



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

Appeal Number: IA088772015

THE IMMIGRATION ACTS

Heard at Stoke

On 11 March 2016

**Decision &
Promulgated**

On 23 May 2016

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

Mr LEON COMPTON MINGO

(Anonymity Direction Not Made)

Appellant

Respondent

Representation:

For the Appellant: Mr Harrison, Senior Presenting Officer

For the Respondent: Ms I Hussain of Counsel instructed by IHC UK Legal

DECISION AND REASONS

1. This matter comes before me pursuant to permission having been granted by First-tier Tribunal Judge Adio dated 29 December 2015. The appeal

relates to a decision by First-tier Tribunal A J Parker promulgated on 28 August 2015. The Judge had allowed the appeal based on Article 8 of the European Convention on Human Rights. The Secretary of State appealed but to ease following this decision I shall continue to refer to the parties as they were before the First-tier Tribunal.

2. The background to the appeal was that the Appellant had been granted various extensions to his original leave to enter, including most recently on 9th November 2011 when he had been granted discretionary leave to remain based on his marriage to Rochalla Mingo. The couple have had a child born to them in January 2011. Both the child and Mrs Mingo are British. Mrs Mingo had to leave the family home in Stoke-on-Trent to go to live in Grimsby to look after three children she has from a previous relationship.
3. The Judge said that he had not been provided with sufficient information to come to a conclusion in respect of whether or not the financial requirements were met so he concluded that the provisions were not met.
4. The Judge considered relevant case law including the Supreme Court's decision in **ZH (Tanzania) v Secretary of State for the Home Department** [2011] UKSC 4, **Azmi-Moayed and others (decisions affecting children: onward appeals)** [2013] UKUT 197 (IAC) and **EV (Philippines) v Secretary of State for the Home Department** [2014] EWCA Civ 874.
5. At the hearing before me Mr Harrison was brief and said he relied on the grounds of appeal.
6. Those grounds contended that there was a material misdirection in law because the Judge had concluded that the Immigration Rules could not be met but he had not considered whether there were compelling reasons for consideration of the case outside of the Rules. The grounds also refer to the Upper Tribunal's decision in **R (on the application of) Chen v Secretary of State for the Home Department (Appendix FM-Chikwamba-temporary separation-proportionality) IJR** [2015] UKUT 00189.
7. It was submitted in the grounds that the Judge had failed to conduct a proper balancing exercise by weighing the factors in favour of the public interest against the factors in favour of the Appellant.
8. Ms Hussain in her submissions said that she relied on the Rule 24 Reply. The Judge had noted the subsisting relationship. The public interest was considered. Paragraphs 15 and 17 showed why the Rules could not be met. Those were natural normal steps which had been undertaken. I then heard further submissions from Mr Harrison. Both parties said that if I had found that there was an error of law then it was appropriate for the matter to be remitted to the First-tier Tribunal for a complete rehearing.

9. I had reserved my decision.
10. In my judgment there is a material error of law. It is not easily identifiable with clarity which aspects the Judge found were the compelling reasons to enable him to conclude that this was an appropriate case to consider outside of the Immigration Rules and nor is it easy to decipher precisely what the compelling reasons were. I have sought to use the cumulative references from the various paragraphs from within the Judge's decision, but I conclude that there is indeed a gap in the findings. It may well be that the Judge had in mind the great weight that needed to be given to the Appellant's British wife who had to remain in the United Kingdom because of her other children. It is also likely that the Judge also had in mind the duties which arise by virtue of section 55 Borders Citizenship and Immigration Act 2009 in respect of the Appellant's British son, but there was also great weight to be attached to the public interest factors too. If, as the Judge noted, the Immigration Rules were not met, then that too was a factor which attracted great weight in that balancing exercise.
11. Ultimately I conclude that the findings of the Judge are insufficient. There has to be a rehearing. That rehearing will take place at the First-tier Tribunal. None of the Judge's findings shall stand.

Notice of Decision

The decision of the First tier Tribunal Judge involved the making of a material error of law.

The Appellant's appeal is remitted to be reheard at the First Tier Tribunal.

An anonymity direction is not made.

Signed

Date: 11 April 2016

Deputy Upper Tribunal Judge Mahmood