



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/15064/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 5th August 2019**

**Determination & Reasons Promulgated
On 7th August 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

BIODUM ADEYEMO

Respondent

Representation:

For the Appellant: Ms S Jones, Senior Home Office Presenting Officer

For the Respondent: Ms [F A], sponsor

DETERMINATION AND REASONS

1. Mr Adeyemo made a voluntary departure from the UK to Nigeria following the signing of a deportation order on 6th April 2006. On 8th December 2011 an application made to join his wife, Ms [F A], was refused on 8th December 2011. His appeal was dismissed for reasons set out in a decision promulgated on 24th August 2012. He was granted permission to appeal and the appeal came before Deputy Upper Tribunal Judge Lindsley. The presenting officer informed the Deputy Upper Tribunal Judge that Mr Adeyemo was not subject to a deportation order but had left the UK voluntarily following his criminal conviction. His appeal was allowed.

2. After enquires were made by Mr Adeyemo and his wife, a further application was made, the practical effect of which was to require the SSHD to put into effect the decision of the Deputy Upper Tribunal Judge. That led to a further refusal of the human rights claim on the basis that Mr Adeyemo was the subject of a deportation order and no application for revocation had been made. The claim was also refused on other grounds, the substance of which had not been accepted by the Deputy Upper Tribunal Judge in her decision promulgated on 22nd February 2013.
3. Before First-tier Tribunal Judge Ross, Mr Alagh, the SSHD presenting officer, stated (and this was accepted by the judge) that the deportation order 'expired' after 10 years in 2016. The First-tier Tribunal judge referred to the positive findings made at the earlier appeals and allowed the appeal.
4. Mr Alagh was incorrect. The First-tier Tribunal judge incorrectly accepted an assertion by the presenting officer that the deportation order had 'expired after 10 years absence from the UK. As made clear in the Immigration Rules, a deportation order remains in force, thus prohibiting entry to the UK, unless and until it is revoked. As *EYF (Turkey)* [2019] EWCA Civ 592 makes clear, there is no presumption that after 10 years has elapsed a deportation order will be revoked. What is required by the Immigration Rules is an individual assessment which means that once 10 years has elapsed, it becomes easier to argue that the balance has shifted in favour of revocation but that does not mean that revocation is automatic or presumed – see [28] of *EYF*.
5. Ms [A] was understandably upset that the First-tier Tribunal judge had erred in law such that the decision to allow the appeal was set aside. Neither she nor her husband, she said, had been aware that an application to revoke the deportation order had to be made and a decision taken on that application before an application for entry clearance could be considered. Although the Immigration Rules make clear that an individual will not meet the Suitability Requirements if subject to a deportation order, navigation around the Rules is complex and it would have been of assistance to Mr Adeyemo and his wife if the decision had been more explicit rather than just referring to lettered paragraphs of the Rules.
6. Nevertheless, the First-tier Tribunal judge erred in law such that the decision is set aside. I remake the decision and dismiss the appeal: Mr Adeyemo remains subject to a deportation order and as such cannot meet the suitability requirements of the Rules.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I re-make the decision in the appeal by dismissing Mr Adeyemo's appeal against the refusal of his human rights claim.

Date 5th August 2019

A handwritten signature in black ink, appearing to read "Jane Coker", is enclosed within a thin black rectangular border.

Upper Tribunal Judge Coker