



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/35583/2013

THE IMMIGRATION ACTS

Heard at Field House
On 5th November 2014

Determination Promulgated
On 8th December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

V A N
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Aihe, Legal representative of Wisestep
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. On 30th September 2014 Judge of the First-tier Tribunal Cruthers gave permission to the appellant to appeal against the determination of Judge of the First-tier Tribunal I Howard who dismissed the appeal against the decision of the respondent to refuse to vary leave to remain applying the provisions of Appendix FM and paragraph 276ADE

of the Immigration Rules and also to issue removal directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. In granting permission Judge Cruthers noted that the grounds did not suggest that the appellant could succeed under the Immigration Rules but that the matter was pursued on the basis that the respondent's decision was a disproportionate breach of Article 8. He noted that the grounds argued that the judge had placed insufficient emphasis on the best interests of his British citizen child and that this ground was arguable even if the grant of permission to appeal should not have been taken as an indication that the appeal would ultimately be successful.
3. At the hearing in the Upper Tribunal before me Mr Aihe acknowledged that the appellant could not come within the Immigration Rules but confirmed that the issue related to the judge's alleged inadequate handling of the Article 8 claim outside the Rules, taking into consideration the best interests of not only the appellant's British daughter as a result of his relationship with Ms C but also the latter's British son of whom the appellant is not the father.
4. Mr Tufan relied upon the terms of the brief Rule 24 reply of 10th October 2014 in which it is argued that the judge had directed himself appropriately and was entitled to assess the weight to be given to the British citizen child's interests. However, he also agreed that the judge did not appear to have given any detailed consideration to the best interests of the children, particularly the appellant's daughter and what the effect would be on the children of the appellant's removal to Nigeria. He thought that the only point he could argue was the materiality of the error. He added that if an error was found, bearing in mind that human rights was the basis of the claim, it would be appropriate for the matter to be remitted to the First-tier Tribunal for a fresh hearing.
5. After I had considered the matter for a few moments, I announced that I was satisfied that the determination showed an error on a point of law in relation to the judge's handling of the human rights claim and that it would be appropriate for the matter to be remitted to the First-tier Tribunal sitting at Hatton Cross.
6. I reached that conclusion because the determination does not show that the judge gave adequate consideration to the best interests of the children involved in the appellant's relationship with Ms C. One of those children is the appellant's daughter who is a British citizen. Ms C, a British citizen, also has a son of whom the appellant is not the father. The parties had lived together until just before the First-tier hearing although they had then separated. Whilst the judge refers to *Razgar* [2004] UKHL 27 and then goes through the five stage tests, there is no indication that the judge made the best interests of the children a primary consideration. In paragraph 28(1) the judge states that it would be very much in the children's best interests to remain with their mother in UK as main carer but gives no reasons for that conclusion, or his finding that it would not be reasonable to expect her to relocate to Nigeria with those children. Although the judge gives brief consideration to what he perceived was the poor social behaviour of the appellant which had given rise to his arrest and associated difficulties with the relationship between the appellant and Ms C, those factors alone were not sufficient to enable him to conclude that the respondent's decision was proportionate without consideration of the best interests of the children against an examination of the appellant's relationship with his British daughter

following the guidance set out in leading case law such as *E-A (Article 8 – best interests of child) Nigeria* [2011] UKUT 315 (IAC).

7. As the agreed issue in this appeal is human rights, it is appropriate that the matter should be re-heard before the First-tier Tribunal. In reaching that conclusion I have regard to the provisions of paragraph 7.2 of the Practice Statement for the First-tier and Upper Tribunal issued by the Senior President on 25th September 2012.

DIRECTIONS

1. The appeal is remitted to the First-tier Tribunal for hearing afresh.
2. The hearing will take place at Hatton Cross on 29th April 2015.
3. The appeal should not be heard before Judge of the First-tier Tribunal I Howard.
4. Representatives should file a consolidated bundle of evidence to be referred to at the hearing at least five days before the hearing date.
5. No interpreter will be required.
6. As this appeal concerns the interests of young children I make the following direction:

Direction Regarding Anonymity – Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

Unless and until a Tribunal or Court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

7. No doubt the First-tier Tribunal will make a further direction for anonymity when this matter is re-heard.

Signed

Date

Deputy Upper Tribunal Judge Garratt