



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

Appeal Number: IA/01619/2014

THE IMMIGRATION ACTS

Heard at Columbus House, Newport

**Determination
Promulgated**

On 25th February 2015

On 11th March 2015

Before

UPPER TRIBUNAL JUDGE POOLE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR BRAHIM SEDDAOUI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Irwin Richards, Home Office Presenting Officer

For the Respondent: Mr Christian Howells, Counsel

DETERMINATION AND REASONS

1. In this document I will refer to the parties by the style in which they appeared before the First-Tier Tribunal.
2. The appellant is a male citizen of Algeria, born 12 March 1968. He entered the United Kingdom as a visitor in August 1990 or 1993. He has remained in the United Kingdom without valid leave. He subsequently

made application for leave to remain on the basis of his relationship with his sponsor. That application was refused and the respondent issued removal directions under Section 47 of the 2006 Act. The appellant appealed those decisions.

3. The appellant's appeal came before Judge of the First-Tier Tribunal Walker sitting at Newport in August 2014. There was an oral hearing. Each party was represented. Both the appellant and his sponsor gave evidence.
4. In a determination dated 22 August 2014, Judge Walker allowed the appellant's appeal on human rights grounds, but dismissed it under the rules. Paragraph 36 of her determination records the view that the appellant could not succeed in the appeal other than "possibly" under Article 8 ECHR.
5. The respondent sought leave to appeal alleging a material misdirection of law. In summary, the respondent alleges that Judge Walker erred in failing to properly deal with Article ECHR in the light of then case law and a failure on her part to properly consider the effect of Section 117B of "the Immigration Act 2014" (sic). It is also alleged that the determination contained incorrect facts with regard to the failure to remove the appellant. Finally, it was submitted by the respondent that the appellant's circumstances "are not exceptional and are merely an ordinary family life claim".
6. The application for leave came before Judge Colyer of the First-Tier who granted leave for the following reasons:

"3. The respondent's Grounds and Reasons for Permission to Appeal submit that the judge made a material misdirection in law, in summary:

- a. *The tribunal has erred in law in its approach to the article 8 assessment.*
- b. *MF (Nigeria) [2013] confirms the immigration rules are a complete code and form the starting point. In Gulshan [2013] article 8 assessment should only be carried out when there are compelling circumstances not recognised by the rules. The tribunal did not identify such compelling circumstances.*
- c. *The tribunal has not followed the approach in Nagre [2013].*
- d. *The tribunal has failed to provide adequate reasons why the appellant's circumstances are either compelling or exceptional. In view of the appellant's poor immigration history, in accordance with section 117B of the immigration act 2014 little weight should be given to any relationship the appellant has formed.*
- e. *Paragraph 42 - the tribunal found the respondent failed to take action to enforce removal; this is factually incorrect.*

f. Since 2008 the appellant has been fully aware that he had no basis to remain. The appellant's circumstances are not exceptional and merely an ordinary family life claim.

4. When considering the determination it is arguable that the judge has made material errors of law in the determination. Permission to appeal is granted".

7. Hence the matter came before me in the Upper Tribunal.
8. In his submission Mr Richards relied upon the grounds seeking leave. However he did draw my attention to the final words of paragraph 37 of Judge Walker's determination, wherein she mentions "compelling circumstances". Mr Richards did submit that the findings by Judge Walker had been inadequately reasoned, especially bearing in mind Judge Walker's statement that the appellants immigration history "is of the very poorest kind". Mr Richards submitted that the requirements set out in the case of **Nagre [2013] EWHC 720 Admin** had not been met. There had been a misdirection at paragraph 42. It was not simply a case of the then Presenting Officer relying upon the 2014 Act. It is and was the law and the judge could not shy away from its implications. Mr Richards when onto to say that the judge was incorrect in finding that the Secretary of State had failed to remove the appellant and to take that into account in the balancing act. The judge was under a duty to give little weight and she failed to meet that duty.
9. Mr Howells in his submission indicated that Grounds 1 to 3 and the first part of 4 indicated that the judge had not met the "Nagre test". He, Mr Howells, was unaware of anything that amounted to a test.
10. As to Ground 2, at no time could any of the steps taken by the appellant have amounted to a bar to his removal. Mr Howells indicated that the grounds were misconceived. As to comments by Judge Walker regarding the lack of removal action on the part of the Secretary of State, the judge had merely said "I also note". That indicates the judge took nothing other than a note of the removal situation and that did not figure largely in her conclusions.
11. Mr Richards responded to indicate that any reference to the sponsor's father must of course be affected by the amendments set out in the 2014 Immigration Act.
12. At the conclusion of the hearing I indicated that I found no material error of law. I now give reasons.
13. The issue before me is whether or not Judge Walker erred in law in the way she dealt with Article 8 considerations having found that the appellant could not succeed under the Immigration Rules. Did she properly deal with the case in the light of such cases as **MF (Nigeria)**

[2013], Gulshan [2013] and Nagre [2013]? In addition did she fail to properly take into account Section 117 of the Nationality Immigration & Asylum Act 2002? Throughout the determination and grounds seeking leave reference has incorrectly been made to this section being of the Immigration Act 2014.

14. As indicated above I do not consider that Judge Walker made a material error of law in her determination. Any reference to the 2014 Act instead of the 2002 Act is of no consequence. The determination shows that Judge Walker (at paragraph 14) quite properly reminded herself of the cases that she should take into account. She was also fully aware of the requirements of Section 117 of the 2002 Act. Indeed she sets out the requirements of that section in paragraph 35.
15. Mr Richards very fairly noted the conclusion of paragraph 37 in his submission. Judge Walker had quite properly asked herself whether or not there were any compelling circumstances not sufficiently recognised under the rules. It was appropriate for her to ask that question of herself.
16. Judge Walker clearly did not find the appellant to be an impressive witness and she also recorded a poor immigration history. That of course cannot be the end of the story when looking at compelling circumstances. Judge Walker properly took into account the appellant's relationship with the sponsor, his actions towards the sponsor's father and the clear difficulties the sponsor had to relocate to Algeria. Judge Walker at paragraph 39 made specific findings and then reached a conclusion at paragraph 41. Notwithstanding these findings the judge then went on at paragraph 42 to consider the requirements of Section 117 and she clearly came to a conclusion that whilst little weight could be given to such matters, sufficient weight existed that merited success for the appellant.
17. The respondent has raised the question of the judge's comments on the failure to remove the appellant. I agree with Mr Howells that steps taken by the appellant would not have frustrated removal and accordingly the judge's comments were well-founded.
18. For these reasons, I conclude that the judge did not make any material error of law.
19. The respondent's appeal is accordingly dismissed and the decision of Judge Walker must stand.

Signed

Date

Upper Tribunal Judge Poole