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Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/27811/2014

IA/27812/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 February 2016	**On 21 March 2016**

Before

Mr H J E LATTER
(DEPUTY UPPER TRIBUNAL JUDGE)

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ASSY BADIANE
[M D]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr S Kotas, Home Office Presenting Officer.
For the Respondent: Ms V Easty, counsel.

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal (Judge Majid) allowing the applicants' appeal against the decision dated 24 June 2014 to remove them from the UK following refusal

of their application based on human rights grounds. In this decision I will refer to the parties as they were before the First-tier Tribunal, the applicants as the appellants and the Secretary of State as the respondent.

Background

2. The background to this appeal can briefly be described as follows. The first appellant is a citizen of Senegal who claims to have arrived in the UK in 2003. Her daughter, the second appellant, was born in the UK on 10 December 2007. Her birth certificate names her father and records that he is a football agent born in Senegal. On 24 June 2011 the appellants applied for indefinite leave to remain on the basis that the first appellant was the victim of domestic violence. The application was refused on 30 July 2011. On 5 April 2013 a further application for leave to remain was made under article 8 and was refused on 1 May 2013. This decision was challenged in judicial review proceedings which were compromised by consent, the respondent agreeing to reconsider the application and, if a decision to refuse was maintained, to issue a removal decision. The decision was maintained in the decision letter of 24 June 2014 and removal decision was duly made. The appellants' appeal against this decision was heard by the judge on 19 August 2015 and allowed for the reasons set out in his decision issued on 3 September 2015.

The Grounds of Appeal and Submissions

3. In the grounds it is argued on behalf of the respondent that the judge's decision shows an absence of reasoned findings. The explanation for allowing the appeal in [27] was minimal in that it referred to the best interests of the child and to the first appellant’s linguistic incompetence in Swahili but there was no indication that the relative merits of the different strands of the evidence had been considered. Secondly, it is argued that there is no evidence of the tribunal taking into account relevant legislation and case law such as s.117B(6) of the Nationality, Immigration and Asylum Act 2002 as amended or the judgment of the Court of Appeal in EV (Philippines) [2014] EWCA Civ 874. It is further argued that the tribunal failed to demonstrate that it was aware of the correct legal tests to be applied as well as failing to explain how it applied them.

4. Mr Kotas submitted that it was impossible for the respondent to understand why the appeal had been allowed. There had been no adequate consideration of the issue of whether the second appellant was entitled to Senegalese citizenship or was stateless. Although the judge had referred to a number of authorities, there was an absence of reasoned findings.

5. Ms Easty submitted that the first ground was in substance a reasons challenge. At [16] the judge had recorded the evidence about the visit to the Senegalese Embassy when the first appellant was told that her daughter could not have a passport of that country "under the rules". The

judge had been entitled to comment that if that was not "exceptional" what could be and that he was dealing with the "best interests" of a child who was stateless [16]. She submitted that this was a finding open to the judge and explained why the appeal had been allowed. So far as the second ground was concerned and the assertion that the judge had failed to consider the provisions of s.117B(6), as the judge had found that the second appellant was not returnable, it could not arguably be reasonable to return her. She argued that if the judge had made any error of law, it would not be capable of affecting the outcome of the appeal.

Assessment of Whether there is an Error of Law

6. I must consider whether the judge erred in law such that the decision should be set aside. I am satisfied that the respondent's grounds are made out. The judge has failed to give adequate reasons to explain why he allowed this appeal. Reasons need not be extensive but they must be understandable and indicate that all relevant matters have been considered. Ms Easty sought to argue that the judge's finding that the second appellant was stateless was properly open to him and once that finding had been made, it followed inevitably that the appeal should be allowed.

7. The judge's finding on this issue is at [16]:

> "The appellant had gone to the Senegal Embassy in London. She was told that her daughter (the second appellant in this case) cannot have passport for that country under the Rules. If that is not "exceptional" what can be - here we are dealing with the ‘best interests’ of the child who is stateless."

8. However, the issue of statelessness in the present case is more complex not least as the letter relied on from the Senegalese Embassy dated 27th of February 2013 reads:

> "This is to certify that, at present, the Embassy of Senegal in London is unable to satisfy the request for the issuance of a passport ... and she has not been registered at birth by her natural father, in accordance with Senegalese law on the matter. ...”.

The use of the phrase "at present" in the letter does not indicate that the Embassy had taken a final view that the second appellant was not entitled to Senegalese citizenship. The letter does not take issue with the nationality of either the second appellant's mother or her natural father and I note that the second appellant was described as Senegalese in the application form. In the light of these matters I am satisfied that the judge failed to give any or any adequate reasons for his finding that the second appellant was in fact stateless.

9. The judge set out at length a number of authorities referring to the best interests of the child. In [19] he said that the best interests of a child are a matter of primary importance and in [20] that where those interests

favoured a certain course, that course should be followed unless countervailing reasons of considerable force displaced them. However, the judge failed to give adequate consideration about whether there were any such reasons. He failed to give proper consideration to the public interest when carrying out the proportionality exercise under article 8. He failed to set the circumstances relating to the second appellant in the context of the evidence as a whole and in particular the immigration history of the first appellant, the fact that the status of both the first and second appellants has been precarious throughout and more generally the need to take proper account of the public interest in maintaining effective immigration control. In summary, the judge failed to assess the question of proportionality in the context of the current immigration rules or take into account the guidance given by the Court of Appeal in EV (Philippines). He also failed to give proper consideration to the provisions of s.117B of the 2002 Act.

10. Both representatives accepted that if there was an error of law, the proper course would be for the appeal to be remitted for a full rehearing before the First-tier Tribunal. I agree in the circumstances of this appeal that this is the right course to take

Decision

11. The First-tier Tribunal erred in law such that its decision should be set aside. The appeal is remitted for reconsideration to the First-tier Tribunal for a fresh hearing before a different judge.

Signed H J E Latter

H J E Latter
Deputy Upper Tribunal Judge

Date: 1 March 2016