Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/00684/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 December 2015	**On 23 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

YUSUF GIWA PALASA
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr Duffy a Home Office Presenting Officer
For the Respondent: Mr Sharma of Counsel

DECISION AND REASONS

Background

1. Mr Palasa is a Nigerian national born on 5 March 1976. The Secretary of State refused his application for Indefinite Leave to Remain on 9 December 2013. His appeal against that decision was allowed by First-tier Tribunal Judge Majid ("the Judge") following a hearing on 24 September 2014. For the sake of consistency with the decision in the First-tier Tribunal I will hereafter refer to Mr Palasa as the Appellant and to the Secretary of State as the Respondent.
2. At a hearing on 3 November 2015 I determined that there was a material error of law in that determination and set it aside. When I indicated that it was my intention to re-hear the case immediately, Mr Bramble submitted that he was not in a position to properly represent the Respondent if the matter was be re-heard

immediately as he did not have the 178 page bundle of evidence filed by the Appellant that was before the Judge.

3. I accepted that there was insufficient time for Mr Bramble to read the bundle and prepare cross-examination (it by then being 2.50pm and there being another case in the list) and in the interests of fairness, the matter would have to be adjourned. The only remaining issue was the appropriate forum.

4. Mr Bramble submitted that it was appropriate to remit the matter back to the First-tier Tribunal as there had been no findings. Miss Butler agreed as. I indicated that I would remit the matter back to the First-tier Tribunal.

5. Upon reflection and having considered the papers in much more detail and having considered the President's Practice Direction in more detail I formed the view that it was more appropriate to retain the matter in the Upper Tribunal.

6. I therefore directed that the matter be set down on the first available date with a time estimate of 3 hours given the number of potential witnesses. No interpreter was required.

7. Since then Patel v Secretary of State for the Home Department [2015] EWCA Civ 1175 was promulgated which states that decisions in the Upper Tribunal are effective as soon as judges uttered the words and could not be reconsidered or reversed, even if the judge had omitted to consider something properly.

8. It will however be noted that firstly I initially said I would re-hear the case. It only had to be adjourned because of Mr Bramble's difficulty. If therefore it was a decision I had no power to change my mind. Secondly if it was not a decision I could change my mind as to venue having reflected further on the submissions as to venue as it did not dispose of proceedings.

9. In my judgement it was not a decision but a case management power and direction that I could set aside in accordance with paragraph 5 of the Tribunal Procedure (Upper Tribunal) Rules 2008 bearing in mind paragraph 2 of those rules and the overriding objective of dealing with the case fairly and justly and in this case in particular avoiding delay. The matter was therefore relisted before me as originally stated.

10. Further submissions were made by Mr Duffy and Mr Sharma neither of whom had the other's bundle. The matter was stood down for them to be copied. They both sought to persuade me that as there were no preserved findings of fact, given the wholly inadequate determination of Judge Majid, the most appropriate course was to remit the matter back to the First-tier Tribunal to enable onward appeal rights for both to be preserved.

11. Given the lack of time they had to prepare, and their desire to preserve onward appeal rights, I decided to remit the matter back to the First-tier Tribunal for a de

novo hearing to be heard by a Judge other than Judge Majid. For ease of reference I incorporate here by findings from the hearing of 3 November 2015 in full subject to a typographical amendment regarding the paragraph numbers in what was my paragraph [19, 20, and 21] where I referred to Judge Majid's paragraph [8] instead of [10]. Those amendments are now to be found at my paragraph [29, 30, and 31] below.

The error of law hearing on 3 November 2015

12. In her refusal letter the Respondent noted that the Appellant claimed to have entered the United Kingdom on 31 January 1996. He applied on 7 October 2011 for Indefinite Leave to Remain. His appeal against the refusal of that application was dismissed and his applications for permission to appeal against that refusal were finally dismissed on 19 November 2012. This application for Leave to Remain outside the Statement of Changes in Immigration Rules HC395 (the rules) was made on 28 March 2013.

13. The basis of the refusal (9 December 2013) was that;

(1) there was no provision within the rules for such an application and it therefore was refused under paragraph 322(1) of the rules,
(2) there was no evidence to support his claimed fear for his safety if he returned to Nigeria,
(3) the previous Tribunal had found there to be insufficient evidence to establish he had been in the United Kingdom prior to 2001,
(4) his ownership of a property here was not a sufficiently compelling reason to warrant a grant of Leave to Remain,
(5) there was no reason his partner could not return to Nigeria she being a Nigerian citizen with no Leave to Remain here,
(6) his partner is not a British citizen or settled here, and she has neither refugee status nor humanitarian protection,
(7) their children (born on 13 October 2010 and 17 December 2011 respectively) have not resided in the United Kingdom for 7 years,
(8) he does not have sole responsibility for the children,
(9) there would be no obstacles in the children leaving the United Kingdom with their parents,
(10) the children are young enough to adapt to life in Nigeria given their tender ages,
(11) there are no insurmountable obstacles to the whole family returning to Nigeria,
(12) he has not lived here continually for 20 years,
(13) he has resided in Nigeria for the majority of his life,
(14) he has not severed all social, cultural, or family ties to Nigeria, and
(15) taking all the above into account there are no compelling or compassionate circumstances to justify allowing him to remain in the United Kingdom outside the rules.

The grant of permission

14. First-tier Tribunal Judge McDade granted permission to appeal (22 June 2015) on the grounds that;

> "it appears that there are arguable errors of law in respect of an apparent failure to give adequate reasons for his findings and to address Section 117B" (that being s117B of the Nationality, Immigration and Asylum Act 2002).

Discussion

Ground 1 - "adequacy of reasons"

15. In the determination the Judge said;

> [2] "I have read this refusal notice carefully and have taken into account its text in assessing this case, paying specific attention to the justifications advanced for the negative decision appealed against."
>
> [5] "ex parte Gondolia [1991] Imm A.R..591 …advises junior judges not to give reasons for every finding of fact and waste paper in detailing obvious reasons..."
>
> [9] "It is not incumbent upon me to isolate every single piece of evidence and indicate whether I have found it relevant to the issue. I am only obliged by the superior precedents to give "sufficient and adequate" reasons and I am not under a duty to refer to each and every piece of evidence and it therefore does not follow that because I have not referred to certain specific facts, they have not been taken into account."
>
> [10] "In this Determination I am confining my reasons to the dispositive aspects of the case. I am particularly affected by the following facts:-
>
> (a) The previous IJ was misled by the Home Office which had not given the "additional papers" to him to show that the Appellant was in this country in 1998.
> (b) I had at my disposal in the Appellant's bundle the "additional papers" which were, as I was told by the Appellant in the oral evidence, in the control of the Home Office,
> (c) I have carefully read the Appellant's statement of 22 September 2014. Indubitably, it registers a powerful human story inspiring any judge to exercise discretion with utmost compassion.
> (d) As in Paragraph 3 of the Statement of 22 September 2014 the Appellant confirms he has been away from Nigeria for over 20 years."

16. The Appellant's account which the Judge extracted [16] can be summarised in this way. He came here in 1996 (with the assistance of an agent – that being clear from the Solicitor's letter 26 March 2013) having lived in Germany for 2 years. He studied in 2004 and from 2008 to 2011 obtaining various business qualifications.

Documentary evidence of being here from 1998 to 2001 was not presented to the previous Tribunal by the Home Office or his previous Solicitor or Barrister. The electricity bills from November 1998 show he was in the United Kingdom then. He has developed close friendships here. His wife and children are here. His father, step mother, step siblings and their families are here, all of whom are British. He has a strong private and family life here.

17. The Judge stated;

> [17] "From the preceding extract it is clear that the Appellant has two children and the "best interest" of the children cannot be ignored. The Appellant's father in his supporting letter has also talked about the enjoyable presence of his grandchildren."

18. The Judge summarised aspects of the law regarding Article 8 and s55 of the Borders Citizenship and Immigration Act 2009 [18 to 29].

19. The Judge stated;

> [30] "Accordingly, in view of my deliberations in the preceding paragraphs and having taken into account all of the oral and documentary evidence as well as the submissions at my disposal…I am persuaded that the Appellant merits the benefit of the Immigration Rules HC395, as amended and the protections of the ECHR."

20. Miss Butler produced a copy of Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC) which was followed by Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) which guides me to the view that it is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for Judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.

21. I note here that the Judge made no reference to the contents of the previous determination of First-tier Tribunal Judge Robinson (IA/14073/2012) or evidence contained within it. He makes no reference to Devaseelan v Secretary of State for the Home Department [2002] UKIAT 00702, or [2003] UKIAT 00053 B (Pakistan) which guides me to the view that the Devaseelan principle applies to all categories of appeals. I note also Rajaratnam v Secretary of State for the Home Department [2014] EWCA Civ 8 which states that previous findings can be set aside if fresh evidence casts doubt on them.

22. It is of note that First-tier Tribunal Judge Robinson recorded that the Appellant stated that;

[8] "his elderly mother and a few brothers were living in Nigeria…he had entered the UK with the assistance of an agent and had no passport…After he came to the UK he worked in his father's letting agency…he had no documents regarding his life from 1998 to 2001 as his parents were in control and did not let him go out", and

[9] "he was earning £780 per month at the minicab office where he has worked since 2008",

and his wife stated that;

[10] "her husband's relationship with his family in the UK was not as strong as it should be as they had a commercial crisis", and

[11] "she did not live with her husband because of financial problems".

23. First-tier Tribunal Judge Robinson noted;

(1) the absence of oral or written evidence from the Appellant's father, step mother or other relatives here [21 and 24], or of having lived in Germany from 1994 to 1996 [22],

(2) they became a couple when his immigration status was precarious [32] (I note here that that is not correct as it has always been unlawful),

(3) his wife is an educated woman who worked in Nigeria [32] and had been here unlawfully since 2010 [28], and

(4) the Appellant was not living with his wife and children [33] although there was a genuine relationship [32].

24. First-tier Tribunal Judge Robinson;

(1) considered at length the best interest of the children [35],

(2) considered at length his private and family life here [36],

(3) considered at length their ties to Nigeria [37], and the economic burden on the state [38], and

(4) found that the proportionality balancing exercise fell against the Appellant [39/40].

25. Miss Butler (with commendable tenacity) submitted that the Judge was not required to give full reasons. The facts were not complex. There was no real conflict of evidence. There were no adverse findings. The Judge focussed on 4 pieces of evidence and adopted entirely the Appellant's witness statement. He

looked at the children's best interest. He applied the "primacy" test despite referring at one point to the "paramouncy" test. He looked at Article 8 through the lens of the rules. He was entitled to find that there were compelling and exceptional circumstances. Miss Butler conceded that the Judge does not deal with the individual matters of concern to the Respondent but dealt with them generally. Mr Bartle submitted that the Respondent's concerns were not dealt with at all.

Ground 2 – Section 117B

26. Miss Butler produced a copy of Dube (ss117A-117D) [2015] UKUT 90 (IAC) and AM (s117B) Malawi [UKUT] 0260 (IAC). She submitted that the Judge referred to s117 and looked at the matter through the lens of the Human Rights Act.

27. In response to my observation that the Judge allowed the appeal under the rules when no such application was made under the rules, Miss Butler said that she had no idea why he referred to them as the whole tenor of the judgement focussed on Article 8. He dealt with compelling circumstances. It was a fact sensitive case. The Judge heard the evidence. He did not have to set out s117 but dealt with the relevant part. He was entitled to find that the maintenance of an effective immigration control did not outweigh the best interest of the children.

Decision on Ground 1

28. The Judge's determination is wholly inadequate. The Judge entirely failed to engage with the Respondent's case and the concerns I have identified at [3] above. The exposition of legal principles in the Judgement [18 to 29] is not a substitute for analysing the evidence and making findings on contested core issues in the case. The final sentence of [27] is utterly irrelevant.

29. In particular, regarding the specific "facts" the Judge relied on [see 10 above] the Judge found that the Home Office misled the previous Judge [10(a)] whilst ignoring the evidence that was before that Judge from the Appellant himself who had said that he had no documents regarding his life from 1998 to 2001 as his parents were in control [see 12[8] above]. If the Appellant did not have the papers, he could not have given them to his legal representatives and they could not have sent them to the Home Office (which additionally fatally undermines the "fact" referred to in [10(b)] above) and neither could have sent them to the Judge. The finding of the Home Office misleading the Judge in those circumstances was perverse and the criticism of his previous representatives entirely without merit.

30. With regards to "fact" [10(c)], the suggestion that the Appellant's statement of 22 September 2014 indubitably registers a powerful human story inspiring any judge to exercise discretion with utmost compassion, is, with as much respect as I can muster, complete nonsense and perverse. It does not engage with the Respondent's core concerns (and upon which the Judge made no findings despite

them being contentious) that the Appellant had failed to establish his residence here since 1996, that he had come illegally and had always been here unlawfully, he had worked illegally, he had significant family ties to Nigeria namely his mother and his brothers, his family ties here had not been established to be as close as claimed, his wife had always been here precariously and unlawfully since 2010, she was Nigerian and had worked in Nigeria, the children were very young (even today the oldest is just 5), and the whole family could return to Nigeria without there being any undue hardship in doing so let alone insurmountable obstacles.

31. With regards to "fact" [10(d)] of the Appellant having left Nigeria 20 years ago, the Judge entirely failed to note the previous finding [16(1) of First-tier Tribunal Judge Robinson's determination] that there was no evidence the Appellant had been in Germany from 1994 to 1996. There was still no subsequent evidence to undermine that finding. In those circumstances it was not a finding open to the Judge on the evidence without further analysis and was perverse.

32. For all these reasons, in my judgement there was therefore a material error of law in the manner in which the Judge dealt with the Respondent's concerns as he simply ignored them, and the Respondent had no idea why she had lost. Gondolia, Budhakothi, and Shizad do not provide an exemption for a Judge to ignore the core disputes in the case, make findings upon them, or ignore previous findings.

Decision on Ground 2

33. The Judge made no reference to s117. The only oblique reference to it is in the reference to the Immigration Act 2014 [29 of the Judge's determination]. There is no analysis of the provisions of s117 or how it applies to this case. In my judgement there was therefore a material error of law in the manner in which the Judge dealt with S117.

Summary of decision on error of law

34. The making of the decision by the Judge did involve the making of an error on a point of law for the reasons I have already given on both grounds contended.

35. I set aside the decision.

36. I remit the matter to the First-tier Tribunal for a de novo hearing to be heard by a Judge other than Judge Majid. The time estimate is 3 hours. No interpreter is required.

Signed:
Deputy Upper Tribunal Judge Saffer
15 December 2015