IAC-BH-PMP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/12222/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke	**Decision & Reasons Promulgated**
On 1st February 2016	**On 21st March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

OLAKUNLE STEPHEN OLABODE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Chaggar of Counsel instructed by Peter Otto & Co Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. On 6th November 2015 Judge of the First-tier Tribunal M Davies gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal S J Pacey in which he dismissed the appeal on immigration and human rights grounds

against the decision of the respondent to refuse leave to remain in accordance with the provisions of Appendix FM and paragraph 276ADE of the Immigration Rules and on human rights grounds outside them.

2. Judge Davies noted that the grounds of application contended that the judge did not have before him the decision in the appellant's wife's successful appeal which was allowed on Article 8 grounds on 19th June 2015. Judge Davies considered that it was arguably an error of law that the judge had failed to consider that decision before reaching conclusions about the husband's appeal.

Error on a Point of Law

3. At the hearing before me Ms Chaggar confirmed that the grounds were relied upon. These point out that the application by the appellant relied upon the decision in the wife's appeal which concluded that she had been residing in UK for a ten year period (even if the ten year lawful long residence claim had not been made out) and the judge's significant conclusion that removal of the wife would amount to a breach of Article 8 rights. Attention was also drawn to paragraph 6 of the appellant's statement submitted at the First-tier hearing which emphasised that the wife's appeal had been successful. Ms Chaggar was not, however, able to indicate whether or not, following the successful appeal by the wife, any status to remain had been granted to her. It appeared, however, that the respondent's application to appeal against the decision in the wife's case was refused on 4th September 2015, after the First- tier decision in the appellant's case had been sent out on 30th July 2015.

4. Mr McVeety pointed out that Judge Pacey had considered the appeal on the papers in accordance with the appellant's request and on the documents put before him. As paragraph 8 of the decision makes clear, such documents did not include a copy of the decision made in the wife's case which, as the grounds of appeal had conceded, was then the subject of an application by the respondent for leave to appeal. The judge had therefore reached a decision open to him on the information put before him.

5. In conclusion Ms Chaggar argued that the judge had notice of the successful appeal so should have taken that factor into account. She also asked me to conclude that, as a result, there had not been a fair hearing of the appeal on the basis set out in *AM (Fair hearing) Sudan* [2015] UKUT 00656 (IAC).

6. At the end of the hearing and after considering the matter for a few moments I announced that I was not satisfied that the decision of the First-tier Tribunal showed an error on a point of law and now give my reasons for that conclusion.

Conclusion and Reasons

7. The basis upon which it is claimed that the judge erred is an alleged failure to take into consideration that an appeal by the appellant's wife to remain on the basis of ten years' long residence had been allowed on Article 8 grounds. Paragraph 8 of the decision makes it clear that the judge was fully aware of the submission in the grounds of appeal referring to the success of the wife's appeal and, from paragraph 9, shows that he had read the appellant's statement which contains a similar assertion. The judge was not wrong to indicate that he did not have a copy of the

decision, could not rely upon on selective quotations from it and, bearing in mind that the respondent had submitted an application for leave to appeal against it that the status of the appellant's wife was unclear. It was the immigration status of the appellant's wife which was material to the husband's appeal.

8. Whilst the decision of the President in *AM* sets out parameters for fairness at a hearing, it is also made clear that it is the duty of a judge to decide each case on the basis of evidence presented by the parties and it is not for the judge to assemble evidence. Further, it is clear from a letter written by solicitors to the Tribunal on 13th July 2015, just before the hearing, that the appellant decided that he did not want an oral hearing but was content for the appeal to proceed on the basis of the papers. Thus, the appellant had foregone the opportunity to be cross-examined upon his evidence or to give explanations about matters upon which the judge was likely to reach material conclusions. It should also be noted that, in paragraph 13 of the First-tier decision, the judge points to a significant error in dates in relation to the wife's appeal and determination which also enabled him to conclude that information given about that decision was inconsistent.

9. Whilst the judge properly concludes that he did not have evidence to show that the wife had been granted status following a successful appeal he reached the favourable conclusion, in paragraph 11, that the parties clearly had a family life in the United Kingdom and, because of the length of time they had been in this country, had also established a private life. The judge's consideration of human rights issues on that basis applying the "compelling circumstances" test within the framework guidance given in *SS (Congo)* [2015] EWCA Civ 387 and Section 117B of the 2002 Act cannot be criticised. The judge took into consideration the limited evidence provided including the report from a consultant psychiatrist before conducting the proportionality balancing exercise having regard to the public interest criteria of Section 117B.

10. It is also evident, from the submissions put to me, that the actual status, if any, to be granted by the respondent to the appellant's wife has yet to be decided. Thus, even if the judge had been given a copy of the First-tier decision and had been able to resolve the inconsistencies to which he referred, he could still have reached the decision he did bearing in mind that the status of the appellant's wife was, at that stage, no better than that of the appellant.

Notice of Decision

The decision of the First-tier Tribunal does not show a material error on a point of law and shall stand.

Anonymity

Anonymity was not requested or granted before the First-tier Tribunal nor do I consider that an anonymity direction is appropriate in the Upper Tribunal.

Signed Date

Deputy Upper Tribunal Judge Garratt