Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/09968/2015

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**

On 29th January 2019 **On 6th March 2019**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

C O
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr N. Garrod, instructed on behalf of the Appellant
For the Respondent: Mr Kandola, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant appeals, with permission, against the decision of the First-tier Tribunal (Judge Macdonald) (hereinafter referred to as the "FtTJ") promulgated on the 3rd August 2018 in which the Tribunal dismissed the appeal of OC against the decision of the Secretary of State made on the 12th March 2015.

2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008. Unless and until a court

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directs otherwise the Appellant is granted anonymity as the facts of the appeal also concerns minor children. No report of these proceedings shall directly or indirectly affect him or members of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. There is a long litigation history to this appeal. I therefore set out the chronology of events to set the appeal in context. The appellant claims to have entered the United Kingdom in or about September 2000 as an EEA national. He came to the attention of the authorities on 27 October 2001 and between December of that year and September 2011 he had six convictions for a number of criminal offences. As a result, deportation action was pursued against him and his appeal against this decision was allowed by the FtT in a decision promulgated on 17 February 2011.

4. On 23 September 2011 the appellant was sentenced to 60 months imprisonment for handling stolen goods. A further deportation order was made on 4 May 2012 which resulted in his removal from the UK on the 23 May 2012. The appellant waived his rights of appeal. Thereafter he sought admission to enter on 1 February 2014 but was returned to France and was then encountered in the UK in June 2014, arrested and served with form IS151 A (EEA) and simultaneously he came to the adverse attention for criminal offences committed between September 2011 and May 2012 and was therefore sentenced to a further period of imprisonment in July 2014. In February 2015 further correspondence was sent by the appellant solicitors setting out further submissions relating to his family and private life in the United Kingdom which resulted in the decision under challenge in this appeal made on 12 March 2015 (and before other judges, both in the FtT and the UT).

5. The appellant appealed the refusal of the human rights claim on 13 March 2015 and was removed on 16 March 2015. On 28 May 2015 he was encountered at Belfast and was arrested and released on bail.

6. His appeal was heard in May 2016 before the FtT and in a decision promulgated on 24 June 2016 his appeal was allowed. Permission to appeal that decision was sought by the respondent and permission was granted on 11 October 2016. As a result of that grant of permission, a deputy judge of the Upper Tribunal reached the conclusion that the decision of the FtT involved the making of an error of a point of law and remitted the appeal to the FtT for a further hearing. It was then heard by the FtT for a second time on 17 July 2018. In a decision promulgated on 3 August 2018 the FtT dismissed his appeal. Permission was sought to appeal that decision and it was granted on 10 October 2018.

7. It is not necessary to set out the previous decisions in any detail as both parties are in agreement that the decision of the FtTJ involve the making of an error on a point of law and that the decision should be set aside for the reasons set out below and I therefore record the agreement reached.

8. The respondent had filed a skeleton argument shortly prior to the hearing in which it was agreed that the relevant statutory appeal scheme is the "old, pre-Immigration Act 2014 and that by reason of the transitional provisions (that is the saving provisions), applied in this case and therefore the appellant would have had, by virtue of receiving a decision to remove taken under the EEA regulations, an appeal against that decision and schedule 1 of the Regulations read with limited interaction with part 5 of the NIAA 2002 (see paragraph 6 of the skeleton argument).

9. It is further agreed and accepted by the parties that under the old scheme the appellant could raise other grounds of appeal under Section 84, including Section 84 (1) (c) that the decision is not in accordance with Section 6 of the Human Rights Act 1998 (as set out in paragraph 7 of the respondent's skeleton argument dated 18/1/19). It is also further agreed by both parties that the Upper Tribunal has the power to apply the former provision at Section 84 (1) (e) that the decision made (that is the decision under appeal of the 12 March 2015) is not in accordance with the law for the mistaken application of Regulation 24 AA (see paragraphs 5 and 8).

10. In the context of this appeal it is agreed between the advocates that the decision made on 12 March 2015 is not in accordance with the law and therefore they invite the Tribunal to make the decision by consent to set aside the decision of the FtT and to remake the appeal by allowing the appeal on this ground, namely the decision of the Secretary of State made on 12 March 2015 is not in accordance with the law and consequently a lawful decision remains outstanding.

Notice of Decision

The decision of the First-tier Tribunal does demonstrate the making of an error on a point of law. The decision of the First-tier Tribunal shall be set aside.

The appeal is remade: the appeal is allowed on the basis that the decision made on the 12th March 2015 was not in accordance with the law and the decision remains outstanding on the application made by the appellant.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed SM Reeds Date 6/2/2019

Upper Tribunal Judge Reeds