



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

Appeal Numbers: IA/46825/2013
IA/46828/2013

THE IMMIGRATION ACTS

Heard at Field House

On 4th June 2014

Determination

Promulgated

On 30th June 2013

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**MRS AMINA RAHMA AUDU (FIRST APPELLANT)
MR SALAHUDEEN MOHAMMED SHITU (SECOND APPELLANT)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: No representation

For the Respondent: Ms J Isherwood - Home Office Presenting Officer

DETERMINATION AND REASONS

1. These are in fact cross appeals, the Appellants and the Respondent both appealing against the determination of First-tier Tribunal Judge Andonian issued on 14th March 2013 dismissing under Article 8 and under the

Immigration Rules the appeal of the Appellants against the decision of the Respondent made on 23rd October 2013 to refuse to vary their leave to remain and to remove them by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. Judge Andonian also made a finding that the decision of the Secretary of State under Section 47 was unlawful and remitted that element of the decision to the Respondent so that a lawful decision could be made.

2. The details of the two appeals made are set out thoroughly in the grant of permission of leave to appeal by Designated First-tier Tribunal Judge Dearden who said, having noted that there are cross appeals:

“3. Mrs Audu and Mr Shitu are nationals of Nigeria. They have applied to appeal the decision of First-tier Tribunal Judge Andonian who, in a determination promulgated on 14th March 2014 dismissed the appeals of Mrs Audu and Mr Shitu against the refusal of the Secretary of State to grant leave to remain in the United Kingdom under the Immigration Rules HC 395 and under Article 8 of the European Convention on Human Rights.

4. The Secretary of State also seeks permission to appeal against the same decision of Judge Andonian. For convenience I shall deal with the appeal lodged by the Secretary of State first and then deal with the appeals lodged by Mrs Audu and Mr Shitu.

5. The judge made several decisions. He dismissed the appeals of Mrs Audu and Mr Shitu under the Immigration Rules and under Article 8 of the European Convention. He also found that the removal decision of the Secretary of State under Section 47 of the Immigration, Asylum and Nationality Act 2006 was unlawful.

6. For a period prior to 8th May 2013 it was unlawful for the Secretary of State to refuse further leave to remain and to make a removal decision at the same time. However that situation was altered on 8th May 2013 by the passing of Section 51 of the Crime and Courts Act 2013, which thereafter allowed the Secretary of State to make a decision to refuse to extend leave to remain at the same time as a decision to remove. The variation and removal decisions were made in this case on 23rd October 2013, after the change in the law referred to. I therefore conclude that the First-tier Tribunal Judge made an arguable error of law by failing to adequately understand what the legal situation was at the relevant time. I therefore grant permission to appeal to the Secretary of State.

7. I now turn to the grounds filed by Mrs Audu and Mr Shitu. In short the grounds allege that the judge disregarded the evidence of the lack of medical facilities in Nigeria, failed to give adequate consideration of the exceptional nature of the case and made irrational and disproportionate findings.”

3. Designated Judge Dearden then went on to explain in detail why the Appellants had failed to establish that there was an arguable error of law in the determination of the Judge, taking the view that he had fully and adequately considered the case and had given sound reasons for his findings.
4. He refused the Appellants permission to appeal.
5. The only issue in this case therefore is the decision that the Judge made relative to Section 47 of the 2006 Act.

Decision

The appeal of the Appellants is dismissed and that of the Respondent allowed.

I set aside the determination of the First-tier Tribunal insofar as it relates to the decision of the Secretary of State under Section 47. The decision to remove under s47 was in accordance with the law and shall stand along with all the other findings made by Judge Andonian.

Signed

Date: 26th June 2014

N A Baird
Deputy Upper Tribunal Judge Baird