Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/18004/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 31st July 2014	**On 15th August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR OLUWATOBI SAMUEL SALAMI
(NO ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - LAGOS

Respondent

Representation:

For the Appellant: Mr O Jibowu (Counsel)
For the Respondent: Mr G Saunders, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Nigeria born on 24th August 1993. The Appellant had applied for a visit visa for one month to visit his mother in the United Kingdom. His application was refused in August 2013 by the Entry Clearance Officer, Lagos.

2. The Appellant appealed and the appeal came before Immigration Judge Whalan sitting at Taylor House on 7th May 2014. In a determination on the papers the Appellant's appeal was allowed in respect of the Immigration Rules.

3. On 20th May 2014 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal pointing out that the judge had gone beyond his jurisdiction and had therefore erred in law and that the decision should be set aside. On 12th June 2014 First-tier Tribunal Judge Colyer granted permission to appeal. It is on that basis that the appeal comes before me. For the purpose of continuity within the Tribunal proceedings the Secretary of State is referred to herein as the Respondent and Mr Salami as the Appellant albeit that this is an appeal by the Secretary of State.

4. The Appellant appears by his instructed Counsel Mr Jibowu and the Secretary of State by her Home Office Presenting Officer Mr Saunders.

Submissions

5. Mr Saunders submits the First-tier Tribunal Judge has erred in law in that he had no jurisdiction to hear the appeal under the Immigration Rules and therefore he asks me to find that there is a material error of law in the decision of the First-tier Tribunal Judge, to set aside the decision and to remake the decision in favour of the Secretary of State.

6. Mr Jibowu acknowledges that the Appellant is precluded from bringing his appeal under the Immigration Rules but submits that once the matter is before the Immigration Judge he is not precluded from looking at the substance of the matter and that once it came before him he was entitled to look at the case on its merits and that this is what he has done and that the decision therefore does not disclose any material error of law and he asked me to dismiss the appeal.

The Law

7. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

8. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising

after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

9. There has been a considerable change over recent years as to the jurisdiction of the Immigration Tribunal to address issues relating to appeals against the refusal of the granting of visit visas by Entry Clearance Officers. Originally the degree of relationship between an Appellant and Sponsor was substantially reduced in the 2012 Regulations. Section 52 of the Crime and Courts Act came into effect on 25th June 2013 and that restricted further the appeal rights of visitors coming to visit family members in the UK. It is pertinent to note that those restrictions only apply to applications made on or after 25th June. This application was made some six to seven weeks later in early August 2013. The effect of the changes to the Crime and Courts Act amended Section 88A of the Nationality, Immigration and Asylum Act 2002 to remove the right of appeal of a person visiting specified family members. The only basis upon which an appeal can now be brought are the residual grounds in Section 84(1)(b) and (c) of the 2002 Act namely

    - that the decision is unlawful by Section 29 of the Equality Act 2010 and

    - that the decision is unlawful under Section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention) as being compatible with the Appellant's Convention rights.

10. It is clear that the appeal came before the First-tier Tribunal Judge on the basis that the Grounds of Appeal alleged a breach of the Appellant's rights under Section 6 of the Human Rights Act 1998. Those grounds are handwritten.

11. The appeal appeared before Immigration Judge Whalan on the papers. He considered the evidence at paragraphs 6 to 9 and made a finding based on the balance of probabilities at paragraph 12 that the Appellant was a genuine applicant whose appeal should be allowed. He therefore allowed the appeal under the Immigration Rules.

12. At paragraph 13 of his determination he addressed the fact that the Grounds of Appeal made reference to a breach of the Appellant's rights under Section 6 of the Human Rights Act 1998 although no submissions or arguments were proffered as to how this could be so. He concluded that

those Grounds of Appeal were without merit and should be dismissed. He was perfectly right and entitled to draw such a conclusion.

13. Where the judge erred was its final sentence of paragraph 13.

> *"These conclusions do not, however, undermine my considered conclusions in respect of the Immigration Rules."*

14. The judge was wrong in reaching that conclusion. He may well not have been wrong in his findings under the Immigration Rules but what he was wrong in doing was concluding that he had any jurisdiction to entertain the appeal under the Immigration Rules. It is clear that pursuant to statute he now does not have that authority although it is understandable as to how the judge perhaps came to consider it bearing in mind the matter was put before him in a paper list. That happened because the Grounds of Appeal referred to Article 6 of the European Convention on Human Rights which as shown above constitute a basis for an appeal to an Immigration Judge. Having properly decided that there was no basis whatsoever in the Grounds of Appeal the judge should merely have dismissed the appeal under Article 6. He should not have gone on to consider the appeal under the Immigration Rules.

15. I explained all this to the Appellant's Sponsor. It is not the intention of the immigration authorities to prevent genuine visits to this country. Further it is not for me to speculate as to the genuineness of this application save to note that one of my colleagues in the First-tier Tribunal has already found that his view was that the visit was genuine. The correct approach now is for the Appellant, should he wish to make his proposed visit, to make a further application to the Entry Clearance Officer. He would be advised to note the basis upon which the appeal was refused in the first place and to ensure that all appropriate documentation is submitted with the application**.**

Decision

16. The decision of the First-tier Tribunal contains a material error of law and is set aside. The decision is remade dismissing the Appellant's appeal for lack of jurisdiction.

17. The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. No application is made to vary that order and none is made.

Signed Date 8th August 2014

Deputy Upper Tribunal Judge D N Harris