Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: DA/00205/2014
DA/00234/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 4 June 2014	**On 12th June 2014**

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MR SOO THOON CHIN
MRS MEIH POH TENG
(Anonymity Direction Not Made)

Respondents

Representation:

For the Appellant: Mr E Tufan a Senior Home Office Presenting Officer
For the Respondent: Professor W M Rees of counsel, directly instructed

DECISION AND DIRECTIONS

1. The appellant is the Secretary of State for the Home Department. I will refer to her as the Secretary of State. The respondents are husband and wife born respectively on 12 April 1962 and 1 March 1968. The husband is a British Overseas Citizen who was originally a citizen of Malaysia. The wife is still a citizen of Malaysia. I will refer to them individually as the husband and the wife and together as the claimants. The Secretary of State has been given

permission to appeal the determination of First-Tier Tribunal Judge Morgan ("the FTTJ") who allowed the claimants' appeals against the Secretary of State's decisions of 16 January 2014 to make deportation orders against them. The FTTJ found that the Secretary of State's decisions were not in accordance with the law and allowed the appeal to the limited extent of returning the decisions to her for further consideration.

2. The husband first came to the UK as a visitor in February 2001 travelling on his Malaysian passport. Subsequently he came here on a number of occasions as a visitor. He last entered the UK in August 2002. The wife came here as a visitor in August 2002 and was subsequently given extensions of stay as a student the last period expiring in March 2006. Their two children, who are now young adults, came here as visitors in November 2004.

3. In November 2004 the husband requested that he be given a British Overseas Citizen passport. This was issued to him in July 2005 for a ten-year period expiring on 18 July 2015. In December 2004 the husband applied for indefinite leave to remain in the UK on compassionate grounds. It appears that the wife and their two children were joined in the application as his dependants. The application was refused on 20 June 2007.

4. On 17 June 2010 the husband was convicted at Wood Green Crown Court of conspiracy to import goods without paying import duty and was sentenced to 30 months imprisonment. The judge's sentencing remarks show that the husband was involved in a highly lucrative and complicated fraud involving the illegal importation of vast numbers of cigarettes.

5. The Secretary of State concluded that she must make a deportation order against the husband as a foreign national who had been convicted in the UK of an offence and sentenced to a period of imprisonment of at least 12 months. He did not fall within one of the exceptions to automatic deportation. The decision in respect of the wife was made because she was a member of the husband's family.

6. The claimants appealed against these decisions. There were two case management hearings before the First-Tier Tribunal the second before the FTTJ on 27 March 2014. Both parties were represented, the claimants by Professor Rees who appears before me. It is said that the second case management hearing was arranged in order to consider the lawfulness of the deportation orders. It was common ground then and now that there are two deportation orders, one in respect of the husband and the other in respect of the wife, neither of which is signed nor dated. I should emphasise that these deportation orders are separate documents from the decisions to make deportation orders. Whilst I refer to both of them as decisions to make deportation orders, which is their substance and effect, only the document in relation to the wife is entitled "Decision to Make a Deportation Order" whilst the decision in relation to the husband is entitled "Decision That Section 32 (5) of the UK Borders Act 2007 Applies".

7. The FTTJ concluded that as the deportation orders were neither signed nor dated they were invalid and there had been no lawful decisions by the Secretary of State. The FTTJ canvassed various options with the representatives in the light of what was considered to be a problematic and very difficult case with a number of potentially very complicated issues relating to immigration and nationality. The FTTJ concluded that the Secretary of State's decision was not in accordance with the law and the appeals were allowed to this extent with the clear intention that the decisions should be reconsidered by the Secretary of State.

8. The Secretary of State applied for and was granted permission to appeal. The grounds argue that the fact that the deportation orders were unsigned and undated was immaterial because the decisions to make the deportation orders were the valid decisions which gave rise to the rights of appeal. Valid deportation orders were not a prerequisite at the appeal stage. Furthermore, it was argued that the Immigration Act 1971 gave power to deport a person who was subject to immigration control which included both claimants, even though the husband was a British Overseas Citizen. I have a detailed Rule 24 response from Professor Rees.

9. At the start of the hearing before me I told the representatives that I was unable to find a copy of the signed decision to make a deportation order against the wife. Professor Rees said that he had not seen one. Mr Tufan was unsure of the position. I adjourned to enable the representatives to make further enquiries about this and whether, if the decision to make a deportation order against the wife had not been signed, it was valid or invalid which was likely to depend on the precise requirements of the Immigration (Notices) Regulations 2003. During the adjournment Mr Tufan found a copy of the decision to make a deportation order against the wife which was both signed and dated. Whilst all the other copies on the Tribunal file were undated I found one identical copy. Whilst Professor Rees said that the claimants said never seen the signed and dated document after inspecting it he accepted that both decisions to make a deportation orders was signed, dated and valid.

10. The Secretary of State's grounds of appeal contend, both representatives now agree and I find that the FTTJ erred in law. The decisions under appeal are not the deportation orders. They are in effect irrelevant at this stage. The decisions which triggered the claimants' rights of appeal are the decisions to make the deportation orders both dated 16 January 2014. Both are signed and valid decisions. They set out the appellant's rights of appeal under section 82, 82 (3A) and 92 (4) (a) of the Nationality Immigration and Asylum Act 2002. It was not open to the FTTJ to conclude that there were no valid decisions giving rise to rights of appeal, to find that the Secretary of State's decision was not in accordance with the law or to allow the appeal to the extent of sending it back to the Secretary of State for further consideration. I accept that the issues in the appeals are potentially difficult and complicated but they should have been addressed and the appeals determined.

11. Having found that the FTTJ erred in law I set aside the decision. In effect there has been no proper consideration of the appeals in the First-Tier Tribunal. In the circumstances I remit the appeals for determination by the First-Tier Tribunal.

DIRECTIONS

i. A hearing date has been allocated in the First-Tier Tribunal, 7 November 2014, at Taylor House.

ii. Time Estimate 3 Hours.

iii. The hearing is to be with all issues at large.

iv. Cantonese speaking interpreter required.

v. Hearing before Judges other than First-Tier Tribunal Judges Morgan or Colvin

Signed:..... Date: 5 June 2014
Upper Tribunal Judge Moulden