



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

Appeal Number: DA/00432/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 11 December 2014**

**Determination
Promulgated
On 13 January 2015**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR JOVAN ANTHONY BURROWES

Respondent

Representation:

For the Appellant: Mr N Bramble, HOPO

For the Respondent: Mr T Bobb, Solicitor

DECISION ON ERROR OF LAW

1. The Secretary of State's decision states that on 25 July 2013 a decision was made to refuse to revoke a deportation order by virtue of section 5(2) of the Immigration Act 1971. However, after agreement to withdraw this decision and the deportation order signed on 28 February 2011, the applicant's solicitor's letter has been treated as further representations granting another right of appeal. The SoS' letter of 5 March 2014 to the applicant's solicitors confirmed the Home Office's agreement to withdraw

the deportation order signed on 28 February 2011 and the subsequent decision of 25 July 2013 and to reconsider his solicitor's representations dated 5 July 2013 under paragraph 353 of the Immigration Rules.

2. On 5 March 2014, the SoS issues a letter giving reasons why it is not accepted that the applicant's right to family life outweighs the public interest in seeking to deport him and concluding that his deportation would not breach Article 8 of the ECHR. A Notice of Immigration Decision to make a deportation order by virtue of section 3(5)(a) of the Immigration Act was accordingly issued on 5 March 2014.
3. The applicant's appeal against this decision came before First-tier Judge B Lloyd on 22 September 2014. Contrary to what the judge said at para 3, the SoS had withdrawn her decision refusing to revoke the deportation order. Therefore the only decision before the judge was the SoS' decision made on 5 March 2014.
4. On 28 July 2014, section 19 of the 2014 Act introducing into the Nationality, Immigration and Asylum Act 2002 a new Part 5A containing new sections 117A-D came into force. Under para A362 of the Immigration Rules of 10 July 2014 (HC 532), where Article 8 is raised in the context of deportation under Part 13 of these Rules, a claim under Article 8 will only succeed where the requirements of the rules as at 28 July 2014 are met, regardless of when the notice of intention to deport or the deportation order, as appropriate, was served.
5. There is no evidence in the determination that the judge applied the requirements of the 2014 Act to this appeal. Under section 19 of the 2014 Act a judge is required to consider the public interest in deportation. Whilst the judge at para 65 says that he has given careful consideration to the public interest of deportation of the applicant, there is no evidence of such consideration undertaken by the judge in the preceding paragraphs. This failure amounts to a material error of law.
6. The judge's decision cannot stand. The decision has to be remade.
7. The applicant's appeal is remitted to **Newport (Columbus)** for rehearing by a judge other than FtTJ B Lloyd.

Signed

Date: **11 December 2014**

Upper Tribunal Judge Eshun