



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/12954/2012
IA/12957/2012

THE IMMIGRATION ACTS

Determined at Field House
On the papers
On 30 July 2013

Determination Promulgated
On 2 August 2013

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

FATIMO OLUWAKUKOLA AYOOLA
GANIYU OLUMIDE AYOOLA

Appellant

Respondents

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against a decision of First-tier Tribunal Judge Adio. For ease of reference, throughout this determination I shall refer to Mr and Mrs Ayoola, who were the original appellants, as "the claimants" and to the Secretary of State, who was the original respondent, as "the Secretary of State".

2. Judge Adio had allowed the appeals of the claimants against simultaneous decisions refusing to vary their leave to remain and to remove them by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006 to the extent that he found that these decisions were not in accordance with the law. The appeal of the claimants' daughter, which was also before him, was dismissed on the basis that she did not have a valid right of appeal. Her appeal is not now before this Tribunal.
3. The Secretary of State submits in the grounds in support of the application for permission to appeal that in accordance with current jurisprudence, even though the Section 47 removal decision was not in accordance with the law, the judge ought to have considered the appeal against the substantive decision on the merits.
4. In my "Directions and Memorandum to Parties", which is dated 15 November 2012, relying on the decisions of this Tribunal in *Ahmadi* and the Court of Appeal in *Patel*, I set out my preliminary view that Judge Adio's decision ought to be set aside, and that the appeal ought then to be remitted to the First-tier Tribunal to be determined afresh.
5. While I accepted that the decision to remove the claimant under Section 47 was made other than in accordance with the law, I expressed my preliminary view that the First-tier Tribunal had made an error on a point of law when finding that the Secretary of State's entire decision (including the substantive decision) was made other than in accordance with the law.
6. I invited the parties to make further submissions, in relation to the approach I intended to take, that is that the appeals ought to be remitted to the First-tier Tribunal to be determined afresh, by no later than 14 days after the directions were sent out. I also indicated that any party failing to provide such a response would be treated as having given consent to the Tribunal taking this approach.
7. Regrettably, the files were then mislaid, but they are now before me. It appears that there has been no further response by or on behalf of the Secretary of State, and although substantial submissions have been received on behalf of the claimants with regard to the merits of their substantive appeal, it is not suggested within these submissions that these appeals should not now be remitted to the First-tier Tribunal for rehearing.
8. Accordingly, having regard to paragraph 7 of the Practice Statements for the Immigration and Asylum Chamber of the Upper Tribunal, I consider that the effect of Judge Adio's failure to consider the substantive appeal on the merits, which I find was a material error of law, was such that the claimants have been deprived of a fair hearing, in that the merits of their appeal have not been considered at all. I consider further, especially in light of the submissions subsequently received on behalf of the claimants, that the nature and extent of the judicial fact finding which will now be necessary in order for their appeals to be properly determined are such that, having regard to the overriding objective, it is appropriate to remit the case to the First-tier Tribunal, which I shall order.

Decision

I set aside the determination of First-tier Tribunal Judge Adio as containing a material error of law.

I direct that this appeal now be remitted for rehearing by the First-tier Tribunal, sitting at Hatton Cross, to be put before any judge other than First-tier Tribunal Judge Adio.

I direct further that Judge Adio's finding that the Secretary of State's decision to remove the claimants by way of directions pursuant to Section 47 fo the Immigration, Asylum and Nationality Act 2006 was not in accordance with the law, shall stand.

Signed

Date: 30 July 2013

Upper Tribunal Judge Craig