



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

Appeal Number: IA/18903/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 February 2015**

**Determination
Promulgated
On 26 February 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**Mr HECTOR JOSEPH WRIGHT
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A Brocklesby-Weller, Home Office Presenting Officer

For the Respondent: Mr P Richardson, Counsel (instructed by AJA Solicitors)

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge N Osborne on 15 January 2015 against the decision of First-tier Tribunal Judge Morgan who had allowed (to the extent of finding that the decisions were not in accordance with the law) the Respondent's appeal against the Appellant's decisions dated 11 April 2014 to refuse to grant the

Respondent leave to remain outside the Immigration Rules and to remove him. The decision and reasons was promulgated on 26 November 2014.

2. The Respondent is a national of Jamaica, born on 30 November 1947. He had entered the United Kingdom as a visitor in November 2000. Subsequently he obtained leave to remain as a spouse but the relationship failed and he became appeal rights exhausted in 2005. In 2008 the Respondent made his application for further leave to remain, which was not refused until 11 April 2014. The judge found that the application had been considered under the wrong Immigration Rules, in particular, that it should have been considered under paragraph 317.
3. Permission to appeal to the Upper Tribunal as sought by the Appellant was granted by Judge Osborne because he considered that it was arguable that the judge had erred when finding that the Secretary of State's decisions were not in accordance with the law. The judge had misinterpreted Edgehill [2014] EWCA Civ 402.

Submissions - error of law

4. Ms Brocklesby-Weller for the Secretary of State relied on the grounds of onwards appeal and submitted that this was a clear case of legal error in relation to what was in substance an Article 8 ECHR claim, as the grant of permission to appeal indicated. Singh [2015] EWCA Civ 74 at [56] had shown that the Secretary of State had been entitled to apply the post 9 July 2012 Immigration Rules. The decision should be set aside and remade at a fresh hearing.
5. Mr Richardson for the Respondent accepted that Singh (above) applied. He also candidly pointed out that the judge's reference to paragraph 317 of the Immigration Rules (no longer in force) was mistaken in any event, as the application had been made outside the Immigration Rules on Article 8 ECHR grounds. He accepted that there had been no proper hearing and that there was no alternative to a full rehearing before a differently constituted First-tier Tribunal. The delay which this would cause was regrettable.
6. There was nothing which Ms Brocklesby-Weller wished to add.

The error of law finding

7. Both parties accepted that there had been material errors of law in the decision and reasons. The tribunal agrees with the submissions made which need not be repeated. The judge did not have the advantage of Singh (above), a judgment providing much needed clarification of the law in this area of Article 8 ECHR law where there

had been conflicting authorities as to the correct treatment of applications made prior to 9 July 2012.

8. The decision cannot stand in the light of Singh (above) and the tribunal accordingly sets its aside. There has not been an effective hearing and there are no sufficient findings of fact. There is no alternative but to return the appeal for a fresh hearing in the First-tier Tribunal. No findings are preserved.
9. There was no application for an anonymity direction and the tribunal sees no need for one.

DECISION

The making of the previous decision involved the making of an error on a point of law. The tribunal allows the onwards appeal to the Upper Tribunal, sets aside the original decision and directs that the original appeal should be heard again before a differently constituted First-tier Tribunal, at Taylor House, not before First-tier Tribunal Judge Morgan, on a date to be fixed.

Signed

Dated 25 February 2015

Deputy Upper Tribunal Judge Manuell