Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03226/2015

THE IMMIGRATION ACTS

Heard at Birmingham Employment Centre	**Decision Promulgated**
On 5 January 2016	**On 13 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

BOLANE ADEOLA OLA
(NO ANONYMITY ORDER)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Mozham, Schaw Solicitors Ltd
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. On 30 June 2015 Designated First-tier Tribunal Judge Zucker granted the appellant permission to appeal to the Upper Tribunal against the decision and reasons statement of First-tier Tribunal Judge Chapman that was promulgated on 3 June 2015.

2. When granting permission, Judge Zucker commented:

> "2. The grounds submit that in issue was the nationality of the Appellant's child (said to be a German National). It is submitted that there was a copy of the child's German passport in the bundle but that the Judge made no reference to it.
>
> 3. The Judge found that that passport of the child's father suggested, if he had any EEA nationality at all, he was "Dutch". (In fact it may say "Deutsch" i.e. German). It is clear that the judge found the evidence unsatisfactory but it is arguable that the judge should have had regard to the child's passport given the EEA law implications following any finding which might have been made that the Appellant's child was an EEA national."

3. At the start of the hearing, Mr Mills conceded that Judge Chapman erred for the reasons given by Judge Zucker when granting permission.

4. Mr Mills explained that it had not been possible to concede the appeal when drafting the rule 24 notice on 17 July 2015 because the author of that notice did not have sight of the appellant's bundle; but having had sight of that bundle Mr Mills acknowledged that it contained a copy of the German passport of the appellant's son. Mr Mills agreed that Judge Chapman had made no finding as to whether the appellant's son was German, or what rights he and the appellant might have as a result. Mr Mills accepted that was a material error since the grounds of appeal and the statement of additional grounds mentioned EEA rights and they would have been a relevant factor in the assessment of the appellant's private and family life rights.

5. Before accepting this concession, I discussed Judge Chapman's findings at paragraph 70 regarding the nationality of the father of the appellant's son. In that paragraph Judge Chapman rejected the photocopy evidence of the father's passport on the basis that it described the father as Dutch and not German. Mr Mills accepted that it was not open to Judge Chapman to make such a finding because it was clearly based on a misunderstanding that Deutsch is the German for German; it is reasonable to expect a judge to be aware of the nationalities of the Member States even when untranslated, particularly in the specialist immigration chamber.

6. If this finding had been sound, I might have found there to have been no error because if the evidence that the father was a German national was unreliable then it would be unlikely that the child would be German by descent. But that finding is not sound for the reasons I discussed with Mr Mills. Therefore, I accept the concession and find there is legal error in Judge Chapman's decision and reasons statement such as to require it to be set aside.

7. Before moving to consider how to remake the decision, I record that Mr Mozham brought the original passport to the hearing and Mr Mills confirmed that it was a German passport issued for the appellant's son (who was also present at the hearing). I made not finding on whether the child is a German national but it would appear from the conversation that the point would be conceded by the Home Office at any re-hearing as the

evidence had been produced. It will be appropriate for the same evidence to be provided at the next hearing for a finding to be made if case there is no concession.

8. I discussed with both representatives how the decision might be remade. Both requested that the appeal be remitted to the First-tier Tribunal for findings to be made on the relevant issues. As no challenge was brought to Judge Chapman's finding on the protection issues, Mr Mozham accepted that the issues in any rehearing would be limited to the following.

    a. Issues relating to whether the appellant has a right of residence as a result of her son being an EEA national. This will of course depend on whether the appellant's son has a right of residence under a provision of the 2006 EEA Regulations, which is by no means obvious since his father is no longer resident here and it is unclear how he might have obtained a retained or derivative right of residence given his young age and lack of financial evidence.

    b. Issues relating to whether the appellant's proposed removal would be a disproportionate interference in her private and family life rights and those of her daughters and son.

9. These issues will need to be explored carefully, particularly in light of the Court of Appeal's reference of certain questions to the Court of Justice of the European Union in SSHD v NA (Pakistan) [2015] EWCA Civ 140, which might have a bearing on the outcome. Those questions consider the interplay of article 8 ECHR and EEA nationality and residence rights.

10. As there is a need to make fresh findings of fact and because the appellant has been deprived from such findings being made by the First-tier Tribunal, this is an appropriate case to remit. I direct that the appeal is limited to the issues identified above and that it is heard by a judge other than Judge Chapman.

11. It is likely that additional evidence will be required, particularly about the relationship between the appellant's son and his father, so that fresh findings can be made. For the sake of clarity, I give permission for the parties to submit such further evidence as they may wish in relation to the issues to be considered so long as it is provided at least seven calendar days before the rehearing in the First-tier Tribunal.

Decision

The decision and reasons statement of Judge Chapman contains an error on a point of law and is set aside.

I remit the appeal for a fresh decision as per the directions in paragraph 10 above.

Signed Date

Judge McCarthy
Deputy Judge of the Upper Tribunal