IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/29587/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 October 2015	**On 4 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR EVAN MIREKU BOATENG
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr E Tufan, Specialist Appeals Team
For the Respondent/Claimant: None

DECISION AND REASONS

1. The Secretary of State appeals to the Upper Tribunal from the decision of Judge of the First-tier Tribunal Bradshaw made at Glasgow on 10 November 2014. It was a paper appeal. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the claimant requires anonymity for these proceedings in the Upper Tribunal.

2. The facts of the case are that the claimant is a Ghanaian national whose date of birth is 14 April 1983. He entered the United Kingdom on 7 March 2009 on a work permit visa valid until 12 August 2009. On 10 August

2009 he applied for leave to remain in the United Kingdom as a spouse of a settled person. His application was rejected. On 2 December 2009 he submitted an application for leave to remain in the United Kingdom as a spouse of a settled person and this application was refused with no right of appeal. On 24 March 2010 he submitted an application to the IAC First Tier for permission to appeal and this was refused on 7 April 2010. On 11 April 2010 he requested a reconsideration of his previous applications for leave to remain as a spouse of a settled person on human rights grounds under Article 8. By a letter dated 2 July 2014 and notice dated 4 July 2014 the application was refused by the Secretary of State and the appeal which came before Judge Bradshaw was an appeal against that refusal.

3. There was no appearance by the claimant or by the Secretary of State. The claimant had requested his appeal should be decided on the basis of the information he had provided. He did not wish an oral hearing.

4. The material part of the judge's reasoning begins at paragraph 6 of his subsequent decision. As far as he could see from the Home Office bundle, the application which was under consideration by the Secretary of State was the reconsideration request made on 11 April 2010 in respect of the previous application for leave to remain as a spouse of a settled person on human rights grounds under Article 8. The judge continued:

> "7. On the basis that the original application was the reconsideration request of 11 April 2010 I do not know why there has been a delay in the Respondent issuing the said Refusal Notice of 2 July 2014 particularly since the last letter referred to from the agents was apparently dated 19 October 2012.
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> 8. The relative major changes to the Immigration Rules came into force on 9 July 2012 and the said reconsideration application of 11 April 2010together with the letters of 7 January 2011 and 11 May 2012 predate these changes of 9 July 2012.
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> 9. The relative Refusal letter of 2 July 2012 deals with the Appellant's reconsideration application principally if not wholly in terms of the new Rules. In terms of the relative case of **Edgehill** it seems to me that the decision of the Respondent in terms of the said Refusal letter of 2 July 2014 is unlawful because the decision maker considered the Article 8 claim of the Appellant in terms of the new Rules notwithstanding the date when the relative application was made."

5. The judge went on to hold that it seemed appropriate to him to allow the appeal to the extent the matter was remitted back to the Secretary of State in order that the reconsideration application of 11 April 2010 was considered in accordance with the law as it was prior to the major changes to the Immigration Rules which came into force on 9 July 2012.

6. On 12 January 2015 Designated Judge David Taylor granted the Secretary of State permission to appeal against Judge Bradshaw's decision. The grounds claim the judge's approach was wrong in that he failed to consider **Haleemudeen**. His reference to **Edgehill** was an error.

Accordingly, it was argued by the Secretary of State the refusal decision was correct in law. Judge Taylor held that these grounds were arguable.

7. In advance of the hearing before me there was a communication received from Ebrahim & Co, the representatives for the appellant. They asked the Upper Tribunal to note they were without instructions and they therefore requested that the Upper Tribunal determine the appeal as it deemed fit. Their client had been informed of the date of the hearing by post on two separate occasions.

8. I received submissions from Mr Tufan who directed my attention to the case of **Singh v Secretary of State for the Home Department [2015] EWCA Civ 74**. In short the ratio of that case is that there is nothing unlawful in the Secretary of State applying the new Rules to an application which predates the change to the Immigration Rules and the case of **Edgehill** has to be confined to special facts. Underhill LJ summarised his conclusions at paragraph [56], which I quote:

> "(1) When HC 194 first came to force on 9 July 2012 the Secretary of State was not entitled to take into account the provisions of the new Rules (either directly or by treating them as a statement of their current policy) when making decisions on private or family life applications made prior to that date but not yet decided. That is because, as decided in **Edgehill**, the implementation provisions set out at para 7 above displaces the usual **Odelola** principle.
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> (2) But that position was altered by HC565 – specifically by the introduction of the new paragraph A277C – with effect from 6 September 2012. As from that date the Secretary of State was entitled to take into account the provisions of FM under paragraphs 276ADE-276DH in deciding private or family life applications even if they were made prior to 9 July 2012. The result is that law as it was held to be in **Edgehill** only obtained as regards decisions taken in the two month window between 9 July and 6 September 2012.
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> (3) Neither decision with which we are concerned in this case fell within that window. Accordingly the Secretary of State was entitled to apply the new Rules in reaching those decisions."

9. The reasoning of the judge in **Singh** applies with equal force to the facts of the case before me. The decision in question does not fall within the short window in which **Edgehill** applies. Accordingly the judge materially erred in law in finding that the Secretary of State had acted unlawfully in applying the new Rules. As the judge failed to make any findings of fact on the merits of the appeal that was before him the parties have been deprived of a fair hearing in the Upper Tribunal on the real issues in controversy. So I must remit the appeal to the First-tier Tribunal for a de novo hearing on the papers.

Notice of Decision

10. The decision of the First-Tier Tribunal contained an error of law, which requires the decision to be set aside and remade.

Directions

11. **The appeal shall be remitted to the First-tier Tribunal at Glasgow, or to another hearing centre if more convenient, for reconsideration on the papers by any Judge apart from Judge Bradshaw.**

Signed Date

Deputy Upper Tribunal Judge Monson