



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

Appeal number: IA/36186/2013

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On September 22, 2015

On October 5, 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR RICHARD OLUBENGA BECKLEY
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Mr Chrigo, Counsel, instructed by Fadiga & Co

Respondent

Mr Parkinson (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria. On September 28, 2010 the appellant was granted limited leave to remain in the United Kingdom as a Tier 1 Highly Skilled Post Study Worker. On July 9, 2012 the appellant applied for a variation of his leave to enter or remain but the respondent refused this on August 15, 2013 and at the same time took a decision to remove him pursuant to section 47 Immigration, Asylum and Nationality Act 2006.
2. The appellant appealed this decision on September 2, 2013, under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. The appeal came before Judge of the First-tier Tribunal Raymond (hereinafter referred to as the "FtTJ") on July 11, 2014 and in a decision promulgated on August 12, 2014 he refused the appeal under the Immigration Rules and Article 8 ECHR.
4. The appellant lodged grounds of appeal on August 21, 2014 submitting the FtTJ had erred by materially in law by failing to carry out a full Article 8 assessment.
5. Judge of the First-tier Tribunal Astle refused permission to appeal on September 24, 2014 and the appellant renewed his grounds of appeal to the Upper Tribunal. Upper Tribunal Judge Kebede gave permission to appeal.
6. The matter originally came before me on April 24, 2015 and at that hearing Mr Parkinson accepted that in light of the fact there was evidence the appellant's child was a British citizen he was, from a pragmatic point of view, in agreement with Mr Chirico, there had been an error in law.
7. Mr Chirico indicated that he would want the matter remitted back to the first-tier but in light of the respondent's approach I stated that at this moment in time I was minded to retain conduct of the appeal but I would when inquiries were concluded review the position.
8. Following the conclusion of those inquiries the matter came back before me on August 3, 2015 and on that occasion I had to adjourn the case for the emails, relied on by the respondent, to be served on both the Tribunal and the appellant's representatives.
9. The matter returned before me today and I was kindly provided with a skeleton argument by Mr Chirico who again repeated his request for a remittal. He submitted this Tribunal would have to undertake additional fact finding both on the appellant's contribution to UK life and the consequences of the appellant's daughter being issued with a passport.
10. Mr Parkinson agreed that the First-tier may well now be the correct venue especially as a fresh issue had been raised in the skeleton argument namely section 1(3)(a) of the British Nationality Act 1981.
11. Part 3, Section 7.1 to 7.3 of the Practice Statement states:

"Where under section 12(1) of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).

The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary."

- 12. In light of the Practice Direction and whilst I had some concerns in remitting this matter back to the first Tier Tribunal due to the inherent delays existing in the jurisdiction at the present time I accepted the joint submissions and remitted the matter back to the First-tier Tribunal.
- 13. With consent of the parties I record that the respondent has not suggested the appellant's daughter's passport was obtained unlawfully. Mr Parkinson accepts the passport was issued to her based on the letter provided to the appellant by the army.
- 14. It goes without saying that once that date has been fixed the appellant should serve on both the tribunal and the respondent and updated bundle of evidence that is to be relied on.
- 15. I am conscious of the fact this case began its life in 2013 and would ask that the matter be given an earliest listing as possible.

DECISION

- 16. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I have set aside the decision.
- 17. The appeal is remitted back to the First-tier Tribunal for a fresh appeal hearing under Section 12 of the Tribunals, Courts and Enforcement Act 2007.

Signed:



Deputy Upper Tribunal Judge Alis