



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

Appeal Number: IA384232014

THE IMMIGRATION ACTS

**Heard at Field House
On 9 March 2016**

**Decision & Reasons
Promulgated
On 24 May 2016**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**DONNA JEAN CHAPLIN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Duffy, Home Office Presenting Officer
For the Respondent: Mr C Harding, Grange & Castle Solicitors

DECISION AND REASONS

1. The Secretary of State's appeals with permission against the decision of First-tier Tribunal Judge Coffey promulgated on 19 August 2015 in which she allowed the appeal of Miss Donna Jean Chaplin, ("the claimant"), on

the basis that the Secretary of State's decision was not in accordance with the law. The judge directed the matter be returned to the Secretary of State for reconsideration of discretionary leave. The facts of this case are sufficiently set out in the determination. It is, however, important to note that the claimant is a citizen of Jamaica and has a son, also a citizen of Jamaica, who was born on [] 1995.

2. There were in this case previous applications for leave made prior to that which gave rise to this appeal. The first, on 17 July 2009 was rejected owing, it appears, to a failure to pay the correct fee and the application was then resubmitted and was refused on 31 March 2010 without the right of appeal. Following a request for reconsideration of the application there was a fresh decision giving rise to the current right of appeal.
3. It is important to note in this context that the claimant's son had not been over the age of 18 at the relevant times and indeed at the time of the first attempted application was made he was 14. The son has subsequently been granted limited leave to remain in the United Kingdom pursuant to paragraph 276ADE of the Immigration Rules. That grant made on 24 September 2014.
4. When the matter came before Judge Coffey the Secretary of State was not represented. The claimant was, as she is today, represented by Mr Harding. The judge concluded at paragraph 26 that "The decision is conspicuously unfair and unlawful due to the unreasonable delay leading to a material change in the outcome. I remit this case to the respondent for reconsideration in accordance with her discretion."
5. Mr Duffy's case is that the judge had not given proper reasoning for the conclusion that the decision not to exercise discretion was unfair. Mr Harding accepted that this is a case in which it might have been better for the claimant to make a cross-appeal in that the judge appears not to have considered Article 8 outside the Immigration Rules.
6. Having heard submissions from both representatives it was agreed that the judge had erred in her finding of unlawfulness. The failure to exercise discretion which she identified was in fact a failure to consider granting leave to remain outside the Immigration Rules. That is a matter which ought to be considered in a proper merits based analysis of the Article 8 claim taking account the failure to meet the requirements of the Immigration Rules. The judge appears to have thought that rather than going on to consider the merits of Article 8 she should have deferred to the Secretary of State to make the analysis outside the Rules.
7. Both parties agree that in the circumstances of this case the best course of action would be for it to be formally recorded that the judge's decision did involve the making of an error of law in that her findings in relation to unfairness and unlawfulness should in reality have led her on to a consideration of Article 8 outside the Rules, which she did not do.

8. In the circumstances of the case I consider that the best course of action, it being agreed there is an error of law in this case, for the matter to be remitted back to the First-tier Tribunal for fresh findings on all issues subject of course to the findings of the judge in respect of the first application which are properly reasoned and based on the evidence.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.
2. The appeal is remitted to the First-tier Tribunal for it to make a fresh decision in respect of the claimant's article 8 case.
3. No anonymity direction is made.

Signed

Date: 10 March 2015

A handwritten signature in black ink, appearing to read 'Jonathan Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul