ASYLUM AND IMMIGRATION TRIBUNAL

THE IMMIGRATION ACTS

Heard at: Field House Date of Hearing: 29 January 2008

Before:

Mr Justice Hodge, President
Senior Immigration Judge Chalkley

Between

EG

Appellant

and

ENTRY CLEARANCE OFFICER, LAGOS

Respondent

Representation
For the Appellant: Mr A. Ogunfeibo, Solicitor
For the Respondent: Mr J. Gulvin, Home Office Presenting Officer

It is most unwise for a judge to conduct post-hearing research, on the internet or otherwise, into the factual issues which have to be decided in a case. To derive evidence from post-hearing research on the internet and to base conclusions on that evidence without giving the parties the opportunity to comment on it is wrong.

DETERMINATION AND REASONS

1. This is a reconsideration of an appeal by the appellant, a citizen of Nigeria, born on 10 October 1976. The respondent has refused the appellant leave to enter the United Kingdom as a student in a decision issued on 6 February 2007.

2. This appeal was first heard before Immigration Judge Hart, who, in a determination promulgated on 24 July 2007, dismissed the appeal. Reconsideration was ordered by a senior immigration judge, who considered it arguable that there may have been two errors of law made in the determination. First, the immigration judge searched the internet for information about the appellant's degree course after the hearing and did not give either party the opportunity to comment on the results of his research. Second, it was suggested the findings on the financial

aspects of the claim might be wrong in law, as the possibility of student fees being paid by instalments had been ignored.

Post-hearing research

3. In this case, the immigration judge searched the internet for information about the appellant's proposed course provider. He ascertained that the relevant college was associated with London Metropolitan University, and that the University awards banking degrees after a three-year, full-time course. The only details provided by the appellant about the course he proposed to take at his course provider were that it ran for about ten months to December 2007, with a requirement for a dissertation in March 2008. The judge then contrasted this information against the information relating to the three-year course provided by London Metropolitan University. He concluded that he did not find it credible that the applicant "would be able to complete his studies for a degree within the brief period suggested by the college".

4. The immigration judiciary, when deciding individual cases, will have close regard to the information and submissions put forward by both parties in writing prior to the appeal, and to the submissions and evidence heard at the appeal. They will also need to consider and be guided by the legislation, Immigration Rules and any case law that may be relevant to the individual case. Any judge will have regard to the evidence and the law during preparation, pre-hearing and during the hearing itself. Where a written determination is to be produced after the hearing, it will generally be necessary to give further detailed consideration to the evidence and submissions made to the judge and to the law applicable to the case.

5. It is, however, most unwise for a judge to conduct post-hearing research, on the internet or otherwise, into the factual issues which have to be decided in a case. Decisions on factual issues should be made on the basis of the evidence presented on behalf of the parties and such additional evidence as the parties are aware of as being before the judge. To conduct post-hearing research on the internet and to base conclusions on that research without giving the parties the opportunity to comment on it is wrong. If such research is conducted, and this determination gives absolutely no encouragement to such a process, where an immigration judge considers the research may or will affect the decision to be reached, then it will be the judge's duty to reconvene the hearing and supply copies to the parties, in order that the parties can be invited to make such submissions as they might have on it.

6. Here we conclude the immigration judge was wrong in law to conduct research on the internet in the manner in which degrees are awarded by the London Metropolitan University and/or the proposed college the appellant intended to attend. The result of the research was adverse to the appellant's claim and clearly had some influence on the immigration judge's assessment of the course the appellant proposed to follow. For the reasons given below, however, we do not consider the error was a material error of law.

Finance

7. Rule 57(vi) Immigration Rules (HC395 as amended) provides as follows:

> "57. The requirements to be met by a person seeking leave to enter the United Kingdom as a student are that he…
>
> (vi) is able to meet the costs of his course and accommodation and the maintenance of himself and any dependants without taking employment or engaging in business or having recourse to public funds."

Both the entry clearance officer and the immigration judge concluded that the appellant did not satisfy this requirement. We agree for the reasons fully set out in the otherwise comprehensive and clear decision of the immigration judge.

8. In particular, it is apparent that the appellant needed finance of over £8,000 to fund one year of his course in the UK. He had paid some £1,200 towards the £3,000 of fees which comprised part of the overall figure. It was suggested that the immigration judge had been wrong in law to disregard the fact that the balance of the monies might have been paid by the appellant's sponsor by instalments.

9. The immigration judge in fact analysed the financial evidence before him very clearly. All the evidence showed was that the sponsor had a reasonably substantial cash flow through his various business accounts. The profit shown on one profit and loss account was so small as to be properly wholly disregarded. The judge concluded that "The accounts give no confidence that the appellant can withdraw from that account under the control of his uncle a sum of the order of 1.8 million naira without leaving those accounts overdrawn or the company bereft of working capital". He also said "There is in fact no evidence that the required sums can be made available by his uncle from the company profits over and above his own financial needs". The appellant failed to adduce evidence showing the full income, outgoings, and the full assets and liabilities of the sponsor with details of the sponsor's dependants (if any) and thereby failed to prove that the sponsor was in a position to sponsor him.

10. The judge reached the wholly understandable conclusion that the appellant had not met the financial requirements of the Rules and explained why in full detail. Accordingly, the fact that an error of law was made by the immigration judge carrying out post-hearing internet research was not material, since the appellant does not otherwise satisfy the requirements of Rule 57 (vi).

Decision

11. The decision of the immigration judge to dismiss this appeal stands.

MR JUSTICE HODGE
PRESIDENT