IAC-AH-DP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/19954/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9th March 2015	**On 25th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR ISMAIL ALI MUHAMMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Adedayo Aderonnu (LR)
For the Respondent: Mr Tony Melvin (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge James promulgated on 4th December 2014, following a hearing at Hatton Cross on 26th November 2014. In the determination, the judge allowed the appeal of Ismail Ali Muhammed. The Respondent subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Nigeria who was born on 26th August 1982. He appealed against the decision of the Respondent dated 10th April 2014 refusing his application to remain in the UK as the partner of a British citizen, Miss Monique Malika Murray, outside the Immigration Rules. The Appellant is also the father of a newly born child, a Master Malik Ayomide Muhammed, who was born on 9th September 2013, and who is also a British citizen. At the date of the decision on 10th April 2014, he was aged 7 months.

The Judge's Findings

3. The Judge found that the Appellant was a Nigerian national, in a relationship with a British woman "and they have a British child born on 9th September 2013. The couple married in the UK on 30th August 2013" (paragraph 12). The judge also held that the Respondent had failed to consider "the impact on the bonding of the father and the baby at this important developmental age" and that "there was no assessment of the child's rights as a British national or those of the partner, Miss Murray, who is also British" (paragraph 19). On the other hand, the judge also held that "Miss Murray has failed to disclose she is residing with the Appellant and has fraudulently claimed single person discount for her council tax" (paragraph 23). Since the Appellant was a "overstayer" (see paragraph 28), the judge held that she would give "less weight to the Appellant's relationship with his wife forged when his immigration status was that of an overstayer" (paragraph 30). However, the public interest did not require the Appellant's removal "where he has a genuine and subsisting parental relationship with the qualifying child" (paragraph 30). The judge also went on to say that "it is not possible to weigh matters in the favour of the Respondent when material matters regarding the child have not been considered or analysed by the Respondent" (paragraph 31).

4. The appeal was allowed.

Grounds of Application

5. The grounds of application state that the judge decided of her volition, and without reference to the representatives, that the appeal be determined on the basis of submissions only. She refused cross-examination on matters raised in the refusal letter.

6. On 23rd January 2015, permission to appeal was granted.

Submissions

7. At the hearing before me, Mr Melvin, appearing on behalf of the Respondent Secretary of State, stated that there were the following errors in the determination. First, the judge was wrong to having opposed a

requirement of hearing submissions only without allowing for any cross-examination to take place.

8. Second, the judge was wrong to conclude that the position of the child had not been considered or analysed by the Respondent (see paragraph 31), when plainly it had been.

9. Third, the judge appears to have been proceeding on the basis that she had an incomplete refusal letter because she observes that,

> "it appears that there may be a large segment of the letter of refusal accidentally deleted, as although there is a passing mention to the British child of the Appellant, the law is not applied to the factual circumstances of the Appellant's case ..." (paragraph 16).

Mr Melvin submitted that the full refusal letter ran into 46 paragraphs and was always available. If the judge did not have sight of the full refusal letter then her findings, in the absence of the line for any cross-examination, could not be sustained.

10. For his part, Mr Adedayo Aderonnu submitted that he would have to accept that the judge presented as a *fait accompli* the position that she would not allow for any cross-examination of the evidence, and nor would she hear the evidence, and the representatives had "no choice but to accept it".

Error of Law

11. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law such that I should set aside the determination (see Section 12(1) of TCEA 2007). My reasons are as follows.

12. First, it is clear that the judge did not have the complete refusal letter of 46 pages. The effect of this was that the judge erroneously held that the position of the child had not been considered (see paragraphs 30 to 31). The refusal letter shows that the Secretary of State is fully cognisant of the position of the child very early on (see paragraph 4) and then specifically deals with the child in terms of the Section 55 BCIA obligation subsequently (see paragraph 37). Such facts as there were, have been properly taken into account in this regard. It was accordingly wrong for the judge to say that "it is not possible to weigh matters in favour of the Respondent when material matters regarding the child have not been considered" (paragraph 31).

13. Second, and more importantly, the judge should have allowed for the evidence to be challenged in cross-examination, given the range of issues which concerned the Secretary of State, including the fact that the parties were not living together and that the Appellant's partner, Miss Murray, had failed to disclose that she was residing with the Appellant and fraudulently

claimed single person discount (see paragraph 23). There is a procedural irregularity in the determination to this extent and one which can only be rectified by remitting this matter back to the First-tier Tribunal under paragraph 7.2 of the Practice Statement to enable all the matters to be reheard again on a de novo basis.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal to be heard by the judge other than Judge James on a de novo basis under Practice Statement 7.2.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 23rd March 2015