Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/49707/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 December 2015	**On 18 January 2016**

Before

UPPER TRIBUNAL JUDGE BLUM
UPPER TRIBUNAL JUDGE McWILLIAM

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MOHAMMED RASEL
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the appellant: Mr Duffy, Senior Home Office Presenting Officer
For the Respondent: Mr Karim, counsel, instructed by MA Consultants

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge of the First-tier Tribunal Dean who, on 23 June 2015, allowed the appeal of Mr Mohammed Rasel to the limited extent that it was remitted back to the Secretary of State to make a lawful decision.

Background

2. Mr Rasel is a citizen of Bangladesh whose date of birth is given as 5 April 1975. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 20 November 2014 refusing his application for leave to remain in the United Kingdom on the basis of his human rights. In that decision the Secretary of State noted that Mr Rasel had three dependants:- his wife, AA and his two children RR and WJA.

3. Mr Rasel arrived in the United Kingdom on 2 June 2005 and his wife and oldest child were last granted permission to enter in November 2009. On 10 November 2011 Mr Rasel made an application for leave to remain in the United Kingdom. The application was made on a form FLR(O). Section 2 of the application form is headed "Dependants who are also applying" and Mr Rasel's dependants were identified in that section. The application form was accompanied by a covering letter dated 10 November 2011.

4. The final paragraph of the covering letter states:

> "Our client's oldest child is currently attending school and will have become settled in his way of life. Documents are being presented to demonstrate that the oldest child is well settled in the UK. The youngest child was born in the UK. The children regard the UK as their home. They have established a private and a family life in the UK and there will be no justification to interfere with this life. Our client has been working since his arrival in the UK and has not been a burden on the state."

5. According to the Reasons for Refusal Letter this application was rejected with no right of appeal on 25 November 2011. On 21 August 2014 Mr Rasel was served with a one-stop notice under Section 120 of the Nationality, Immigration and Asylum Act 2002. In a letter dated 10 September 2014, which was a response to the Section 120 notice, Mr Rasel, through his solicitors, indicated that he was relying on his established family and private life in the United Kingdom. He maintained that he was in a genuine relationship with his wife and children, and that the children had established private lives in the UK as they were attending school where they made friends.

6. In her decision the Secretary of State considered the family and private life of Mr Rasel. The Secretary of State took account of the best interests of the children, making specific reference to Section 55 of the Borders, Citizenship and Immigration Act 2009. The Secretary of State also considered whether there were exceptional factors consistent with the right to respect for private life and family life under Article 8 that would entitle the family to a grant of leave to remain. In so doing the Secretary of State took account of the various relationships Mr Rasel had with his partner and with his children and took into account the circumstances of the children.

7. The Secretary of State made a decision to remove Mr Rasel on 20 November 2014 under Section 10 of the Immigration and Asylum Act 1999, as it applied at the date of the hearing. This was on an IS151B form. On the same date decisions were made to remove his dependants, also under Section 10. They were not however served with an IS151B form but with an IS151 Part 2 form which indicated that they only had a right of appeal that could be exercised once they were outside the United Kingdom.

The decision of the First-tier Tribunal

8. At the hearing before the First-tier Tribunal the Secretary of State was not represented. Mr Rasel's representative, Mr Karim, who also appears before us, accepted that the removal directions had been made in cases of all of the parties and that the Reasons for Refusal Letter addressed Mr Rasel and his children. However, whereas Mr Rasel had been given an in-country right of appeal his wife and two children had not. It was submitted by Mr Karim before the First-tier Tribunal that a full consideration of Mr Rasel's family and private life necessarily involved consideration of his wife's circumstances and those of his children because the rights of one encompassed those of the others. Mr Karim argued that it was not possible to make a proper Article 8 assessment in the absence of in-country rights of appeal relating to the dependants.

9. The Judge noted that the Reasons for Refusal Letter was addressed to Mr Rasel, his wife and their two children and that it addressed Section 55 of the Borders, Citizenship and Immigration Act 2009 in relation to the needs and welfare of the children. At paragraph 13 the Judge made reference to Mr Rasel's immigration history and found that there were material concerns about his relationship with his wife and that these matters needed to be considered in a rounded assessment of his family life and that of his wife and children.

10. At paragraph 14 the Judge stated:

> "Accordingly, looking at the totality of the evidence before me, I find that this is a case where the respondent's decision is not in accordance with the law and therefore should be remitted for a full consideration of the removal decisions in order that these cases can be linked and a rounded assessment of all the evidence undertaken."

The Judge thereafter allowed the appeals to the limited extent that they were remitted back to the Secretary of State.

The Grounds of Appeal

11. The Secretary of State's grounds of appeal indicated that, despite Mr Rasel's wife and children being dependent upon his application, they had not made applications of their own. The grounds state that the only person

within the family who had made a claim on human rights grounds was Mr Rasel. The Secretary of State asserted that the decision to serve the IS151 Part 2 decision notice on the dependants was correct in law as they had not made separate claims. The grounds maintained that the decision of the Secretary of State under appeal was not unlawful and that the Judge was wrong to have remitted the matter because he could have considered the various relationships that Mr Rasel had with his children and the impact on the children and that this would constitute sufficient consideration under Article 8.

Submissions at the Hearing

12. In his submissions Mr Duffy maintained that Mr Rasel's dependants had not made human rights claims and referred to the definition of a human rights claim contained within Section 113 of the Nationality, Immigration and Asylum Act 2002. He maintained that, as no human rights claim had been made by the dependents, they were only granted an out of country right of appeal. Mr Duffy submitted, in the alternative, that even if this was not correct, it was nevertheless open to the First-tier Tribunal Judge to hear the case and to make appropriate findings.

13. Mr Karim submitted that the dependants had made human rights applications. When pressed by us he accepted that the actual immigration decision in respect of Mr Rasel was not defective. Mr Karim submitted that whilst it was open to the First-tier Tribunal to hear the appeal, it was also open to the Tribunal to remit the matter as well.

Discussion

14. This is an appeal against the decision to remove Mr Rasel under Section 10 of the Immigration and Asylum Act 1999. As the Secretary of State accepted, Mr Rasel had made a human rights claim prior to the section 10 decision and therefore had a suspensive right of appeal pursuant to sections 82 and 92(4) of the Nationality, Immigration and Asylum Act 2002. On the same date, 20 November 2014, decisions were made under Section 10 in respect of his dependants. These were on the IS151A Part 2 forms which indicated that the dependents had no suspensive right of appeal.

15. Mr Karim submits that the FLR(O) application form received by the Secretary of State on 11 November 2011 made clear, at section 2, that the dependants were applying on the same basis as Mr Karim. In other words, these dependants were also making human rights claims. Further support was identified by reference to the covering letter dated 10 November 2011. This application was however rejected on 25 November 2011.

16. The Reasons for Refusal Letter takes the solicitor's letter of 10 September 2014, which was the response to the Section 120 notice issued in August of that year, as the relevant claim for family and private life and one that was made by Mr Rasel only. This is the basis of the dispute between Mr

Rasel and the Secretary of State as to whether his dependants made human rights claims for the purpose of the Section 10 decisions.

17. What however is not in doubt is that the immigration decision made in respect of Mr Rasel was not itself defective. The decision against Mr Rasel was one that the Secretary of State was lawfully entitled to make and one that Mr Rasel properly appealed to the First-tier Tribunal. There was therefore a valid appeal before the First-tier Tribunal. The Judge was obliged to deal with that appeal. Specifically, the Judge was obliged to engage with the grounds of appeal and to make material findings in respect of the Article 8 private lives of the children and the impact that the removal decisions would have on their lives (*Beoku-Betts (FC) (Appellant) v Secretary of State for the Home Department (Respondent)* [2008] UKHL 39 indicates that the First-tier Tribunal was entitled to consider all the family life relationships in the context of the single appeal). The fact that there were no appeals from the children themselves before him did not absolve the Judge of his duty to determine the appeal that was lawfully before him.

18. It was, and continues to be, open to the dependants to file notices of appeal with the First-tier Tribunal requesting that it resolve the dispute as to whether they enjoyed in-country rights of appeal (*Basnet (Validity of application – respondent)* [2012] UKUT 00113). If notices of appeal were lodged with the First-tier Tribunal and it decided that the dependants did have suspensive rights of appeal because they did make human rights claims, then the appeal notices to the dependants are likely to have been defective for failing to properly identify their in-country rights of appeal. In *OI (Notice of decision: time calculations) Nigeria* [2006] UKAIT 00042 the Tribunal gave consideration to the issue of whether an appellant required an extension of time for lodging an appeal with the Tribunal in circumstances where, *inter alia*, the notice of decision bore a misleading statement as to the time limit to bring such an appeal. The Tribunal observed as follows at paragraph 15:

> The Notices Regulations are clearly made for the benefit of those who receive the notices, and as a result the Tribunal has regularly held that an applicant or appellant may waive a requirement of the Regulations by submitting a notice of appeal even if the Regulations have not been fully complied with. But an applicant is entitled to require compliance with the Regulations, and if a notice has not been served by one of the methods specified in Regulation 7(1), it has not been lawfully served at all, and in that case time has not yet begun to run against any intending appellant.

19. A recipient of a decision notice that failed to comply with the notice Regulations can therefore bring an appeal before the Tribunal by waiving the need for the Secretary of State for the Home Department to comply with the requirements of such Regulations.

20. The Secretary of State’s decision in the present appeal clearly engaged with the rights of the children. Specific consideration was given by the

Secretary of State to the nature and quality of the private lives they had established.

Decision

21. We are satisfied that the decision under appeal fulfilled all the requirements necessary to be properly brought before the First-tier Tribunal. Faced with such a decision it was incumbent on the First-tier Tribunal Judge to have engaged substantively with the appeal before him. There was nothing preventing the Judge from considering the Article 8 rights of Mr Rasel's children in the context of their father's appeal. We are satisfied that the First-tier Judge made a material error of law and that it is appropriate to remit the appeal back to the First-tier Tribunal for a lawful consideration of the substantive Article 8 rights at play.

22. No anonymity direction is made.

Signed

15 January 2016
Date

Upper Tribunal Judge Blum