



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

Appeal Number: IA/32256/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 12<sup>th</sup> August 2014**

**Determination  
Promulgated**

**On 18<sup>th</sup> August 2014**

**Before**

**UPPER TRIBUNAL JUDGE POOLE**

**Between**

**CHIKE CASIMIR EJIFUGHA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In Person

For the Respondent: Mr P Deller, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a male citizen of Nigeria born 2 November 1969. The appellant had applied for leave to remain on human rights grounds (Article 8). The application was refused by the respondent by reference to Appendix FM to the Immigration Rules, by reference to paragraph 276ADE.

2. The appellant's appeal came before Judge of the First-Tier Tribunal MA Khan sitting at Richmond on 19 May 2014. The appellant attended and gave evidence. For the reasons set out in the determination the judge found that the appellant did not satisfy the Immigration Rules, which in themselves dealt with Article 8 considerations and the judge also found there were no compelling circumstances which would allow "stand alone" consideration of Article 8 ECHR. In those circumstances the appeal was dismissed.
3. The appellant then sought leave to appeal alleging an error of law on the part of the judge. In the main, the grounds simply amount to a disagreement with the judge, but also include allegations that the judge misdirected himself with regard to the situation involving the appellant's children.
4. In granting leave another judge of the First-Tier Tribunal gave the following as reasons for granting permission:

"1. The appellant seeks permission to appeal, in time, against a decision of the First-Tier Tribunal (Judge Khan) who, in a determination promulgated on the 5 June 2014, dismissed the appeal against the respondent's decision to refuse his application for leave to remain on the basis of his private and family life in the United Kingdom.

2. Paragraphs 1A - E of the application amount to little more than the appellant's lengthy explanation for why he disagrees with the Tribunal's conclusions. It is however arguable, as contended at paragraphs 1F and 2D of the application, that the Tribunal failed to provide any or any adequate explanation for its finding that "the appellant has a minimum involvement with his children" [paragraph 33] and that it erroneously failed to attach weight to their best interests when concluding that there were no "copelling (sic) circumstances which would justify, exceptionally, allowing the application under Article 8 on the basis of decision produced a result that was unjustifiably harsh" [paragraph 35]".

5. Hence the matter came before me in the Upper Tribunal.
6. At the commencement of the hearing I explained the procedure to the appellant, he confirmed that he understood.
7. He referred to his written grounds seeking leave, but did, with some difficulty, explain his case verbally, which in essence referred to his involvement with his children.
8. The thrust of the appellants contention is that the judge misdirected himself with regard to the evidence of the appellants contact with the children and the effect on his family life and that of the children should the decision be maintained and he be obliged to leave the United Kingdom.

9. The appellant submitted that there was nothing in UK law to say how many times he must have contact with children each month and the judge was wrong to say that his contact was minimal.
10. Mr Deller indicated that the judge at the First-Tier Tribunal must firstly look at the Rules and only if there are then sufficiently strong circumstances can he go outside the Rules to look at Article 8. He referred to Judge Khan's findings as "short" and contained in paragraphs 35 and 36.
11. Mr Deller referred to the recent Court of Appeal case of **MM (Lebanon) v SSHD [2014] EWCA Civ 985** which might be read as authority to say that the judge had perhaps considered too high a burden and that the sufficiency of strength of the circumstances maybe somewhat less, and that accordingly the judge's view could well have been to harsh.
12. Mr Deller conceded that Judge Khan may have "fallen short" of a proper consideration of the position of the children and the impact of the decision on them.
13. At the end of the hearing I indicated that based upon the way in which Mr Deller had made his submission and with regard to the matters raised by the appellant, I considered that there was an error contained within Judge Khan's determination and that it was material. It was appropriate therefore to set aside his decision. Facts found by the judge in respect of the children could not be preserved and the appropriate course was therefore to remit the case back to the First-Tier Tribunal for a complete re-hearing de novo.
14. My reasons for finding a material error of law are that whilst the judge properly directed himself with regard to the Rules and the Article 8 involvement therein as a complete code, and that he went onto direct himself following the decision in **Gulshan (Article 8 - New Rules Correct Approach) [2013] UKUT 640**, I was of the opinion that the judge had fallen into error with regard to the position regarding the appellant's children. The judge had come to a conclusion that (paragraph 33) the appellant has "minimum involvement with his children". The judge may well have reached conclusions on the evidence which were, in effect, contrary to the evidence that had been placed before him. The circumstances of the appellant's case could well be that his involvement with the children was greater than "minimum". But for this the judge may well have come to a different conclusion.
15. The matter is therefore remitted back to the First-Tier Tribunal to be heard by a First-Tier Tribunal Judge other than Mr MA Khan.

Signed

Date

## Upper Tribunal Judge Poole