



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

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 August 2013**

**Determination Promulgated  
On 19 August 2013**

.....

**Before**

**UPPER TRIBUNAL JUDGE WARR**

**Between**

**SECRETARY OF STATE**

**and**

**JONATHAN KENRICK CHARLES**

Appellant

Respondent

**Representation:**

For the Appellant: Mr E Tufan, Home Office Presenting Officer  
For the Respondent: Mrs S Bassiri-Dezfouli, of counsel, instructed by ROCK solicitors

**DETERMINATION AND REASONS**

1. This is the appeal of the Secretary of State but I will refer to the original appellant, a citizen of the Dominican Republic, born on 19 August 1978, as the appellant herein.
2. The appellant came to the United Kingdom in 2001 and returned to Dominica in 2003. The appellant obtained a visa as the spouse of a British citizen in 2004. He re-entered the UK on 9 August 2004.

3. The appellant was arrested at Gatwick airport and was subsequently convicted at Croydon Magistrates' Court and sentenced to 8 years imprisonment at Croydon Crown Court on 10 September, 2007 for importing cocaine.
4. The Secretary of State decided to deport the appellant on 30 September, 2011. There was reference in paragraph 4 of the decision to the Secretary of State's duty under section 55 of the Borders, Citizenship and Immigration Act 2009 and Article 8 was considered on a conventional basis prior to the change in the rules. The appellant appealed against this decision and his appeal came before a panel on 9 February, 2012. The appellant was represented then as he is now by Mrs Bassiri-Dezfouli.
5. The panel decided that the duty of the Secretary of State under section 55 had not been properly carried out. The panel remitted the matter back to the Secretary of State to consider this duty in respect of the appellant's daughter.
6. On 20 December, 2012 the Secretary of State again decided to deport the appellant. By this stage the new rules had come into affect and Article 8 was considered in the context of the new rules.
7. The appellant appealed and his appeal came before a different panel on 24 April, 2013. The appellant was again represented by Mrs Bassiri-Dezfouli. She submitted that Article 8 had not been considered outside the rules and that given that Article 8 was a central matter in issue "the correct and pragmatic approach was to find the decision unlawful thereby giving the respondent the opportunity to properly consider the appellant's circumstances."
8. The panel considered it appropriate to remit the matter for the second time to Secretary of State and commented that this would give the appellant the opportunity to produce up-to-date evidence of his relationship with his British daughter. The panel indicated that the appeal was allowed solely on the technical ground that the Secretary of State had failed to lawfully consider the appellant's circumstances within the decision. The effect of the decision was that the appellant awaited a lawful consideration and decision.
9. Permission to appeal was granted on 29 May 2013. It was arguable that the panel had erred in law in that the proper course was to proceed to consider the merits of the appeal both under and outside the immigration rules. The judge commented that the appeal had not been allowed because the appellant should be afforded a further opportunity to present evidence-he did not find much merit in the complaint advanced on this point by the Secretary of State.
10. Mr Tufan submitted that the panel should have gone onto consider Article 8 on its merits and the matter should be remitted to the First-tier tribunal.
11. Counsel submitted there was no material error of law and submitted that the panel had directed itself by reference to the relevant authorities. The daughter had sickle cell anaemia. Insufficient reasoning had been given in the refusal letter. She had not recollected that there had been a previous hearing before a different panel which had also remitted the matter-there had been a change of solicitors.

12. Mr Tufan in reply submitted that the panel should have taken into account s 55 as part of the Article 8 analysis in the light of the decision of the Court of Appeal in *AJ (India) v Secretary of State for the Home Department* [2011] EWCA Civ 1191.
13. I indicated at the hearing that the procedures in this case were far from ideal. I of course accept that counsel might not have recollected the fact that a previous Tribunal had remitted the matter and it is true that the previous decision is imperfectly copied in the Secretary of State's bundle.
14. There may be occasions where it is expedient to remit a case back to the Secretary of State and it may be that the Presenting Officer indeed requests such a course to be taken on proper grounds.
15. There was no challenge apparently to the previous decision by the first panel to remit the matter. Counsel relied on the case of *BN, R (on the application of) v Secretary of State for the Home Department* [2011] EWHC 2367 (Admin) on that occasion.
16. However as a general rule the First-tier Tribunal should only remit matters in the clearest cases. After all the appellant and his witnesses can give their evidence and the Tribunal can make its findings on that evidence doing justice to the welfare and best interests of any child involved. Simply putting the appeal back in the hands of the Secretary of State does not appear to be the ideal way of resolving matters. The cases of *AJ (India)*, *MF (Nigeria)* [2012] UKUT 393 (IAC) and *Izauzu* [2013] UKUT 45 (IAC) do not appear to provide encouragement for what happened in this case. It is difficult to conceive of circumstances where it would be right to remit a matter twice to the Secretary of State as happened here.
17. I have no hesitation in finding the panel materially erred in law in dealing with the case it did.
18. This is a case which has not been considered on its merits at all by the First-tier Tribunal and I accept Mr Tufan's submission that the appropriate course is for the appeal to be heard by the First-tier Tribunal.

Appeal of Secretary of State allowed.

Appeal remitted to First-tier Tribunal for a hearing on all issues.

Signed

Upper Tribunal Judge Warr

14 August 2013