Upper Tribunal
(Immigration and Asylum Chamber)
Appeal Number: DA/00016/2017

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 20 October 2017 and 8 February 2018	**On 11 May 2018**

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB

Between

OLADIMEJI AYEMOJUBA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Dean, of Elizabeth Dean Solicitors.
For the Respondent: Mr I Richards, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The respondent, whom we shall call "the claimant" is a national of Belgium. Following two convictions for robbery, the Secretary of State made arrangements for his deportation and, after an unsuccessful appeal, the claimant was deported to Belgium in July 2012. The claimant then moved to the Republic of Ireland, where he began study. He is said to be in a relationship with Bianca Taylor, whom we shall call "the sponsor". The sponsor has a child from a previous relationship, and she and the claimant have a child together, a daughter born on 18 December 2015.

2. Since his deportation, the claimant has been encountered on five separate occasions in the United Kingdom or attempting to enter. On the most recent occasion he was found in the United Kingdom in February 2016 and was, according to Home Office records, removed on 21 April 2016.

3. In an application submitted on his behalf by Halliday Reeves, a firm of solicitors, the claimant sought the revocation of the deportation order. The application was refused in a decision noted as served on 21 December 2016. The claimant appealed against that decision, and in the First-tier Tribunal Judge Povey allowed the appeal.

4. The Secretary of State appeals against that decision on a number of grounds, the material one being that Judge Povey had no jurisdiction. The reason for that is as follows. As the claimant is an EEA national, his status and other matters related to immigration were covered by the Immigration (European Economic Area) Regulations 2006, in force at the relevant time. Under those Regulations he had a right of appeal against an 'EEA decision'. The latter phrase is defined in such a way as to include only a decision made under the Regulations.

5. Regulation 24A provided for the revocation of a deportation order, but by reg 24A(3) an application could be made for a deportation order to be revoked, but only while the applicant was outside the United Kingdom. Regulation 24A(1) provided that unless the order is revoked "under this regulation" it is to remain in force. Further, reg 27(1)(b) provided that an appeal against the refusal to revoke a deportation order could be brought only while the appellant was outside the United Kingdom.

6. We have already noted two of the relevant dates: Judge Povey specifically found that the claimant's removal in April 2016 was after he had submitted the application for revocation of the deportation order. The only further date clearly recorded is that of the appeal, which was heard on 16 January 2017.

7. On the basis of the dates of application and removal set out above and by the judge, it is clear that the application was invalid for failure to comply with reg 24A(3) and so could not justify any decision that the deportation order ceased to be in force, because of reg 24A(1). When we heard the appeal on 20 October 2017 we announced that our decision would have to be to that effect, with the result that the Secretary of State's appeal would be allowed and that we would substitute a decision dismissing the claimant's appeal for lack of jurisdiction.

8. Shortly after the hearing, however, we received a letter from Ms Dean, who represented the claimant, asserting that the Home Office record that the application that had been made on 17 March was incorrect. The sponsor had explained to her that research had been undertaken in connection with a complaint Halliday Reeves had made to the Home Office about delay in this case. The documents that came to light then showed that the application had been made on 17 June, many weeks after the claimant's removal in April 2016. Ms Dean suggested that the date of 17 March had been mistranscribed from the form on which the claimant gave authority to Halliday Reeves, which also accompanied the application.

9. We reviewed the documentation and arranged for the matter to be re-listed. The review of the documentation raises two questions of interest in

this context. First, the documentation relating to the submission of the application, now available apparently from Halliday Reeves' files, includes a letter dated 1 July 2016, Post Office documents showing the posting of a packet weighing 0.341kg in Kempston, Bedfordshire, on 17 June 2016 and its receipt on 20 June 2016, and an undated letter from an MP's office repeating details obtained from the Home Office, recording no application of 17 March 2016 or 17 June 2016, but indicating that on 5 October 2016 the claimant had requested revocation of his deportation order, and that that request "remains outstanding" but will be decided by 7 December 2016.

10. At the hearing we were able to ask Mr Richards whether the Home Office Records threw any more light on this, but he was unable to help. As we indicated at the time, it is extremely surprising that the claimant's application should be said to have been posted in Bedfordshire on 17 June. Neither the place of business of Halliday Reeves (Newcastle-upon-Tyne) nor the residence of the sponsor (Bristol) is anywhere near Kempston. Although we can understand the solicitors having business in Bedfordshire, there is no obvious reason why anybody going to Bedfordshire should take a parcel to be posted there: it is not suggested that there was any event connected with the application, or with instructions for it to be made, either on or about 17 June or in or about Bedfordshire. Without further information, we are sceptical that the post office documents relate to the claimant's application, despite the reference in the letter from Halliday Reeves dated 1 July 2016, to an application of 17 June.

11. There may be explanations for all that: but the review of the documents raised another difficulty. As we have said, the daughter of the claimant and the sponsor was born on 18 December 2015. Her birth was, however, registered on 28 April 2016, and the certified copy of the Register entry, bearing the signature of the Deputy Registrar and that date, was submitted as evidence of the parentage of the child. That certificate makes it clear that on that date, a week after the claimant's removal, he appeared before the Deputy Registrar in Bristol, giving an address in Southwark. We invited Ms Dean to explain how this could be. After taking instructions and consulting elsewhere, she told us that she was professionally embarrassed and could not continue to represent the claimant.

12. There is no reason to doubt what is shown on the certificate. It demonstrates that the account given by the claimant and the sponsor, that the claimant has been out of the United Kingdom since his removal on 21 April 2016, is not true. The claimant has continued to enter the United Kingdom when he chooses, in defiance of the deportation order and other provisions of immigration control. Evidently he re-entered, illegally, very shortly after his last removal. His attitude can be seen from the fact that he is prepared to give an address in the United Kingdom, not, be it noted, anywhere near where the sponsor and her children live.

13. For the purposes of the appeal before us, this means that no importance can be attached to the date of the claimant's removal, because neither that nor the deportation order are reasons for saying that he is outside the United Kingdom. His own, and the sponsor's, accounts of his movement are not true. Now that the issue of the competence of his application has been raised, there is no credible evidence upon which we could conclude he was outside the United Kingdom on 17 June 2016, even if the application was made on that date. As he has never admitted crossing an international boundary after 28 April 2016 (when, as we have indicated, he was evidently in the United Kingdom) there is, in addition, no credible evidence that he was outside the United Kingdom on 16 January 2017, when his appeal was filed, so there is no basis for saying that that was valid either.

14. Judge Povey erred in law because on the material on which he relied he had no jurisdiction to allow the claimant's appeal. We set aside his decision. We re-determine the claimant's appeal.

15. There is no credible evidence that, and no reason to believe that, the claimant was outside the United Kingdom either at the time he made his application or at the time he filed his appeal. Both were invalid and the only function of the Tribunal is therefore to note that the deportation order remains in force under the provisions of reg 24A(1). To that extent his appeal is now dismissed.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 8 May 2018.