



IAC-AH-CO-V1

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

Appeal Number: DA/00117/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 26 August 2015**

**Decision & Reasons Promulgated
On 21 December 2015**
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Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**NIZAR ALAMIN MUHAMAD
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Harrison, Senior Home Office Presenting Officer
For the Respondent: Mr Howard, instructed by Fountain Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and to the respondent as the appellant as they appeared respectively before the First-tier Tribunal.
2. The appellant, Nizar Alamin Muhamad, was born on 1 January 1974 and is a male citizen of Sudan. It appears that he entered the United Kingdom in or around September 2003. The appellant made a series of asylum applications which were refused as were subsequent appeals to the Tribunal. In April 2008, the appellant made a fresh asylum claim. In December of the following year, he made further representations as regards Article 8 ECHR and in January 2012 he sought leave to remain on

the ground of marriage to a British citizen. As the First-tier Tribunal (Judge Chambers/Doctor Okitikpi) noted at [6]:

“All of this was considered by the respondent. On 9 January 2014 the respondent again made the decision to refuse asylum and to deport the appellant. [The appellant had been convicted and sentenced to twelve months’ imprisonment having been convicted of attempting to leave the United Kingdom on a false passport]. The appellant once again appealed against that decision. Thus the matter comes before us. On the day of the hearing the appellant had been in the United Kingdom for well over a decade. The appellant seems always through the use of legal representation to have had some sort of further application in with the respondent [sic] the result of which he was awaiting or, if not awaiting, appealing. In that way more than ten years has gone by.”

3. The appellant appealed to the First-tier Tribunal on asylum and human rights grounds. His asylum appeal was dismissed and his application for permission to appeal against that decision ultimately refused in the Upper Tribunal (Judge Macleman) on 31 July 2014. However, the First-tier Tribunal did allow the appeal on Article 8 ECHR grounds. The Secretary of State now appeals against that decision, with permission, to the Upper Tribunal.
4. In her grounds of appeal, the Secretary of State records that the First-tier Tribunal found that the appellant’s wife (a British citizen) may be at risk in Sudan of discrimination [42]. She had recently visited the country in order to see her mother and had done so without suffering “adversity.” The Tribunal found that the appellant’s wife would lose her career in the United Kingdom if she were to return to the Sudan but, the Secretary of State submits, had not considered the possibility of employing her skills as an interpreter in that country. The Secretary of State also argues that the Tribunal had failed properly to assess the public interest concerned with the appellant’s removal. The Tribunal had also failed to consider the possibility of the appellant seeking revocation of the deportation order following his removal (*Sanade* [2012] UKUT 00048) and to factor that possibility into its analysis. The appellant could apply, in due course, for entry clearance to the United Kingdom as the spouse of a British citizen.
5. The Tribunal had no doubt as to the genuineness of the relationship between the appellant and his British wife. The Tribunal recorded that the appellant and his wife had been trying to have a family [44] but that the wife had suffered a nervous breakdown following the death of twins born to the couple in June 2013. The wife had been born in Sudan but had “bad memories of living there.” [42]. The Tribunal noted that, in order to preserve her relationship with the appellant, the appellant’s wife would have to travel to Sudan with him. Having considered the evidence, the Tribunal found that such a course of action would have “unjustifiably harsh” consequences for the appellant and sponsor. The Tribunal observed [46] that “the appellant after deportation could not apply to come back for settlement” and appears to have failed to consider the possibility of the appellant applying, out of country, for revocation of the deportation order. Having said that, the Tribunal was right to find that in

the short and medium term at least, there would be no possibility of the appellant returning to the United Kingdom.

6. It is also the case that the Tribunal at [47] found that the interests of the appellant and his wife “in light of her life history here and in Sudan” outweighs the public interest but they reached that finding without specifying in any detail what the public interest concerned with the removal of the appellant may be in this instance. I note the grounds of appeal also make no attempt to define the public interest. Given that the Tribunal was considering a deportation appeal, it is reasonable to assume that it considered the public interest, in general terms, to be both the maintenance of immigration control and the prevention of crime and disorder.
7. It is also the case that, at [43], the Tribunal noted that the appellant’s wife had developed a successful career as an interpreter and she would “lose [that career] if obliged to return to Sudan.” However, there is no reason why the appellant’s wife could not transfer her professional skills, acquired in the United Kingdom, to similar work in Sudan although it is also true to say that the particular career that she has developed in this country would be lost if she returned with her husband. I consider that this is an appeal which was finely balanced before the First-tier Tribunal. The matters raised in the grounds of appeal by the respondent and which I have discussed above are legitimate but so are the reasons given by the Tribunal for deciding that the appeal should be allowed on Article 8 ECHR grounds. In my opinion, none of the points raised by the respondent on appeal to the Upper Tribunal are of such consequence that the reasoning of the First-tier Tribunal is so seriously undermined that its decision should be set aside. The First-tier Tribunal was required to consider all the relevant evidence to reach a judgment as regards proportionality in the Article 8 ECHR appeal. Its conclusion, that it would be disproportionate for the appellant and his British born wife to be separated possibly for many years if not permanently by deportation or for the British wife to be required to leave the country of her nationality to return to a country from which she had fled in order to live permanently there, was hardly perverse. The Tribunal has given clear and cogent reasons for finding the appellant’s deportation to be disproportionate and, whilst another Tribunal may have reached a different result on the same facts, I can identify no reason to justify the Upper Tribunal interfering with that outcome reached by this Tribunal. The points raised by the Secretary of State are arguable but, ultimately and if we accept that the outcome was not perverse, they amount to little more than a series of disagreements with findings made by the First-tier Tribunal. The Secretary of State’s appeal is, therefore, dismissed.

Notice of Decision

The Secretary of State’s appeal is dismissed.

No anonymity direction is made.

Signed

Date 20 November 2015

Upper Tribunal Judge Clive Lane