IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006614
First-tier Number: HU/50927/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 21st of December 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL
DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

Secretary of State for the Home Department

Appellant

and

PB
EOP
HOP
JOP
EOP
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms Isherwood, Senior Home Office Presenting Officer
For the Respondents: Mr O. Agho, of Counsel, instructed by Bridges Solicitors

Heard at Field House on 21 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and members of his family are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant for members of his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant in this appeal is the Secretary of State for the Home Department. We shall however, for the sake of convenience, refer to the parties as they were referred to before the First Tier Tribunal. The first appellant claims to be a citizen of Liberia. The respondent asserts that the appellant is a Nigerian national. There are four other appellants dependent on the appellant's appeal. The second appellant is a Nigerian citizen and is his partner. The third, fourth and fifth appellants are their children and their nationalities are not known.

2. The appellant's case is that he arrived in the UK in 2007 as an asylum seeker from Liberia and claimed asylum on 22 November 2007. His claim was refused on 17 March 2010 and his appeal to the First-tier Tribunal was dismissed on 14 May 2010. His permission to appeal to the Upper Tribunal was refused on 10 September 2010. The appellant became appeal rights exhausted on 13 September 2010. The appellant made further submissions on 26 February 2014 which were refused on 9 December 2015. On 18 January 2017 the appellant made an application for leave to remain, as a stateless person which was refused on 25 July 2018. This was reconsidered on 10 September 2018 and the decision was maintained on 7 January 2019 and upheld again on 18 February 2019. The appellant lodged further submissions on 27 May 2019 which were refused on 17 July 2019. He lodged further submissions which was the subject of the respondent's refusal against which decision the appellant appealed

3. On appeal, Judge Ross found [11] that the applications may not have been considered in the context of them forming a single family unit, and that their best interests may not have been considered. He noted [15] that a Asylum Registration Card had been issued to the first appellant, recording him as Liberian, as did the three birth certificates for the third to fifth appellants. In that context, he found that there had been no analysis of their respective ages, strength of ties to the United Kingdom, or to which country they would be expected to go; or if that would cause undue hardship. He then allowed the appeals on human rights grounds.

4. The Secretary of State sought permission to appeal on the grounds that the judge had erred:

   (i) In failing to give adequate reasons for allowing the appeals under article 8, and in failing to make findings whether removal would be unduly harsh or whether exceptional circumstances exists;

   (ii) In failing to apply the public interest factors set out in section 117B of the 2002 Act.

5. Permission to appeal was granted by FtTJ Thapar on 22 November 2022 in stating, “the grounds do raise an arguable error of law”.

Submissions – Error of Law

6. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if so to decide if any such error was material and decision should be remade.

7. It was submitted by the respondent that the judge has failed to give adequate reasons for allowing the appeal under Article 8. It is argued that the judge provided a critique of the refusal letter but gave no reasons for why the family cannot return to Nigeria or Liberia as a family unit. There was no finding under paragraph 276 ADE (1) (vi) as to whether there were very significant obstacles to the appellants integration into their own country or whether exceptional circumstances exist. There was no reference made to any rules that the judge applied. The judge did not identify and resolve key conflicts of the evidence and did not explain in clear and brief terms the reasons for allowing the appeal, so that the parties can understand why they have won or lost. The judge had a duty to give reasons for the decision.

8. The judge failed to consider the public interest factors outlined in section 117B of the Nationality Immigration and Asylum Act 2002 and this is a material error of law. The first appellant remained in the United Kingdom without leave after becoming appeal rights exhausted on 13 September 2010. As a consequence of the errors, the judges decision is unreliable and should be set aside.

The hearing

9. Ms Isherwood relied on the grounds of appeal, submitting that there was a failure to make proper findings, or provide any proper reasons for the decision.

10. It was accepted by the appellant’s counsel that the decision was “scanty “ but he submitted that the judge addressed the relevant issues in this appeal. It was also accepted by counsel that the judge has not made findings on relevant issues. However he argued that the

judge took into account the documents submitted in the appeal and upon these documents he made his findings, which are sustainable and without material error. He further submitted that the appellant has been in this country for 20 years and there are five other people involved in his appeal.

Error of law-decision

11. The judge's decision to allow the appeals is concerning for several reasons. The appellants' case is that they met the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules; and, even if they did not meet those requirements, their removal would be in breach of their rights under article 8 of the Human Rights Convention. Yet, despite that, there are no findings made in respect of paragraph 276ADE (i)(vi).

12. Although the available grounds of appeal no longer contain a ground that the decision under challenge was not in accordance with the immigration rules, a finding that an appellant did meet the requirements of the immigration rules will almost always result in a finding that the decision to remove is a disproportionate interference with article 8 rights – see TZ(Pakistan) v Secretary of State for the Home Department [2018] EWCA Civ 1109. For that reason it is good practice to in an appeal to decide first whether the immigration rules were met. The judge did not do so.

13. The judge did not give any indication in the decision as to what were the issues before him nor set out the relevant legal framework that apply to those issues. Instead the judge based the decision solely on criticisms of the Home Office refusal letter without making any specific findings on the facts of the case as he was required to do.

14. We find that there was insufficient reasoning in the decision of the First-tier Tribunal and in particular there was no engagement at all with paragraph 276 ADE (1)(vi) as to whether there are very significant obstacles for the appellant and his dependants' integration into their home country. There were also no findings whether removal would result in unjustifiably harsh consequences. There was also no engagement and findings as to whether exceptional circumstances exist in the appeals.

15. Having failed properly to make findings as to whether the appellants met the requirements of the immigration rules, the judge then made findings as to the proportionality of removal without any proper reference to section 117B of the immigration rules in failing in particular to make any findings as to the public interest in removal to which significant weight is attached when the requirements of the immigration rules are not met. There is, in reality, no proper reasoning given as to why the judge considered that the public interest in

removal was outweighed on the facts of this case. That one of the children has significant learning difficulties is insufficient, absent any proper findings on that matter.

16. It appears from the decision that the judge considered that a failure on the part of the respondent properly to address her duty under section 55 of the 2009 Act was a sufficient basis to conclude that the appeal ought to be allowed. That is simply incorrect as can be seen from Arturas (child's best interests: NI appeals) [2021] UKUT 237 applying AJ (India) v Secretary of State for the Home Department [2011] EWCA Civ 1191;

17. For these reasons, we are satisfied that the First-tier Tribunal has erred in law by failing to give adequate or sufficient reasons for the decision for allowing the appeals.

18. It is appropriate for the appeals to be remitted to the First-tier Tribunal for the remaking hearing and no findings are to be preserved.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error of law.

2. We set aside the decision of the First-tier and all of the findings.

3. We remit the remaking hearing to the First-tier Tribunal to be heard de novo by any Judge of the First-tier Tribunal except Judge Ross.

Signed by a Deputy Judge of the Upper Tribunal
S Chana

Dated this 3rd day of October 2023