



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05376/2013

THE IMMIGRATION ACTS

Heard at Stoke
on 13th February 2014

Determination Promulgated

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

E C E

(Anonymity direction made)

Respondent

Representation:

For the Appellant: Mr McVeety – Senior Home Office Presenting Officer.

For the Respondent: Ms Rutherford instructed by TRP Solicitors.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Rose who, in a determination dated 16th October 2013, allowed the appeal on human rights grounds.
2. The Secretary of State seeks to challenge the findings but the grounds on which permission is sought read more like a challenge to a decision in a deportation

appeal rather than a case involving a challenge to a refusal of leave to remain. I accept there is reference to some criminality in the papers but this is not a deportation case.

3. The Judge found the appeal should be allowed by reference to Article 8 after having conducted a detailed analysis of the evidence. It was noted, for example, that ECE had been granted a period of leave to pursue a case for contact that such contact was found to have been re-established since the decision letter. Whilst the author of the refusal letter cannot be criticised for finding no evidence of ongoing contact at the time the letter was written the author of the grounds should have realised it is an irrational challenge to suggest that having granted a period of leave to secure contact and for it to have been found that such contact has been re-instated and that family life exists as a result, a finding in ECE's favour on the family life issue leading to the proportionality conclusion is somehow legally wrong.
4. The claim in the grounds on which permission to appeal is sought that the Judge misdirected himself in relation to the new rules has no merit. As stated this is not a deportation appeal to which the rules which came into force on 9th July 2012 would apply. The application was made on 16th December 2011 and returned to the Secretary of State for a lawful decision to be made which resulted in the further refusal letter of the 30th May 2013. There was no provision in the Rules for considering Article 8 claims when this application was made and so the transitional provisions purporting to apply the provisions of the Rules in force at the 9th July have no relevance. I accept that the Secretary of State was entitled to consider the new rules as being representative of her view in relation to the application of Article 8, but this does not prove any legal misdirection by the Judge in this case. It was for this reason the Judge was entitled to rely upon the case law which pre-dated the new rules.
5. The claim in the grounds asserting inadequate findings as no arguable merit. A reading of the determination shows the Judge considered all the competing elements with the degree of care required, that of anxious scrutiny, and gave adequate reasons for the findings made. There is no obligation on the Judge to make findings on each and every element of the case provided a reader of the determination is able to understand why the conclusions have been reached. In this case that test has been satisfied.
6. In any event the Judge appears to have considered the case in accordance with the framework set out by the Court of Appeal in MF (Nigeria) [2013] EWCA Civ 1192 at paragraph 35.
7. The conclusions in relation to the proportionality of the decision were open to the Judge on the evidence and within the range of decisions properly open to him on the facts. No arguable irrationality, legal misdirection, or perversity has been proved.

Decision

- 8. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

- 9. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed.....
Upper Tribunal Judge Hanson

Dated the 16th February 2014