



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/07329/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11 January 2016

Decision and Reasons Promulgated  
On 25 January 2016

Before

UPPER TRIBUNAL JUDGE FINCH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ANDREW MAURICE NICOL  
(NO ANONYMITY ORDER MADE)

Respondent

**Representation:**

For the Appellant: Mr. D. Clarke, Home Office Presenting Officer

For the Respondent: No representation

**DECISION AND REASONS**

History of Appeal

1. The Respondent, who was born on 4 February 1989, is a citizen of South Africa. He first arrived in the United Kingdom on 29 October 2004 as a dependent of his father who had been granted leave to remain on the basis of his UK ancestry. He was initially granted limited leave to remain until 29 October 2008 and this leave was subsequently extended until 5 January 2014.
2. He applied to vary his leave to remain once more on 12 December 2013 but his application was refused on 23 January 2014 and a decision was made to remove him

from the United Kingdom. He appealed against this decision on 6 February 2014 and his appeal was listed before First-tier Tribunal Judge Boyd on 29 May 2014. The Respondent had flu and was not able to attend but First-tier Tribunal Judge Boyd continued with the hearing in his absence and dismissed his appeal in a decision, promulgated on 13 June 2014.

3. The Respondent appealed against this decision and on 19 September 2014 First-tier Tribunal Judge Hollingsworth granted him permission to appeal. On 3 November 2014 Deputy Upper Tribunal Judge Rimington found that First-tier Tribunal Judge Boyd had made an error of law and remitted the appeal to the First-tier Tribunal.
4. First-tier Tribunal Judge O'Garro allowed his appeal in a decision promulgated on 6 May 2015.
5. The Appellant appealed on 12 May 2015 and First-tier Tribunal Judge Lambert granted her permission to appeal on 15 July 2015.

#### Error of Law Hearing

6. At the hearing I heard from the Home Office Presenting Officer and then provided the Appellant with the opportunity to respond. He addressed me about his family's present circumstances and the fact that his older brother was planning to migrate to work abroad and would no longer be living in South Africa.
7. In paragraph 28 of her decision First-tier Tribunal Judge O'Garro reminded herself that in order to meet the requirements of paragraph 276ADE(vi) of the Immigration Rules the Respondent would have to show that there were very significant obstacles to his integration in South Africa.
8. She noted that the Immigration Directorate Instruction on *Family Migration: Appendix FM Section 1.0b, Private Life in the UK* sets out matters which should be considered when assessing whether there are "very significant obstacles". She partially referred to three of these factors in paragraph 30 of her decision and noted in paragraph 32 that he had arrived here at the age of 15 and would not at that age have been exposed to all the facets and culture of South Africa and, in particular, would not have been exposed to world of work. She did not take into account the fact that he had been educated in South Africa until the age of 15 and that he had been employed here in the United Kingdom. In addition, she did not explain why he would now be returning to a country whose cultural norms were alien to him when he had been born and brought up there until the age of 15. She also failed to reflect the totality of the content of the IDI, which specifically stated that the fact that a person may have no family members in the country of return does not necessarily give rise to very significant obstacles to re-integration.
9. Crucially, she did not provide any definition of the test of "very significant obstacles" which she was applying but appeared to conflate it with the earlier test in paragraph 276ADE(v) which merely required a person to show that he had no ties (including social, cultural or family) in South Africa. This led her to rely on *Ogundimu (Article 8-new rules) Nigeria* [2013] UKUT 60 and to pick out the factors in the IDI which related to cultural, social and family ties.
10. She failed to take into account the fact that the IDI said that a very significant obstacle to integration means something which would prevent or seriously inhibit the applicant from integration into the country of return and means more than mere

obstacles. It also states that very significant obstacles will exist where the applicant demonstrates that they would be unable to establish a private life in the country of return or where establishing a private life would entail very serious hardship for the applicant. She did not apply this or any other similar test to the facts of the Respondent's case. Therefore, I find that she made a material error of law when finding at paragraph 33 of her decision that the Respondent met the requirements of paragraph 276ADE(vi) of the Immigration Rules.

11. However, from paragraph 34 to 36 of her decision First-tier Tribunal Judge O'Garro considered whether, in the alternative, the Secretary of State had also failed to consider whether the Respondent's circumstances were exceptional and should have been considered outside the Immigration Rules.
12. In her decision letter, dated 21 January 2014, the Appellant had included a paragraph headed: *Decision on Exceptional Circumstances*. However, it was a stock paragraph, which did not refer to or consider any of the Respondent's individual circumstances. In particular, she did not comply with her own policy, referred to above, which stated that:

"The degree of private life an individual has established in the UK is not relevant to the consideration of whether there are serious obstacles to integration into the country of return. However, this will be relevant to the consideration of whether, where the applicant falls for refusal under the Rules, there are exceptional circumstances which would make refusal unjustifiably harsh for the applicant".
13. I agree with First-tier Tribunal Judge O'Garro that the test to be applied in paragraph 276ADE(vi) of the Immigration Rules does not address the aspects of his private life, which arise from him living here in the United Kingdom, and that, therefore, the Appellant decision was not in accordance with the law.
14. For these reasons I find that the alternative basis for First-tier Tribunal Judge O'Garro's decision did not include material errors of law and I uphold her decision that the Secretary of State for the Home Department had failed to consider the Respondent's case sufficiently, or at all, outside the Immigration Rules.

#### Decision

15. I uphold First-tier Tribunal Judge O'Garro's decision in so far as she found that the Appellant has not yet given sufficient consideration to the Respondent's case outside the Immigration Rules.
16. The case remains before the Secretary of State for the Home Department to make a decision on this aspect of the application.

Date: 18 January 2016

Nadine Finch

Upper Tribunal Judge Finch