



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL

APPEAL NUMBER: IA/34369/2013

THE IMMIGRATION ACTS

Heard at: Field House  
on 16 February 2016

Decision and Reasons Promulgated  
on 4 April 2016

Before

Deputy Upper Tribunal Judge Mailer

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR BAKER GASHUGI  
NO ANONYMITY DIRECTION MADE

Respondent

Representation

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer  
For the Respondent: Mr P Bonavero, counsel (instructed by Gross and Co Solicitors)

DECISION AND REASONS

1. I shall refer to the appellant as “the secretary of state” and to the respondent as “the claimant.”
2. The secretary of state appeals with permission from the decision of First-tier Tribunal Judge Shamash promulgated on 25 August 2015 allowing the claimant's appeal under the Immigration Rules as well as pursuant to Article 8 of the Human Rights Convention.

3. In the grounds for permission, the secretary of state contended, inter alia, that there had been a material misdirection of law in respect of the test applied under paragraph 276ADE(vi) of the Immigration Rules. The Judge had accepted that the claimant had no connections in Burundi [59]. It is contended that this is not the proper test under paragraph 276ADE(vi) which requires that there must be a very significant obstacle to the claimant's integration into the country to which he would have to go if required to leave the UK.
4. There were further grounds relating to the alleged failure by the Judge to engage with the public interest considerations.
5. In granting permission, First-tier Tribunal Judge Colyer found that it is arguable that the Judge misdirected himself in applying the incorrect test under paragraph 276ADE (vi), and failing to give adequate reasons.
6. Mr Bonavero, who represented the claimant before the First-tier Tribunal Judge, relied on an extensive Rule 24 response to the secretary of state's appeal, which was prepared by other counsel.
7. In essence he contended that the First-tier Tribunal Judge in fact used the correct test, which was the version of paragraph 276ADE(vi) in force at the date of the secretary of state's refusal. The secretary of state refused the claimant's application on 14 August 2013. It was only on 28 July 2014 that the test changed to "very significant obstacles". The change in the wording operated for applications decided on or after 28 July 2014.
8. Accordingly the Judge used the correct test, namely that the claimant had no ties, including social, cultural or family with the country to which he would have to go if required to leave the UK. Moreover, that was the test relied on by the secretary of state in the reasons for refusal letter. Mr Bonavero also challenged the secretary of state's remaining grounds of appeal as set out in the response.
9. Mr Bramble accepted that the ground relied on by the secretary of state in the permission application had been incorrect. He further submitted that the remaining grounds directed towards public interest considerations were not relevant as the First-tier Judge had upheld the appeal in accordance with the private life provisions under paragraph 276ADE. He therefore accepted that the decision of the First-tier Tribunal Judge should stand.

### **Assessment**

10. I am satisfied that the First-tier Tribunal Judge directed himself appropriately when finding that the claimant "now has no social, cultural or familial connections with

Burundi having lived in the UK for 13 years.” The version of that rule in force at the relevant time was correctly applied.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of any material error on a point of law. The decision shall accordingly stand.

No anonymity direction is made.

Signed

Date: 16 March 2016

Deputy Upper Tribunal Judge Mailer