



Home Office

Mr L. T. Onikosi

Our Ref

Your Ref

Date 18 January 2018

Dear Mr Onikosi,

Your further submissions dated 24 August 2017 have been rejected. You should now leave the United Kingdom.

What this means for you.

Your application has been unsuccessful.

You must leave the United Kingdom now, or you will be liable to be detained and removed.

If you do not leave voluntarily and removal action is required you may be subject to a re-entry ban of up to 10 years. You may also be prosecuted for the offence of overstaying, the penalty for which is a fine and/or up to 6 months imprisonment.

While in the United Kingdom you may not work or access benefits.

Further information

If you have any reason to stay in the United Kingdom that you have not already told us about, you must tell us now using the application forms on our website: gov.uk/ukvi. You should seek legal advice as soon as possible if you are intending to stay in the United Kingdom

The enclosed documents set out the reasons why your application has been unsuccessful and informs you of the legal consequences.

Yours sincerely

On behalf of the Secretary of State

CONSIDERATION OF FURTHER SUBMISSIONS

NRA

Re: Mr Luqman Temitayo Onikosi Nigeria

Date of decision: 18 January 2018

Our ref:

1. Thank you for your letter of 24 August 2017 in which you have asked for your representations to be considered as a fresh application for Human Rights.
2. Your application has not been considered by the Secretary of State personally, but by an official acting on her behalf.
3. You have previously had an asylum or human rights claim refused with a right of appeal. On 21 January 2014 you made a claim for leave to remain on human rights grounds under the Immigration Rules and Article 3 and 8 of the European Convention on Human Rights (ECHR). This was refused and certified with an out of country right of appeal on 28 April 2015. You submitted an appeal on 15 February 2016 despite having no in-country right of appeal which was struck out by the First Tier Tribunal on 6 April 2016. You still have the opportunity to appeal the certified refusal decision but you must first leave the United Kingdom in order to do so. Therefore your current claim has been considered to determine whether it is either a repeat claim or a fresh claim. We have made this consideration under paragraph 353 of the Immigration Rules (HC 395 as amended).
4. Paragraph 353 of the Immigration Rules states:

“When a human rights or asylum claim has been refused or withdrawn or treated as withdrawn under paragraphs 333C of these Rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:

 - (i) had not already been considered; and
 - (ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection.

This paragraph does not apply to claims made overseas.”
5. Some points raised in your submissions were considered when the earlier claim was determined. They were dealt with in the letter giving reasons for refusal of 28 April 2015. These submissions are not significantly different from the material that has previously been considered.
6. Below is a list of points that you have raised that have previously been considered:
 - (i) Your private life in the United Kingdom under Immigration Rules and under Article 8 of the ECHR
 - (ii) Your medical conditions under Articles 3 and 8 of the ECHR
7. You have provided no new evidence within the course of these submissions that suggest that you now meet the requirements for paragraph 276ADE of the Immigration Rules in regards to your private life in the United Kingdom. Your private life was given due consideration in the course of the original decision however no new evidence has been provided within the course of these submissions that are significantly different from the material considered in the previous refusal decision. You entered the United Kingdom in January 2007 and consequently fall far short of the 20 years continuous residency requirement of 276ADE (iii). You are 37 years of age and fail to meet the age requirements for consideration under 276ADE (iv) and (v). You have provided evidence to suggest there are very significant obstacles to your integration on return to Nigeria in order to satisfy 276ADE (vi). You were born and raised in Nigeria spending the majority of your

life, including your important formative years, there before entering the United Kingdom. You have significant prior experience of Nigeria, its society, culture and traditions as well as the requisite language skills to draw upon on your return. Your mother, brother and sister reside in Nigeria and it is considered they will be able offer emotional and practical support on your return. It is accepted that you have a wide support network of friends in the United Kingdom who support you both financially and emotionally. It is considered that these relationships can be maintained overseas by modern methods of communication e.g. phone, email, Skype. It is noted from the statement of support of Ms Yana Barenboim that you have communicated with her using Whatsapp and Skype and used video streaming technology in order to allow your mother and sister to witness your wedding in November 2016. While it is accepted that modern communication tools cannot replicate the physical proximity of your current relationships they do however offer a means of maintenance. You have provided no evidence that friends resident in the United Kingdom would be prevented from seeking the appropriate entry clearance in order to visit you on your return to Nigeria. It is noted that you are receiving some financial support from friends however it is considered that this can be continued overseas. While it is acknowledged that your medical conditions may have worsened over time, it is clear Nigeria has a fully functioning healthcare system which treatment can be sought from on return. You have provided no new evidence within these submissions which suggests there are now exceptional circumstances warranting leave to remain outside the Immigration Rules. It is therefore considered that the submissions in relation to your family and private and life in the United Kingdom are no more than mere repetition of your previous claim

8. Your physical and mental health conditions were given due consideration in the course of the original refusal decision. Your submissions, although they include more up to date medical evidence, are not significantly different to the previously considered in the course of the original decision and do not suggest you now engage Articles 3 and 8. Therefore the contents of your submissions are considered to be a repetition of your previous claim.
9. Due consideration was given to your medical conditions in light of the case law of **N v SSHD [2005] UKHL 31.** and **D vs the United Kingdom [1997] 24 EHRR 423.** It is not accepted, based on the contents of these submissions that you now meet the high threshold of these cases. While it is accepted that your medical conditions are undeniably debilitating you are not suffering from a terminal illness nor are you in the end stages of such disease. While it is acknowledged that your medical conditions may have worsened in the interim, it is not accepted that the evidence within the course of these submissions suggest you would now meet the threshold.
10. It is accepted that you have both physical and mental health conditions for which you are under the care of various medical professionals and are prescribed medication for. Nigeria has a fully functioning healthcare system from which treatment can be sought on your return. While it is accepted that the standard of and availability of specialist care may differ from that received in the United Kingdom this does not warrant a grant of leave to remain. The Nigeria Essential Medicines List show that medication is available. Your submissions contain copious amounts of medical articles and reports regarding the state of healthcare, in particular mental healthcare and counterfeit medication, in Nigeria. While it is accepted that there is a clear gulf in care in the United Kingdom and Nigeria the fact remains treatment in some form is available.
11. It is clear from your submissions that you have family in Nigeria. You have provided no evidence to suggest that they would be unable to offer emotional support in regards to your medical conditions on your return. It is also noted that the uncertainty of your status in the United Kingdom is an influential contributor to your condition. This uncertainty could be alleviated by returning to Nigeria where, as a Nigeria citizen, you would not be subject to Immigration control.
12. You have stated that your mental health conditions attract social stigma which would lead to your isolation on return to Nigeria. It is noted that there are NGOs operating in Nigeria such as the Mental Health Foundation working with those suffering from mental health conditions as well as advocating better care, social reform and battling the stigma of mental health. While you state that

you will face stigmatism in the street and at work you have provided no evidence to suggest this will happen to you. Your fear of return due to the fear of potential reactions of those in your local community does not warrant leave to remain.

13. You state that your medical conditions would render you unable to work on return to Nigeria or, if employment was secured, put you at risk of exploitation by your employer. You have provided no evidence within the course of these submissions to suggest you would be actively prevented from accessing the job market or be at risk of exploitation in order to substantiate this claim.
14. It is noted that you are currently in the United Kingdom without any valid leave to remain and therefore you are not entitled to secondary non-emergency treatment from the NHS, including out-patient care, free of charge. You have provided no evidence in the course of these submissions to suggest that you are currently paying, or have paid, for previous or ongoing treatment. It is therefore considered that the requirement to pay for treatment on return to Nigeria is no different to that in the United Kingdom and your desire to remain in the United Kingdom to access free healthcare does not warrant leave to remain.
15. It is therefore not accepted that the material submitted in the course of these submissions in regards to your private life and medical conditions is different from the material that has previously been considered. It is therefore considered that your submissions are no more than a repetition of your previous claim.
16. The remaining points raised in your submissions, have not previously been considered, but taken together with the material which was considered in the letter giving reasons for refusal of 28 April 2015, they do not create a realistic prospect of success before an Immigration Judge.
17. Below is a list of points that you have raised that have not previously been considered:
 - (i) Your relationship with Yana Barenboim
18. You state in your submissions that you and your partner married in a religious ceremony on 9 November 2016. While this relationship was not considered in the course of the original refusal decision it is not accepted that would, when taken together with the previously considered material, create a realistic prospect of success.
19. In her letter of support Ms Barenboim states that you met online and your relationship developed as you communicated through messages via Whatsapp and later via Skype. Ms Barenboim states you decided to commit to each other and took the opportunity, when she was in the United Kingdom for a conference, to get married. Ms Barenboim states she entered the United Kingdom on 7 November 2016 and you entered into a religious marriage on 9 November 2016. Ms Barenboim confirms she resides in Israel and visits the United Kingdom taking advantage of the concession granting Israeli passport holder leave as a visitor on arrival. It is noted that Ms Barenboim and her two daughters were stopped at the border on 28 August 2017 and were refused Leave to Enter and return to Israel the next day.
20. On the evidence provided in the course of these submissions it is not accepted that your relationship with Ms Barenboim would meet the requirements for leave to remain as a partner under Appendix FM of the Immigration. While it accepted that you and Ms Barenboim entered into a religious marriage on 9 November 2016 as this is not legally registered it is not accepted that you are married. Ms Barenboim permanently resides in Israel only entering the United Kingdom as a visitor and it is therefore it is not accepted that you have lived together in a relationship akin to marriage for at least two years. Following this Therefore you are unable to satisfy the requirements of GEN 1.2 of Appendix FM of the Immigration Rules. You have provide no evidence to suggest that you would be prevented from relocating to Israel in order to be with your partner. You do not have legal basis of stay in the United Kingdom and Ms Barenboim only holds limited leave as a visitor (granted at the discretion of the Secretary of State) when she enters. It is therefore not considered to be unreasonable to expect you to continue your relationship overseas.

21. As your submissions do not create a realistic prospect of success before an Immigration Judge, they do not amount to a fresh claim.
22. Anxious scrutiny has been given to all the evidence you have put forward in your further submissions and all evidence available on your Home Office file. For the reasons set out above it is considered that there is no realistic prospect that your further submissions, when considered in light of all evidence provided, could be allowed at appeal. It is therefore concluded that your further submissions do not amount to a fresh claim under Paragraph 353.
23. As it has been decided that your further submissions do not amount to a fresh claim, the previous decision, dated 28 April 2015 is maintained including the certification of your refusal under section 94(1) of the Nationality, Immigration and Asylum Act 2002. You still have the right to appeal the certified decision of 28 April 2015, however you can only appeal this decision after you have left the United Kingdom.
24. The human rights claim has been reconsidered on all the evidence available, including the further representations, but we are not prepared to reverse our decision of 28 April 2015.
25. I must remind you that you have no basis of stay here and should make arrangements to leave the United Kingdom without delay.
26. You have claimed that even if your removal from the United Kingdom would not be a breach of the Refugee Convention or ECHR, there are exceptional circumstances for allowing you to remain in the United Kingdom. Consideration has therefore been given to the following relevant factors
 - (i) Character, conduct and associations including any previous criminal record and the nature of any offence of which the applicant has been convicted.

Regard has been had to your character, conduct and criminal history. It is noted that you have no criminal record nor have you made any associations of concern. It is acknowledged that you have made a great contribution to both your local and University communities however this does not justify allowing you to remain in the United Kingdom.

- (ii) Compliance with any conditions attached to any previous grant of leave to enter or remain and compliance with any conditions of temporary admission or immigration bail where applicable.

Regard has been had to your compliance. It is noted that you entered the United Kingdom with student leave which, as leave in a temporary category, would not have led to settlement. While it is accepted that you have tried to regularise your stay in the United Kingdom, you remain without any valid leave despite refused applications, dismissed appeals and a certified human rights claim. You have been informed of your liability to detention and removal from the United Kingdom on numerous occasions via removal notices and refusal letters as well as at your reporting events. It is considered your continued presence in the United Kingdom shows a flagrant disregard for and continued non-compliance with the United Kingdom's Immigration rules. This is considered conduct unbecoming of a person seeking leave to remain. It is considered that your personal history, character, conduct and employment record are not sufficiently compelling to justify allowing you to remain in the United Kingdom.

- (iii) Length of time in the United Kingdom accrued for reasons beyond the migrant's control after their human rights or asylum claim has been submitted or refused.

Regard has been had to your length of time in the United Kingdom. It is noted that you entered the United Kingdom in January 2007 with a student visa and have remained without any valid leave since your appeal rights were exhausted on 25 March 2011. It is therefore considered that you have spent the majority of your 11 year residency without any valid leave to remain. It is considered that your length of residency has always been within your control and you could have left at anytime. It is therefore considered that your length of residence is not sufficiently compelling to justify allowing you to remain in the United Kingdom

Careful consideration has been given to all these circumstances individually and together, but for the reasons given above it is not accepted that there are exceptional circumstances in your case considered sufficiently compelling to justify allowing you to remain in the United Kingdom

ENFORCEMENT NOTICE

Re: Mr Luqman Temitayo Onikosi Nigeria

Date of decision: 18 January 2018

Our ref:

This enforcement notice accompanies the enclosed decision on your application for leave to remain.

LIABILITY FOR REMOVAL

Persons who require, but no longer have leave to enter or remain are liable to removal from the United Kingdom under section 10 of the Immigration and Asylum Act 1999 (as amended by the Immigration Act 2014).

If you do not leave the United Kingdom as required you will be liable to enforced removal to Nigeria. We may remove you via a transit point in an EU member state. We may also remove you via Egypt or Ethiopia.

You may be detained or placed on reporting conditions.

If you wish to seek legal advice you must do so now.

CONSEQUENCES OF ILLEGALLY STAYING IN THE UNITED KINGDOM

Persons who remain in the United Kingdom without lawful basis may be prosecuted for the offence of overstaying under the Immigration Act 1971, the penalty for which is a fine and/or up to 6 months imprisonment. If you do not leave voluntarily and removal action is required you may face a re-entry ban of up to 10 years. If you decide to stay, then your life in the United Kingdom will become increasingly more difficult. For example, some of the consequences of not leaving immediately will be that:

- You will not be allowed to work in the United Kingdom. Immigration Enforcement Officers visit workplaces and any employer found to be employing an illegal immigrant may be liable for a civil penalty of up to £20,000 per illegal worker.
- The Immigration Act 2014 will require landlords to conduct immigration checks. Landlords may face a penalty if they let a property to an illegal migrant.
- You are not entitled to claim benefits. Immigration Enforcement will share your details with HMRC or DWP. You may be liable for prosecution if you make a false declaration to these organisations or fail to inform them of a change in your circumstances which affects your entitlement to benefits.
- You may be charged for any secondary healthcare you receive.
- Immigration Enforcement may share your details with financial fraud prevention organisations to allow service providers to decide whether you should have access to financial products such as bank accounts and credit agreements.
- Immigration Enforcement will ask the DVLA not to issue you with a driving licence. If you already have one, we will ask the DVLA to consider cancelling it. If your licence is cancelled, you will then be unable to drive legally in the United Kingdom.

IF YOU HAVE FURTHER REASONS FOR WANTING TO STAY IN THE UNITED KINGDOM

If you have reasons to stay in the United Kingdom that were not part of your recent application, you must state them. This requirement is being given under section 120 of the Nationality, Immigration and Asylum Act 2002. If you do not tell us as soon as reasonably practicable and you tell us later without good reason, you will lose any right of appeal you may have otherwise qualified for if we refuse your claim.

What you must do You must **now** tell us about any reasons or grounds you have for wishing

now: to remain in the United Kingdom. You do not need to tell us about any reasons or grounds which you have already told us in your claim or application.

Where you do have a reason or grounds for wishing to stay in the United Kingdom you should submit an application using the relevant form. You can find the application form on our website: gov.uk/ukvi.

Where you do not have a reason or grounds for wishing to stay you must leave the United Kingdom.

What you must do in the future: In the future, if you fail to depart from the United Kingdom and your circumstances change so that you have new reasons or grounds for wishing to remain in the United Kingdom, you must tell us about them, by making an application to remain in United Kingdom, as soon as reasonably practicable.

HELP AND ADVICE ON RETURNING HOME

The Home Office Voluntary Departure Service can be contacted for help on returning home.

The team can discuss your return, obtain your travel document and send it to the port of departure, help with the cost of your tickets or provide other practical assistance.

Telephone: 0300 004 0202 (Monday – Friday between 9.00 and 17.30)

Fax: 0870 336 9544

You can email the teams. Email:

voluntarydeparture@homeoffice.gsi.gov.uk if you are planning a voluntary departure from the UK and need help with your travel document or cost of flight but do not require a special assistance.

AssistedVoluntaryReturn@homeoffice.gsi.gov.uk if you are planning a voluntary departure from the UK but require special assistance which includes help with your medical needs or reintegration into the country of your return.

Please tell us what you think of this service by completing our anonymous customer satisfaction survey. To access the survey, simply type the web address into your internet browser or scan the QR code with your smart phone.

<https://www.homeofficesurveys.homeoffice.gov.uk/s/visasurveyuk>

