



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA 02452/2013

THE IMMIGRATION ACTS

Heard at FIELD HOUSE

On 10 September 2014

**Determination
Promulgated**

On 3 October 2014

Before

**UPPER TRIBUNAL JUDGE CLIVE LANE
DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

APPELLANT

And

**ZGG
[ANONYMITY ORDER MADE]**

CLAIMANT

Representation:

For the Appellant: Mr L Tarlow (Home Officer Presenting Officer)
For the Respondent: Miss R Atcher (Counsel instructed by Maliks & Khan)

DETERMINATION AND REASONS

1. In this appeal we shall refer to the appellant as the Secretary of State and to the claimant.

2. This matter comes before us for consideration as to whether or not there is a material error of law in the determination promulgated on 26th June 2014 by the First-tier Tribunal (Judge Maxwell & Ms VS Street JP non legal member) in which it allowed the appeal against a decision to make a deportation order signed on 11th November 2013.

Background

3. The claimant is a citizen of Georgia and his date of birth is 17.10.1980. He claimed asylum in Sweden in 2003 and entered the UK clandestinely in April 2005. He was removed following refusal of his asylum claim on 27th June 2005. He re-entered the UK in May 2006, made a further application for asylum and thereafter absconded. His asylum application was refused on 26th June 2006.
4. On 11th November 2013, the Secretary of State made a decision to deport the claimant following his conviction at the Wolverhampton Crown Court on 26th January 2011 for 2 counts of possession false identity documents with intent, motoring offences including driving while under the influence of alcohol, no insurance and no licence and obstructing a police officer. He was sentenced to a total of 18 months imprisonment (12 months plus 6 months to run consecutively). He was notified of the decision to automatically deport him on 12th March 2011.
5. He appealed on the grounds that Article 8 was engaged. He claimed to be in a relationship with his partner, N, a Georgian citizen, with whom he has a child born on 2.10.2010. He also has two British citizen children (born 24.2.00 and 17.11.02) from a previous relationship. The claimant lives alone but sees his children regularly.
6. The Tribunal found that the claimant's account was consistent with that given by his partner in separate appeal proceedings heard by Judge Maxwell [8]. The Tribunal concluded there was no Convention reason and that he was not entitled to asylum or humanitarian protection.
7. The Tribunal considered Article 8 in the context of paragraphs 399(a) and (b) and 399A citing **MF(Nigeria)[2013]EWCA Civ 1192**. It found that there was an enduring relationship between the claimant and N, although they did not live together [18]. He has a relationship with all three children and played a significant role in their upbringing. It concluded that family life did not meet the criteria in paragraph 399. [26]. The Tribunal found that the claimant's children lived with their respective mothers who were able to look after them [29i] and that his partner N held valid leave only since 2012 [26ii]. It found 399A (private life) was not relevant [27]. The Tribunal went on to consider exceptional circumstances. It found the claimant's family life consisted of a partner and children which exceptionally fell outside the scope of paragraph 399 (a) or (b) [29]. The Tribunal concluded that the interests of the claimant and his family life outweighed the public interest in deportation and that the deportation was a disproportionate interference [32].

Grounds of appeal

8. The Secretary of State argued that the Tribunal made a material misdirection of law. It failed to identify circumstances that were exceptional outside of the rules. Family life as existed was incorporated into and covered by the rules at 399a and b.
9. The Tribunal failed to consider the public interest factors and or relevant case law **AM v SSHD [2012] EWCA Civ** and **Masih(deportation - public interest - basic principles) Pakistan 2012 UKUT**. There was no proper consideration of the risk of re offending and the deterrent element in deportation .

Submissions

10. Mr Tarlow relied on the grounds of appeal and submitted that it was not open to the Tribunal to make a finding that having a partner and a child was exceptional. The Tribunal misinterpreted the rules. Its approach had been absurd. The Tribunal failed to place weight on the public interest in deportation.
11. Miss Akhter submitted that the Tribunal correctly found exceptional circumstances outside of the Rules following the approach in **MF(Nigeria)** and having found unjustifiably harsh consequences. It had also considered public interest factors. The grounds of appeal focused only on the public interest point.

Discussion and conclusion

12. We find that the determination discloses a material error of law for the following reasons. The Tribunal has clearly misinterpreted the Immigration Rules at [29] by taking the view that they do not apply persons whose family life comprises both a partner and children. Furthermore, at [30] the Tribunal concluded wrongly that this family life was exceptional, which we find is absurd. There was a material misdirection of the law.
13. The Immigration Rules specify the criteria to be met for family life and/or private life to be satisfied in order for that to outweigh the public interest in deportation. The claimant's family life failed to satisfy those criteria and there were plainly no exceptional circumstances beyond the contemplation of the Rules rendering the decision disproportionate. The appellant had failed to satisfy the provisions of the Immigration Rules either as the father of a child or as the partner of N; it was absurd to suggest that there was a hiatus in the Rules because applicants with partners and children were not provided for. The correct approach is set out in (**Nagre [2013] EWCH 720 Admin**). The **Gulshan (Article 8 - new rules - correct approach) [2013] UKUT 00640 (IAC)** approach for "arguably strong grounds" is no

longer a necessary stage in the consideration (**MM Lebanon**
[2014]EWCA CIV 985).

14. The public interest is recognised in the Immigration Rules and it is presumed to be met in deportation. There was no necessity for the Tribunal to make any separate consideration in the absence of exceptional circumstances where none existed.

Decision

There is a material error of law disclosed in the determination which shall be set aside. We substitute the following decision - the appeal is dismissed on immigration and human rights grounds.

Signed

Date 2.10.2014

GA Black
Deputy Judge of the Upper Tribunal

Anonymity order maintained
No fee award applicable

Signed

Date 2.10.2014

GA Black
Deputy Judge of the Upper Tribunal