



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

**Appeal Number: IA/43214/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26<sup>th</sup> August 2015**

**Decision & Reasons Promulgated  
On 2<sup>nd</sup> September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**EMMANUAL OGBONNA EZE**

Respondent

**Representation:**

For the Appellant: Mr P Nath, Senior Home Office Presenting Officer

For the Respondent: Mr F Singarajah (counsel) instructed by Nasim & Co, solicitors

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Turnock, promulgated on 13 May 2015, which allowed the Appellant's and held that the respondent's decision to remove the appellant

from the UK was disproportionate and unlawful under Article 8 of the European Convention on Human Rights.

## **Background**

3. The appellant is a Nigerian citizen, born on 27 May 1960. The appellant first visited the UK in 2000. The appellant was granted entry clearance as a visitor in 2000, again in 2002, and again in 2004.

4. On 4 February 2014, the appellant applied for leave to remain in the UK on the basis of his relationship with his partner and their children. That application was refused on 25 February 2014, but no decision to remove the appellant from the UK was made. The appellant raised judicial review proceedings which were concluded by a consent order. The respondent then gave further consideration to the appellant's claim and refused the appellant's claim (of new) and issued a decision to remove the appellant from the UK on 13 October 2014.

## **The Judge's Decision**

5. The appellant appealed to the First Tier Tribunal. First Tier Tribunal Judge Turnock ("the Judge") dismissed the appeal under the Immigration Rules but allowed the appeal on Article 8 ECHR grounds, because the appellant's partner and their children have leave to remain in the UK until January 2016.

6. The Secretary of State lodged grounds of appeal and on 9 July 2015, First Tier Tribunal Judge Pooler gave permission to appeal, stating *inter alia*:

"The judge found that the circumstances of the appellant should be considered together with those of his partner and their four children (who had leave to remain) when their leave expired in January 2016 and arguably failed to give reasons for his conclusion at [60] that at the date of hearing, it was not possible to expect the appellant to return to Nigeria and apply for entry clearance."

## **The Hearing**

7. Mr Nath, for the respondent, argued that between [57] and [59], the judge sets out the case law but does not set out any reasoning, and then at [60], the judge makes a bold statement that it is not reasonable for the appellant to return to Nigeria to apply for entry clearance from there. He argued that it was incumbent on the judge to look at the situation at the date of the hearing and to reach conclusions based on the evidence, and to set out those conclusions. He argued that a fair reading of [57] to [60] discloses a material error of law because the judge failed to analyse the evidence and set out clear reasons for reaching the conclusion that he did.

8. Mr Singarajah, Counsel for the appellant, relied on the case of Budhathoki (Reasons for decisions) [2014] UKUT 00341 (IAC). He told me that when the decision is read as a whole, it sets out adequate reasons and that neither party is left in any doubt about the reasons that the judge came to the decision that he did. It was his position that the grounds of appeal amount to no more than a

disagreement with the findings made by the judge and an attempt to re-litigate matters, rather than identifying a material error of law.

## **Analysis**

9 At paragraph 49 of MA (Somalia) [2010] UKSC 49, it was said that “*Where a tribunal has referred to considering all the evidence, a reviewing body should be very slow to conclude that that tribunal overlooked some factor, simply because the factor is not explicitly referred to in the determination concerned*”.

10 In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

11 In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal’s decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

12 In this case, the judge could have, perhaps, expressed himself a little more clearly and could have expanded on his reasons for finding that Article 8 ECHR is engaged, and that the respondent’s decision to remove the appellant is a disproportionate interference with the right to respect for family and private life. However, when the determination is read as a whole, I find that there is no misdirection of law and that the judge properly considered the statutory framework and the case law relevant to the appeal.

13 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 under argument. Disagreement with an Immigrations Judge’s factual conclusions, 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 that 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.

14. I am satisfied that the Judge's determination when read as a whole sets out findings that were sustainable, sufficiently detailed and based on cogent reasoning.

### **CONCLUSION**

**15. I therefore find that no errors of law have been established and that the Judge's determination should stand.**

### **DECISION**

**16. The appeal is dismissed.**

Signed

Date 1<sup>st</sup> September 2015

Deputy Upper Tribunal Judge Doyle