IAC-TH-LW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/34369/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6th January 2015	**On 25th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR BAKER GASHUGI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr S Walker (Senior Home Office Presenting Officer)
For the Respondent: Mr P Collins (Counsel)

DECISION AND REASONS

1. The appellant's appeal against a decision to remove him from the United Kingdom was allowed by First-tier Tribunal Judge Beg ("the judge") in a determination promulgated on 3rd October 2014.

2. Having made the decision to remove the appellant under paragraphs 8 to 10A of Schedule 2 to the Immigration Act 1971, the Secretary of State went on to set removal directions, identifying Burundi as the country of return. At the First-tier Tribunal hearing, the two representatives present drew the judge's attention to a determination made by an Adjudicator in

May 2003. In dismissing the appeal in that year, the Adjudicator found that the appellant was not a national of Burundi. In the present appeal, the judge recorded a suggestion from the Secretary of State's representative that "the matter be referred back to the caseworker to consider the removal directions in light of 'the earlier findings'" (paragraph 2 of the determination). The judge then purported to allow the appeal, observing that it was appropriate in the light of the finding of fact regarding nationality made in 2003 that the Secretary of State consider the case further.

3. The Secretary of State applied for permission to appeal, which was granted on 20th November 2014. The author of the grounds contended that the judge erred in allowing the appeal. The country identified in removal directions does not render the decision under appeal unlawful and removal directions are not in themselves an "immigration decision" attracting a right of appeal. The judge was required to determine the appeal and erred in law in allowing it for the reasons given.

4. In a rule 24 response, Mr Collins submitted that the judge did not err in allowing the appeal. The Tribunal was required to determine any matter raised as a ground of appeal, by virtue of section 86(2) of the 2002 Act. Removal directions set in accordance with paragraphs 8 to 10A of Schedule 2 to the 1971 Act fell within section 82(1) and 82(2) of the 2002 Act, as an "immigration decision" under section 82(2)(h) of the 2002 Act. The appellant raised as a ground of appeal the destination of return and so this was a relevant issue in the appeal. In those circumstances, the judge correctly allowed the appeal to the limited extent of deciding that the adverse decision was not in accordance with the law and properly directed that the matter be given further consideration by the Secretary of State.

Submissions on Error of Law

5. Mr Walker said that the identification of the country of return was a matter for the Secretary of State. She could, as a matter of law, name two countries. The judge was required to determine the appeal and erred in finding that the decision to remove the appellant was unlawful, by reason of the country named in the removal directions.

6. Mr Collins said that it had been the Presenting Officer's suggestion that the Secretary of State's caseworker give the matter further consideration. The country of removal was a matter raised as a ground of appeal, falling within section 86(2) of the 2002 Act. There had been further delay which might have been avoided if the Secretary of State had simply applied for an adjournment at the hearing. The appellant was concerned at delay and further cost when all that was sensibly required was reconsideration by the Secretary of State.

Conclusion on Error of Law

7. I conclude that the judge materially erred in allowing the appeal on the basis that the removal directions identified Burundi as the country of return, notwithstanding the finding of fact made in this context in 2003. The setting of removal directions is an administrative step and does not amount to an "immigration decision" falling within section 82(2) of the 2002 Act. In his rule 24 response, Mr Collins suggested that section 82(2)(h) was engaged but, with great respect to him, I disagree. The decision identified there is a decision to remove, in accordance with directions under paragraphs 8 to 10A of Schedule 2 to the 1971 Act. There is a clear distinction between the decision itself, which gives rise to an appeal under section 82(1) of the 2002 Act and the setting of removal directions. With great respect to the judge, she erred in concluding that the identification of the country of return of itself rendered the removal decision unlawful.

8. Of course, identification of Burundi as the country of return might very well have been a relevant matter in the judge's overall assessment but, again, naming Burundi in the directions did not of itself undermine the integrity or lawfulness of the removal decision. Under the Immigration and Asylum Act 1999, the setting of removal directions did give rise to an appeal but that is not the case under the 2002 Act. The Secretary of State may, administratively, alter the country of return in a particular case and, as Mr Walker said, she may identify more than one country. Whereas the lawfulness of a removal decision falling within section 82(2) of the 2002 Act may be challenged in a statutory appeal, a challenge to a particular country identified in removal decisions may be pursued by means of an application for judicial review.

9. Mr Collins properly drew my attention to his client's concern at further delay and expense when the Secretary of State ought reasonably to take into account the earlier findings of fact in identifying a potential country of return. In the light of the Presenting Officer's suggestion at the First-tier Tribunal hearing, his remarks have force. There would appear to be no sensible reason why the Secretary of State ought not now to identify a country of return, having had over three months to consider the position.

10. The judge materially erred in allowing the appeal for the reasons she gave. The decision of the First-tier Tribunal must be set aside and remade. The two representatives agreed that the appropriate venue was the First-tier Tribunal and, taking into account the practice statement and the very limited findings of fact made in the First-tier Tribunal, I agree.

11. The appeal is remitted to the First-tier Tribunal, at Taylor House, to be remade by a judge other than First-tier Tribunal Judge Beg.

12. The rule 24 response prepared on the appellant's behalf included a claim for costs but in the light of my conclusion that the judge erred in law, there would be no basis for making such an order, even if the Upper Tribunal's jurisdiction in this regard were not as limited as it is.

NOTICE OF DECISION

13. The decision of the First-tier Tribunal is set aside. It shall be remade in the First-tier Tribunal, at Taylor House, before a judge other than First-tier Tribunal Judge Beg. The parties agreed that no interpreter would be required and that a time estimate of three hours would suffice. The appellant and his partner will be the only witnesses.

Signed Date **23rd March 2015**

Deputy Upper Tribunal Judge R C Campbell

ANONYMITY

The First-tier Tribunal Judge made no anonymity order and none has been sought since. I make no order on this occasion.

Signed Date **23rd March 2015**

Deputy Upper Tribunal Judge R C Campbell