



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/25919/2016

THE IMMIGRATION ACTS

Heard at Field House
On 6th July 2018

Decision & Reasons Promulgated
On 18th July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ERHUNMWWUNSE ORHUE
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mrs L Kenny, Senior Home Office Presenting Officer
For the Respondent: No legal representation

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against a decision of Judge Rayner (the judge) of the First-tier Tribunal (the FTT) promulgated on 7th March 2018.

2. The Respondent before the Upper Tribunal was the Appellant before the FTT and I will refer to him as the Claimant.
3. The Claimant is a male national of Nigeria born 17th April 1984 who applied for leave to remain in the UK as the spouse of a British citizen. He married Amora Francisco in the UK on 9th July 2016.
4. The application was refused on 8th November 2016 and the appeal was heard by the FTT on 26th February 2018. The judge found that the couple had married knowing that the Claimant had a precarious immigration status, in that he had entered the UK with entry clearance as a Tier 4 Student valid from 16th December 2014 to 8th May 2016.
5. The judge considered EX.1. of Appendix FM, finding there would be no insurmountable obstacles to family life continuing outside the UK. The judge considered paragraph 276ADE(1)(vi) finding that there would be no very significant obstacles to the Claimant reintegrating in Nigeria.
6. The judge found that there were no exceptional circumstances which would justify granting leave to remain pursuant to Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention) outside the Immigration Rules.
7. The judge at paragraph 24 confirmed that the Claimant did not satisfy any provisions of the Immigration Rules, and the decision made by the Secretary of State was lawful and proportionate and did not breach section 6 of the Human Rights Act 1998.
8. However, under the heading "Notice of Decision" the judge recorded;

"This appeal is allowed. The Respondent's decision is not unlawful under section 6 of the Human Rights Act 1998."
9. The Secretary of State applied for permission to appeal to the Upper Tribunal. It was submitted that the decision to allow the appeal was inconsistent with conclusions made by the judge at paragraphs 23 and 24, and it was submitted that the decision to allow the appeal appeared to be "a slip of the pen and therefore an inadvertent error of law".
10. It was submitted, in the alternative, that the judge's conclusion that the appeal should be allowed was irrational, given the findings made that the Claimant had failed to show that the Secretary of State's decision was in breach of section 6 of the Human Rights Act 1998.
11. Permission to appeal was granted by Judge Foudy of the FTT in the following terms;

"2. It is perfectly clear on reading the decision as a whole that the judge intended to dismiss the appeal. In a simple slip he wrote the word 'allowed' at the end of a decision that gave detailed reasons why he was dismissing the appeal.

3. It would be sensible for the judge to be given an opportunity to correct that one word error but in accordance with Katsonga [2016] UKUT 228 I can only find that an error of law has occurred, and I do so find.”
12. Following the grant of permission there was no response from the Claimant. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FTT had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

13. The Claimant attended the hearing without legal representation. He confirmed that he was content to proceed without legal representation. He also confirmed that he had read and understood the decision of the FTT, and that he had seen and understood the application made by the Secretary of State for permission to appeal to the Upper Tribunal, and the grant of permission to appeal.
14. On behalf of the Secretary of State reliance was placed upon the grounds upon which permission to appeal had been granted. I was asked to find an error of law and set aside the decision of the FTT and re-make that decision by dismissing the appeal.
15. The Claimant indicated that he did not oppose the application. He explained that he had, on 31st May 2018, lodged a further application for leave to remain, and if it was within his power, he would have withdrawn the application which is the subject of the present appeal.

My Conclusions and Reasons

16. The judge erred in law on one point only, and that is recording under the heading “Notice of Decision”, that the appeal was allowed. It is clear, and agreed by the parties, that the judge intended to dismiss the appeal. The judge gave reasons at paragraph 19 for not accepting that insurmountable obstacles existed to family life continuing outside the UK, at paragraph 21 in finding that there were no very significant obstacles with reference to paragraph 276ADE(1)(vi), and in paragraph 23 in concluding that the appeal could not succeed with reference to Article 8 outside the Immigration Rules. At paragraph 24 the judge summarised the conclusions, which clearly indicate that the Secretary of State’s decision was not in breach of section 6 of the Human Rights Act 1998.
17. The error of law in purporting to allow the appeal is material. I therefore set aside the decision of the FTT.
18. However, the findings made by the FTT are preserved in their entirety. The judge made findings on all appropriate issues, and gave sound and adequate reasons for making those findings.

19. I re-make the decision by dismissing the appeal, and the reasons for dismissal are contained within the FTT decision.

Notice of Decision

The decision of the FTT contained a material error of law and was set aside. I re-make the decision by dismissing the appeal.

No anonymity direction was made by the FTT. There has been no request for anonymity made to the Upper Tribunal and I see no need to make an anonymity direction.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

6th July 2018

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

6th July 2018