IAC-PE-SW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/32800/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15th October 2015	**On 3rd November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MR MENSAH ABORAMPAH AFRANE
(ANONYMITY NOT RETAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Adophy
For the Respondent: Miss Fijiwala

DECISION AND REASONS

Introduction

1. The Appellant born on 5th February 1966 is a citizen of Ghana. The Appellant had made application for a reconsideration of his case to be allowed to remain in the United Kingdom outside of the Immigration Rules. The Respondent had refused the Appellant's application. The Appellant had appealed that decision and his appeal was heard by First-tier Tribunal Judge Monaghan sitting at Richmond on 26th March

2015. The judge had dismissed the Appellant's appeal under both the Immigration Rules and under Article 8 of the ECHR.

2. The Appellant had made application for permission to appeal that decision and permission was granted by Designated Judge Zucker on 1st July 2015. It was said that it was arguable the judge had misunderstood the chronology of the case and had given insufficient consideration to the issue of delay and that arguably weight should have been given to the application said to have been made by the Appellant's child for British citizenship.

3. Directions were issued directing the Upper Tribunal firstly to decide whether or not an error of law had been made by the First-tier Tribunal and the matter comes before me in accordance with those directions.

Submissions on behalf of the Appellant

4. Mr Adophy relied on and adopted the Grounds of Appeal. It was submitted that there had been a delay on the part of the Respondent in this case such that the Appellant had been denied the benefit of the old Rule under paragraph 395C. It was further said that the proportionality exercise under Article 8 of the ECHR had not been properly considered including a failure to properly consider the issue of delay and weight to the fact that the Appellant's child may shortly have been granted British citizenship.

Submissions on behalf of the Respondent

5. I was reminded that permission to appeal had not been granted because of the alleged grounds under the case of **Singh**. It was said that the judge had properly considered all matters in this case and that in respect of any issue regarding delay the Appellant's status in the UK had at all times been precarious and consideration needed to be taken therefore of Section 117B(5) of the 2002 Act.

6. At the conclusion of the submissions I reserved my decision to consider the documents and submissions made in this case. I now provide that decision with my reasons.

Decision and Reasons

7. Permission in this case was granted on the basis that it was arguable that a misunderstanding of the chronology by the judge may have given insufficient consideration to the issue of delay and further he should have considered the application said to have been made by the Appellant's child for British citizenship.

8. The judge had noted at paragraph 16 that "Appellant accepted the immigration history as deduced within the Respondent's bundle and I therefore incorporate the history in these findings of fact". That would seem to mitigate against the concept the judge misunderstood the chronology in this case.

9. The Appellant arrived in the UK as a student in 2000. He remained as a student until May 2006. Prior to that expiry he applied in March 2006 for a residence card having married a Dutch national. That card was revoked on 7th May 2009. The Appellant appealed unsuccessfully and became appeal rights exhausted on 11th December 2009. Rather than returning to Ghana the Appellant remained unlawfully. He made application on 21st January 2010 for leave to remain under Article 8 of the ECHR. There were no dependents on that application. That was refused with no right of appeal on 16th September 2010. Again the Appellant failed to leave and remained unlawfully.

10. An application for reconsideration was made on 27th June 2011. However rather than waiting for the Home Office to consider that application the Appellant put in a further application, essentially on the same basis on 25th June 2011 (rejected as no fee paid), a further application on 15th July 2013 (rejected 24th July 2013) and a third application on 25th September 2013 (rejected 10th October 2013). Leaving aside the fact the Appellant was unlawfully in the UK when the application process was made the first significant delay was one of eighteen months between the refusal of the Appellant's application and the solicitor requesting reconsideration. Whilst there was delay between the receipt of that reconsideration requested on 27th June 2011 and the final refusal in July 2014 in that three year period the Appellant had made three further applications all essentially based upon the same facts and request. It should be further noted that the application for reconsideration was made on 18th June 2014.

11. I find no evidence to suggest the judge misunderstood the chronology as asserted nor do I find delay in this case as stark or simple as suggested. I further reject any submissions that an earlier decision may have resulted in the Appellant receiving a greater chance of success. As noted above he did make earlier applications of a similar or identical nature all of which have been rejected. In reality the message has been plain to this Appellant for a substantial period of time that he has no basis for remaining in the UK. Further **EB Kosovo [2008] UKHL 41** paragraph 13 makes clear that that argument that an earlier decision may have given him better prospects even if it had merit, which it does not, is an argument that has no value. **EB Kosovo** at paragraph 14 also however makes clear that delay may strengthen any Article 8 claim and therefore the ultimate question of proportionality.

12. The judge in this case had looked at the case firstly under the Immigration Rules in accordance with both Appendix FM and EX.1. The judge gave cogent reasons why, even having regard to Section 55 of the Borders Act 2009 it would be reasonable for the children to leave the UK with the Appellant and found the Appellant failed under the Immigration Rules. Separately the judge had considered the same factual matrix under Article 8 of the ECHR and concluded that removal was proportionate.

13. Whilst it is said in the Grounds of Appeal that the eldest child had applied for UK citizenship, the decision does not necessarily disclose that that was communicated to the Tribunal. However it is clearly the case that the child had not at the date of hearing been granted UK citizenship. Furthermore the judge had considered all the

factors when looking at Appendix FM which includes at FM-(cc) "is a British citizen or has lived in the UK continuously for at least the seven years prior to date of application." As indicated above the date of application for reconsideration was 18th June 2014. The judge was aware of how long the children had lived in the UK (paragraph 20). It is clear therefore that the factors considered by the judge and his assessment under both the Immigration Rules and Article 8 would have been entirely the same and operating within the same legal framework even if the eldest son had been granted UK citizenship. Accordingly there could have been no different outcome even if at the date of hearing the eldest child was a UK citizen which plainly he was not.

14. The decision reached by the judge was in accordance with the law, well-reasoned and a conclusion open to him on the evidence. The grounds essentially are no more than a disagreement and no error of law was made.

Notice of Decision

15. There was no material error of law made in this case and I uphold the decision of the First-tier Tribunal.

16. Anonymity not retained.

Signed Date

Deputy Upper Tribunal Judge Lever