



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

Appeal Number: VA/19517/2013

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 20 November 2014**

**Decision Promulgated
On 25 November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**OPEOLUWA VICTORIA KAZEEM
(ANONYMITY NOT ORDERED)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: not represented

For the Respondent: Mr A Mc Vitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not deem it necessary to make an anonymity direction.
2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-

tier Tribunal Judge O Williams, promulgated on 10 June 2014 which allowed the Appellant's appeal under the Immigration Rules

Background

3. The Appellant was born on 22 September 1950 and is a citizen of Nigeria. On 24 October 2013 the Appellant applied for entry clearance to the United Kingdom as a family visitor. On 5 November 2013 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons on the basis that the Appellant did not meet the requirements of paragraph 41(i) and (ii) of the Rules and advised the Appellant that by virtue of section 84 (1) (c) of the Nationality, Immigration and Asylum Act 2002 her right of appeal was limited.

The Judge's Decision

4. The Appellant appealed the decision stating that the decision was not in accordance with the Immigration Rules, not in accordance with the law and was unlawful under section 6 of the Human Rights Act 1998.
5. The Appellant appealed to the First-tier Tribunal and First-tier Tribunal Judge Williams (hereinafter called "the Judge") allowed the appeal under the Rules. The Judge found that the Appellant was economically settled in Nigeria, had strong family ties, that the sponsor could afford to maintain and accommodate her mother the Appellant and that the Appellant would return at the end of her trip.
6. Grounds of appeal were lodged and on 22 July 2014 Designated Judge Woodcraft gave permission to appeal stating that the Judge;
"overlooked the fact that the Appellant's appeal rights were restricted by operation of section 52 of the Crime and courts Act 2013 to human rights and race relations grounds, neither of which were considered in the determination(or indeed raised at the hearing."
7. At the hearing I heard submissions from Mr Mc Vitie on behalf of the Respondent that he relied on the grounds of appeal; the right of appeal in this case was limited and the substantive issues addressed by the Judge were irrelevant.

The Law

8. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong,

there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Finding on Material Error

10. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.
11. This was an appeal against a refusal of an application for entry clearance as a family visitor made on 24 October 2013. From 25 June 2013, a person refused entry clearance to visit relatives in the UK will be unable to appeal against that immigration decision except on (i) human rights and (ii) race relations grounds. This change is the result of s.52 of the Crime and Courts Act 2013. The new provisions apply to any application made after 6 April 2013. The limited right of appeal was set out in the refusal letter sent to the Appellant dated 5 November 2013. The Appellant raised human rights as one of her grounds of appeal and the matter therefore proceeded to a hearing on that basis.
12. The failure of the First-tier Tribunal judge to address and determine the case on the basis of whether the decision involved a breach of the Appellant's human rights constitutes a clear error of law. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply.
13. I therefore found that errors of law have been established and that the Judge's determination cannot stand and must be set aside in its entirety and I indicated to the Appellant's sponsor Rasidat Erinle that I proposed to rehear the case unless there was wished me to consider adjourning the matter. She was content for the matter to proceed.

The Law

14. The burden of proof in this case is upon the Appellant and the standard of proof is upon the balance of probability. Where applicable, it is for the Appellant to satisfy me that he or she has an Article 8 private and/or family life which will be interfered with by the decision under appeal. If that is shown, the Respondent must establish that the decision is legitimate, taken in pursuit of a legitimate aim and necessary and proportionate in a democratic society.
15. I have determined this matter based upon facts that were appertaining at the time the decision of the Entry Clearance Officer being constrained by Section 85(5) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act)

Evidence

16. I had a copy of the Respondent's bundle. I had a copy of the grounds of appeal which the Appellant's daughter Mrs Erinle had drafted.
17. I heard evidence from Mrs Erinle in which in essence she stated that she wanted her mother, the Appellant to visit her in the United Kingdom. She accepted that there was nothing preventing her visiting her mother in Nigeria and she had last visited her mother there in 2013.

Findings

18. The Appellant is a 64 year old citizen of Nigeria who was refused entry clearance to the United Kingdom as a family visitor to see her daughter the sponsor Mrs Erinle. As the application was made after 6 April 2013 the refusal letter set out that the Appellant had a limited right of appeal and that the grounds she could rely on included that the decision involved a breach of her human rights..
19. Mrs Erinle on behalf of her mother has submitted that the Appellant's rights under Article 8 of the Convention are engaged. I have determined the issue on the basis of the questions posed by Lord Bingham in Razgar [2004] UKHL 27

Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private (or as the case may be) family life?

20. I heard evidence from the sponsor Mrs Erinle who I found to be a credible witness and it was clear to me that she enjoys a close and supportive relationship with her mother. The Appellant and her daughter have maintained their close family relationship through visits and this relationship must be respected.

If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?

21. Having heard the evidence of Mrs Erinle I am satisfied that the refusal does not prevent them enjoying their family relationship because Mrs Erinle accepted in evidence that there was no difficulty for her in visiting her mother in Nigeria and indeed she had been there in 2013. Therefore I am satisfied that the refusal must fail at this stage.
22. However if I am wrong about this I have considered the remaining questions posed in Razgar.

If so, is such interference in accordance with the law?

23. I am satisfied that there is in place the legislative framework for the decision giving rise to the interference with Article 8 rights which is precise and accessible enough for the Appellant to regulate her conduct by reference to it.

If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others?

24. The interference does have legitimate aims since it is in pursuit of one of the legitimate aims set out in Article 8 (2) necessary in pursuit of the economic well being of the country through the maintenance of the requirements of a policy of immigration control. The state has the right to control the entry of non nationals into its territory and Article 8 does not mean that an individual can choose where she wishes to enjoy their private and family life.

If so, is such interference proportionate to the legitimate public end sought to be achieved?

25. In making the assessment I have must take into account that the Immigration Rules provide a basis for family visits to the United Kingdom and at the time of her application the Appellant did not provide the necessary evidence to meet the requirements of the Rules. It may well be given the findings made by Judge Williams in relation to the matters put in issue by the ECO and my own positive findings on Mrs Erinle's credibility that a future application would succeed allowing the Appellant to come to the United Kingdom. However the decision in issue does not prevent the enjoyment by the Appellant and her daughter of their family life as the sponsor can visit the Appellant in Nigeria. In those circumstances in determining whether the decision would be proportionate to the legitimate aim of immigration control I find that none of the facts underpinning the Appellants circumstances taken either singularly or cumulatively outweigh the legitimate purpose of the refusal decision.
26. I have considered the issue of anonymity in the present instance. Neither party has sought a direction. The Appellant is an adult and not a vulnerable person. I see no reason to make any direction in this regard.

Decision

27. **There was an error on a point of law in the decision of the First-tier Tribunal that the decision is set aside**
28. **I remake the appeal.**
29. **I dismiss the appeal on human rights grounds.**

Signed

Date 25.11.2014

Deputy Upper Tribunal Judge Birrell