



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: IA/23865/2014**

Appeal

THE IMMIGRATION ACTS

Heard at: Field House

**Determination
Promulgated**

On: 15th April 2015

On: 20th April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

**Mrs Eshun Adwaba Nana
(no anonymity direction made)**

Respondent

Representation:

For the Appellant:

Ms Holmes, Senior Home Office Presenting Officer

For the Respondent:

Mr Patrick, Pillai and Jones Solicitors

DETERMINATION AND REASONS

1. The Respondent is a national of Ghana date of birth 24th November 1980. On the 18th December 2014 the First-tier Tribunal allowed her appeal against a decision to remove her pursuant to s10 of the Immigration and Asylum Act 1999. The Secretary of State now has permission¹ to appeal against that decision.
2. The Secretary of State's decision followed rejection of Mrs Eshun's application for leave to remain in the UK on the basis of her

¹ Permission granted by First-tier Tribunal Judge PJM Hollingworth on the 6th February 2015

relationship with a person present and settled here. Her application, made outside of the Rules, had initially been made on that basis, and was rejected in January 2013. There was no right of appeal against that refusal since no relevant immigration decision was taken. Further representations followed which prompted the decision to remove in May 2014. When the appeal came before Judge Morgan in December 2014 there had therefore passed some seven months.

3. When the appeal was heard Mrs Eshun was heavily pregnant. This was not a factor that the Respondent had previously had an opportunity to consider. Since Mrs Eshun had not been pregnant at the date of either the reasoned refusal letter in January 2013 or the decision in May 2014, neither had dealt with her "condition".
4. Judge Morgan allowed the appeal in the following terms: "in light of the fact that there has been no up-to-date consideration by the respondent of the appellant's current circumstances, namely the fact that she is heavily pregnant, I find that the decision to remove is unlawful". On that basis he allowed the appeal as "not in accordance with the law".

Error of Law

5. The Secretary of State complains that the decision of May 2014 cannot rationally be said to be flawed for failure to consider the fact of Mrs Eshun's pregnancy, since she was not at that time pregnant. There is merit in that submission. In this in-country appeal the Judge was obliged to take the new circumstances into account, for instance in his assessment of Article 8 ECHR, but the fact that they were until that point unknown to the Secretary of State was not capable of making the removal decision unlawful. There is a legal error and the decision is therefore set aside.
6. Before me the parties agreed that the most appropriate disposal would be for the matter to be remitted to the First-tier Tribunal for re-making on Article 8 grounds. Mrs Eshun's baby has now been born. It would be helpful if both parties could come to the next hearing prepared to deal with all the factual issues likely to arise before the First-tier Tribunal. To that end I make the following directions:
 - i) Mrs Eshun's representative is to send all relevant evidence to the Secretary of State (I note that Ms Holmes was able to inspect the original birth certificate at court) within 28 days of this decision being received;
 - ii) The Secretary of State is to consider that material and if she considers it necessary to do so, to issue a further refusal letter,

or alternatively to grant whatever form of leave to remain she consider appropriate;

- iii) Should there be any further change in Mrs Eshun's circumstances following compliance with direction (i), evidence of the same should be filed and served as soon as practicable.

Decisions

7. The determination of the First-tier Tribunal contains an error of law and it is set aside.
8. The matter is remitted to the First-tier Tribunal for re-making.
9. There was no request for an anonymity direction and I see no reason, on the facts before me, to make one.

Deputy Upper Tribunal Judge Bruce
15th April

2015