



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/11533/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 5th April 2016

**Decision & Reasons
Promulgated
On 26th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**JAMES ADEKUNLE ATANDA ADEBOYE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Kareem of Atlantic Solicitors

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Nigeria, born on 17th July 1970. The Appellant claims to have first arrived in the UK on 21st September 1994 when he was given leave to enter as a visitor. Thereafter the Appellant has a lengthy immigration history, including many unsuccessful applications for leave to remain. Eventually and on 2nd March 2015 the Appellant made representations which were treated as an application for leave to remain on human rights grounds. That application was refused

for the reasons given in the Respondent's letter of 18th March 2015. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Kainth (the Judge) sitting at Richmond on 16th September 2015. He decided to allow the appeal under the Immigration Rules and on human rights grounds for the reasons given in his Decision dated 22nd September 2015. The Respondent sought leave to appeal that decision and on 23rd February 2016 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge first dismissed the appeal under the provisions of paragraph 276B of HC 395. This is the long residency Rule. That decision has not been challenged by the Appellant. The Judge also dismissed the appeal under Appendix FM of HC 395 as he was not satisfied that the Appellant's relationship with his partner, MGL, had been of sufficient duration. Again, this decision has not been challenged by the Appellant. However, the Judge did find that the Appellant had a genuine and subsisting relationship with his partner, and that they had a child, MDA born in the United Kingdom in October 2014. The Appellant had a family life with his partner and child which would be interfered with by the Respondent's decision to such a degree of gravity as to engage the Appellant's Article 8 ECHR rights, and that in the circumstances such interference was disproportionate. The Judge allowed the appeal for those reasons.
4. At the hearing, Mr Kandola referred to the grounds of application and submitted that the Judge had erred in law in reaching that decision. Mr Kandola said that he did not wish to proceed with the first such ground of a procedural unfairness, but said that the Judge had erred in law by failing to consider if there were compelling circumstances required by the decision in **R (on the application of) Nagre v SSHD [2013] EWHC 720 (Admin)** in order to proceed to consider the Appellant's Article 8 ECHR rights having found that the Appellant did not qualify for leave to remain under Appendix FM.
5. In response, Mr Kareem argued that there had been no such error of law. The Judge had given a sufficient consideration of the Appellant's Article 8 rights and had found that it would be in the best interests of the child to remain with her mother which was in accordance with the decision in **Azimi-Moayed and Others [2013] UKUT 197 (IAC)**.
6. I do find an error of law in the decision of the Judge which I therefore set aside. In my view the Judge's reasoning in considering the proportionality of the Respondent's decision and therefore whether there were compelling circumstances was insufficient. He noted that the Appellant was an overstayer with no leave to remain, and that he had a conviction for a criminal offence. The Judge did consider the public interest, and took account of the factors set out in Section 117B of the Nationality, Immigration and Asylum Act 2002. In particular, the Judge found that the

Appellant had a precarious immigration history. Set against these factors, the Judge only mentioned the obvious fact that with a child so young, her best interests would be to remain with her mother. The Judge has therefore not explained why there are compelling circumstances to outweigh the public interest for the Respondent's decision to be disproportionate.

7. For these reasons I find an error of law in the decision of the Judge. I set that decision aside. At the hearing I did not proceed to remake the decision but decided that the decision should be remade in the First-tier Tribunal in accordance with paragraph 7.2(b) of the Practice Statements. Further findings of fact need to be made.

Notice of Decision

8. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

The decision is to be remade in the First-tier Tribunal.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed I find no reason to make such an order.

Signed

Dated

Deputy Upper Tribunal Judge Renton