



IAC-FH-AR-V1

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

Appeal Number: IA/28748/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 September 2015**

**Decision & Reasons Promulgated
On 9 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR BABS BABARINDE ADEYANJU DAWODU
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer

For the Respondent: Mr D Coleman, Counsel, instructed by Adonal Beulah Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department (the Secretary of State) against the decision of First-tier Tribunal Judge J Bartlett, promulgated on 12 February 2015 in which he allowed Mr Dawodu's appeal. That appeal was against the Secretary of State's decision of 30 June 2014 to remove Mr Dawodu from the United Kingdom by way of directions under section 10 of the Immigration and Asylum Act 1999.

2. Hereafter I refer to the parties as they were before the First-tier Tribunal. The Secretary of State is the Respondent Mr Dawodu is the Appellant.
3. The Appellant is a Nigerian citizen born on 30 January 1961. He claims to have been in the United Kingdom for a very long time, although this is apparently still in dispute.
4. On 7 August 2010 the Appellant made an application to the Respondent on human rights grounds. On 16 March 2011 this application was refused by the Respondent, with no right of appeal. On 23 March 2011 the Appellant sought a reconsideration of his application. On 30 June 2014 the Respondent refused the application having considered it under Appendix FM and Paragraph 276ADE of the Immigration Rules. An appealable decision was issued at this time.
5. Judge Bartlett heard the appeal on 14 January 2015. At paragraph 3 of his decision he notes that both representatives agreed that the provisions contained in the Statement of Changes to the Immigration Rules HC 194 should not have been applied to the Appellant's case.
6. At paragraph 6 of his decision Judge Bartlett relied on the decision of the Court of Appeal in Edgehill [2014] EWCA Civ 402 and concluded that the provisions of the Immigration Rules were indeed wrongly applied to the Appellant's case. He therefore allowed the appeal on the basis that the Respondent's decision was not otherwise in accordance with the law. He did not make any findings of fact whatsoever.
7. The Respondent sought permission to appeal, relying on the recent Court of Appeal decision in Singh [2015] EWCA Civ 74. Permission to appeal was granted by First-tier Tribunal Judge Lambert on 20 April 2015.
8. At the hearing before me both representatives agreed that Judge Bartlett had been wrong to have relied on and applied the decision in Edgehill. This was through no fault of his own because at the time of the hearing before him and at the date his decision was promulgated the decision in Singh had not yet come out. Singh held that the provisions inserted into the Immigration Rules by Statement of Changes HC 194 did apply to any application where the decision of the Respondent was made after 6 September 2012 (see paragraph 56). The decision under appeal to Judge Bartlett was made on 30 June 2014 and so the relevant Immigration Rules had been properly applied by the Respondent when making her decision.
9. Although the Singh judgment postdates the decision of Judge Bartlett, the Court of Appeal there was simply stating the correct legal position as it had always been. Therefore it is clear that Judge Bartlett erred in law and, having not made any findings of fact, his error of law was material to the outcome of the appeal.
10. In terms of disposal, both representatives were agreed that if a material error of law were found the appeal should be remitted to the First-tier

Tribunal. I agree with this position. Judge Bartlett made no findings of fact at all and such findings are clearly necessary for the proper disposal of this appeal. Therefore I remit the appeal to the First-tier Tribunal. The appeal will be heard before any First-tier Tribunal Judge other than Judge Bartlett. A new date will not be fixed at this time.

Notice of Decision

The Secretary of State's appeal is allowed.

The making of the decision of the First-tier Tribunal did/did not involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

No anonymity direction is made.

Directions:

- 1. The appeal shall be heard at the Taylor House hearing centre by any First-tier Tribunal Judge other than Mr J Bartlett.**

Signed
Deputy Upper Tribunal Judge Norton-Taylor

Date: 9 September 2015