article 8 of the Convention. Permission was refused on the papers on 9 October 2006. An application to renew the application was made outside the seven day time-limit prescribed by the relevant rule of court. Permission was finally refused on 14 December 2007.

The applicant was deported to Nigeria on 30 March 2007.

### B. Relevant domestic law

Section 3(5) of the Immigration Act 1971 provides, insofar as material, as follows:

> "A person who is not a British citizen in liable to deportation from the United Kingdom if: -

(a) the Secretary of State deems his deportation to be conducive to the public good;

..."

At the time of the applicant's deportation, paragraphs 390 to 392 of the Immigration Rules HC 395 (as amended) provided that after a minimum of three years following his deportation, the applicant would be entitled to apply to have his deportation order revoked. Revocation of the deportation order did not entitle the applicant to re-enter the United Kingdom; rather, it would entitle him to apply for admission under the Immigration Rules.

Following the applicant's deportation, paragraphs 390 to 392 of the Immigration Rules HC 395 (as amended) were amended. They now provide as follows:

"390. An application for revocation of a deportation order will be considered in the light of all the circumstances including the following:

(i) the grounds on which the order was made;

(ii) any representations made in support of revocation;

(iii) the interests of the community, including the maintenance of an effective immigration control;

(iv) the interests of the applicant, including any compassionate circumstances.

391. In the case of an applicant *who has been deported following conviction for a criminal offence* continued exclusion

*(i) in the case of a conviction which is capable of being spent under the Rehabilitation of Offenders Act 1974, unless the conviction is spent within the meaning of that Act or, if the conviction is spent in less than 10 years, 10 years have elapsed since the making of the deportation order; or*

*(ii) in the case of a conviction not capable of being spent under that Act, at any time, unless refusal to revoke the deportation order would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees.*

will normally be the proper course. In other cases revocation of the order will not normally be authorised unless the situation has been materially altered, either by a change of circumstances since the order was made, or by fresh information coming to light which was not before, or the appellate authorities or the Secretary of State. The passage of time since the person was deported may also in itself amount to such a change of circumstances as to warrant revocation of the order.

392. Revocation of a deportation order does not entitle the person concerned to re-enter the United Kingdom; it renders him eligible to apply for admission under the Immigration Rules. Application for revocation of the order may be made to the Entry Clearance Officer or direct to the Home Office."

## COMPLAINTS

The applicant complained under Article 8 of the Convention that his removal to Nigeria violated his right to respect for his family life. He further

complained under Article 3 of the Convention that he was likely to end up destitute in Nigeria.

## THE LAW

The applicant submitted that his removal to Nigeria violated his rights under Article 8 of the Convention. In particular, he submitted that the offences that he committed were not at the most serious end of the spectrum of criminal activity and in prison he was deemed to be in the lowest category of risk. With regard to his family life, he argued that he and his family had been settled in the United Kingdom since 1992. His wife and daughter were British citizens and it would be unreasonable to expect them to relocate to Nigeria. In particular, he relied on the fact that his daughter was preparing to sit her GCSE examinations and his wife was caring for her elderly mother in London. Moreover, his wife and daughter had never been to Nigeria and he submitted that they would be ostracised there as "black Europeans".

Finally, the applicant submitted that his removal to Nigeria violated his rights under Article 3 of the Convention because he had no prospects of obtaining employment there and would likely end up destitute.

In their observations the Government challenged the applicant's version of events as presented in the statement of facts. In particular, they submitted that his criminal record was more extreme that he had previously admitted. His first criminal convictions were in May 1993, when he was convicted of three offences of burglary and theft for which he was sentenced to concurrent twelve month probation orders. Nineteen other offences were taken into consideration at the same time. In May 1994 he was convicted of a further three offences of burglary and was sentenced to twelve months' imprisonment. In June 1994 he was convicted of driving whilst disqualified and driving without insurance. He was convicted of a further five traffic offences in April 1995. In May 1997 he was convicted of two offences of conspiracy to defraud for which he was sentenced to four years' imprisonment. In May 1999 he committed a further offence involving the use of a forged passport and utility bill in order to obtain money from a building society. In July 1999 he was convicted of possession of a false instrument. In November 2000 he was again convicted of possessing a false instrument and of attempting to obtain a money transfer by deception. Finally, in September 2006, the applicant was convicted of three offences of burglary and was given concurrent two month sentences of imprisonment. Therefore, since arriving in the United Kingdom in July 1991, the applicant has committed forty-seven separate criminal offences for which he had received prison sentences in aggregate of over nine years.

In relation to the applicant's complaints, the Government submitted that they were inadmissible, either because he had failed to exhaust domestic remedies or because his complaints were manifestly ill-founded. They submitted that he had failed to exhaust domestic remedies because he did not bring an application to judicially review the removal directions set for 30 March 2007. While the Government accepted that the applicant's daughter had brought an application to judicially review the decision to remove him, this claim could not be treated as if it were brought by the applicant.

In the alternative, the Government argued that the application should be found to be inadmissible as the applicant's removal did not constitute a lack of respect for his family life. In particular, there were no insurmountable obstacles to prevent the applicant's wife and child from joining him in Nigeria. Although the Immigration Appeal Tribunal had accepted that the applicant's wife did not know of his immigration status at the date of the marriage, it found that she did not know because she failed to ask the obvious question. At the date of the marriage she was therefore aware of his criminal record and must be taken to have been aware of his precarious immigration status. Moreover, any interference with the applicant's daughter's family life flowed from the choices of her parents and could not be attributed to State interference.

Finally, the Government submitted that if the application were found to be admissible, any interference with the applicant's family life was proportionate in light of the criteria established by the Court in *Üner v. the Netherlands* [GC], no. 46410/99, §§ 57-58, ECHR 2006-XII.

The applicant was invited to submit comments on the Government's observations by 4 July 2007. This deadline was later extended to 9 August 2007 as the Government submitted additional observations on 26 July 2007. On 8 August 2007 the applicant contacted the Court to seek an extension. The deadline was further extended to 28 September 2007. On 13 November 2007 the applicant sought a further extension on the ground that communication was stalled because of the unreliable postal service in Nigeria. On 17 December 2007 the Court wrote to the applicant to advise that the President of the Chamber had agreed to extend the deadline to 15 January 2008. He was advised that this was a final extension and failure to submit observations and a claim for just satisfaction within this deadline might entail that the application would be struck out.

On 15 January 2008 the Aire Centre contacted the Court, asking for a one-week extension to reach a decision. On 23 January 2008 the Court's Registry wrote to the Aire Centre to advise that the Acting President had exceptionally granted it until 5 February 2008 to allow it to decide if it wished to represent the applicant. On 5 February 2008 the Aire Centre advised the Court that it was unable to represent the applicant. On 11 February 2008 the applicant wrote to the Court, asking for a further

extension of time. On 8 April 2008 the Court acknowledged his letter but no further extension of time was granted. No further correspondence has been received from the applicant.

In view of the additional information provided by the Government, and the applicant's failure to submit observations in response to this information, the Court cannot but conclude that the applicant's complaints do not disclose any appearance of a violation of the Convention rights invoked by him. In particular, the Court has regard to the applicant's significant criminal record during his time in the United Kingdom, the fact that his wife was either aware or ought to have been aware that his immigration status was precarious at the date of the marriage, and the fact that the applicant only resided lawfully in the United Kingdom for a very short period. Moreover, and even assuming that Article 3 can be relied on, the Court observes that the applicant has submitted no evidence to substantiate his claim that he would be unable to secure employment in Nigeria and as a consequence would become destitute.

It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Lawrence Early
Registrar

Lech Garlicki
President