

**BEFORE THE REGISTRATION APPEALS COMMITTEE  
OF THE GENERAL OPTICAL COUNCIL**

**PAUL NIYONKURU**

**A(10)01**

**AND**

**GENERAL OPTICAL COUNCIL**

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**DECISION: 22 MARCH 2011**

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On 22 March 2011, the Registration Appeals Committee met to consider an appeal against the decision of the Council not to register Paul Niyonkuru in the Register of Student Optometrists.

On the 27<sup>th</sup> of September 2010, the Appellant applied to be registered as a Student Optometrist of the General Optical Council. In the section 4 of the application, he disclosed 2 convictions for driving a motor vehicle whilst disqualified and the consequent sentences.

On the 11<sup>th</sup> of November 2010, the registration team wrote back to the Appellant asking for further details. On the 18<sup>th</sup> and 24<sup>th</sup> of November 2010, the Appellant gave those details including information about an initial, further, offence of driving without insurance which caused him to be disqualified in the first place.

On the 1<sup>st</sup> of December 2010, the Chief Executive and Registrar refused the application. This was on the basis of his “failure to comply with the law on 3 separate occasions within a short time frame. The repetitive pattern suggests a lack of understanding of the severity of the offences.”

By a notice of appeal dated the 15<sup>th</sup> of December 2010, the Appellant applied to this Committee to overturn that decision.

At this point, we should note that the Chief Executive and Registrar was not privy to the information placed before the Committee today in the Appellant’s bundle.

The Committee is required to approach the matter afresh. The onus rests on the Appellant to satisfy it on the balance of probabilities that he is a suitable person to be registered.

The Appellant has 3 sets of previous convictions.

On the 7<sup>th</sup> of November 2005, he drove a motor vehicle on the road whilst uninsured. He pleaded guilty at Liverpool Magistrates on the 2<sup>nd</sup> of May 2006 and was fined and disqualified from driving for a period of 6 months.

On the 2<sup>nd</sup> of June 2006, exactly a month after he was banned from driving, he drove a motor vehicle on the road whilst so disqualified and whilst uninsured. He pleaded guilty before Liverpool Magistrates Court on the 28<sup>th</sup> of November 2006 and was made the subject of a 12 month community order with 120 hours of unpaid work. He was further disqualified for 6 months.

On the 14<sup>th</sup> of October 2006, he drove on the M6 in Cheshire whilst disqualified and uninsured. On the 2<sup>nd</sup> of February 2007, he pleaded guilty before the South Cheshire Magistrates Court and was sentenced to a period of 4 months imprisonment suspended for a period of 12 months. He was ordered to undertake 150 hours unpaid work and disqualified for a further 12 months.

These are serious offences and the Committee treats them as such. Driving whilst disqualified involves a deliberate flouting of an order of the Court. Driving whilst uninsured is irresponsible and reckless.

During this hearing, the Committee became aware of this Appellant's sad history in Burundi and in Rwanda. Much of this evidence was aired in private and thus the Committee will not go into details here other than to acknowledge the same and to take them into consideration in arriving at its decision.

Suffice to say that the period of 2005 to 2006 was a difficult period for this Appellant. He was rather left adrift in Liverpool, awaiting possible deportation. This does not condone his offending but it does offer the Committee a contextual explanation for his offences.

It seems to the Committee that once the Probation Service became involved with the Appellant, they succeeded in putting his life back on track. The Committee was particularly impressed by the contents of the statement of Darren Rogers of the National Probation Service at page 5 of the Appellant's bundle. This statement underlines the extent of the Appellant's problematic history and the positive steps he has taken since to turn his life around.

The last 4 years have passed without any repetition of the Appellant's offending. Whilst the Committee fully understands the decision of the Chief Executive and Registrar, it has arrived at a different conclusion. The Committee has had the benefit of reading all the material in this case and also hearing from the Appellant. The Committee feel that he has learnt his lesson and now should be encouraged and supported in his future plans.

Although serious offences, these matters did not involve dishonesty. Further, the Appellant did declare his convictions to the Chief Executive and Registrar and did not try to conceal them. The Committee has to balance the competing arguments. Whilst bearing in mind the decision of Bolton –v- the Law Society [1993] EWCA Civ 32, the Committee did not feel that public confidence in the profession would be damaged if the Appellant was allowed to be admitted to the Register. On the balance of probability the Committee has decided that the public interest rests in favour of the Appellant's registration rather than against it.

The Committee thus determined that the Chief Executive and Registrar's decision be overturned.

**Chairman of the Committee: Peter North**

Signed \_\_\_\_\_ Date 22 March 2011

**Appellant: Paul Niyonkuru**

Signed \_\_\_\_\_ Date 22 March 2011

<b>FURTHER INFORMATION</b>
<b>Transcript</b>
A full transcript of this hearing will be made available via the GOC website in due course.
<b>Appeal</b>
Where the decision by the Registrar been upheld by the Registration Appeals Committee, the appellant may appeal against that decision through the Courts. The relevant court is shown at section 23G(4)(b)-(c) of the Opticians Act 1989 (as amended).
<b>Council for Healthcare Regulatory Excellence</b>
This decision will be reported to the Council for Healthcare Regulatory Excellence.
<b>Contact</b>
If you require any further information, please contact the Council's Hearings Manager at 41 Harley Street, London, W1G 8DJ or, by telephone, on 020 7580 3898.