



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

Appeal Number: DA/00641/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 April 2015**

**Decision & Reasons Promulgated
On 3 August 2015**

Before

UPPER TRIBUNAL JUDGE STOREY

Between

FB

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Rana, Counsel, instructed by Clapham Law LLP

For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a national of Ghana, challenges with permission a determination of First-tier Tribunal (FtT) Judge W. L. Grant dismissing his appeal against a decision made by the respondent on 10 March 2014 to deport him as a foreign criminal in accordance with s.32(5) of the Borders Act 2007.
2. It is unnecessary to say very much about the grounds as both parties were broadly in agreement that the decision was vitiated by multiple legal errors and should be set aside and I found myself in clear agreement with them. In essence the FtT judge applied the wrong set of Immigration Rules

(a pre-28 July instead of a post- 28 July set): even in respect of the Rules of the FtT Judge did apply, he failed to properly differentiate the criteria set out in paragraphs 398, 399 and 399A (he simply lumped them together); he failed to address properly the issue of the best interests of the three children, one of whom was British; and he failed to address adequately the s.117C considerations.

3. The error on the part of the FtT judge necessitate that I set aside is determination.
4. Mr Rana initially sought to submit that in setting aside the determination I should specify that the next hearing should consider the appellant's appeal *de novo*. I decline to do so. The grounds raised no challenge to the FtT Judge's findings of fact. He saw and heard the appellant and witnesses. In such circumstances it would have been entirely wrong in my view not to preserve unchallenged findings. The only caveat I make is that since Mr Deller himself urged that the next Tribunal adopt a "Devaseelan" approach, so that the FtT Judge's findings are only a starting point. I will take that as an indication that the respondent is prepared to have some flexibility left as to the extent to which those findings are preserved.
5. Mr Rana urged that I exercise my power to remit this case rather than set it down for the Upper Tribunal to remake the decision. Mr Deller said he was content with either course. On reflection I have decided to remit the appeal to the FtT with a direction that it takes the findings of fact made by FtT Judge W.L. Grant as its starting point. My essential reason is that the legal framework the judge sought to apply to the appellant's appeal was so erroneous that it could be said that he did not have a fair hearing. I bear in mind also that remittal may well result in a speedier disposal of this appeal. I accept that the negative terms of my decision do not positively assist the First-tier Tribunal Judge who inherits this appeal or knows the correct laws to apply, but there is a considerable benefit of doubt of higher court authority on the relevant law - see more recently SS (Congo) [2014] EWCA Civ 387 - and there is no value in my seeking to add my own gloss to that.
6. For the above reasons:
7. The FtT judge materially erred in law
8. The FtT judge's decision is set aside.
9. The appeal is remitted to the First-tier Tribunal with a direction that the findings of fact made by the FtT judge be taken as a starting point.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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.

Signed

Date

Upper Tribunal Judge Storey