



**The Upper Tribunal
Immigration and Asylum Chamber)
PA/00658/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at North Shields

Decision & Reasons

On 5 July 2016

Promulgated

Prepared on 6 July 2016

On 6 July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

N. B.

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown, Counsel, instructed by Legal Justice Solicitors
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of the Gambia. She entered the UK as a visitor in April 2009, and then sought to vary her leave as a dependent of her father. That consisted of a number of applications that were all refused, before she claimed asylum on 1 June 2015. On 20 July 2015 the Respondent refused the asylum claim, and made a decision to remove her from the UK. The Respondent was not satisfied that the Appellant had told the truth about her experiences.
2. The Appellant's appeal against the removal decision was heard on 14 March 2016, and it was dismissed on asylum, Article 3, and humanitarian

- protection grounds, but allowed on Article 8 grounds, in a decision promulgated on 18 April 2016 by First Tier Tribunal Judge Robson.
3. The Respondent was granted permission to appeal that decision on 6 May 2016 by First Tier Tribunal Judge Davidge on the basis it was arguable the Judge's findings of fact were inconsistent, and that there had been a failure to engage with the Appellant's case through the lens of the Immigration Rules and s117A-D, in the light of the guidance to be found in decisions such as SS (Congo) [2015] EWCA Civ 387. Thus the matter comes before me.

Error of Law?

4. Ultimately both parties were agreed that the Judge's approach to the Article 8 was flawed for two reasons. First, given her immigration history there was a clear inconsistency between the findings made in paragraphs 62-3 of the decision which rejected her claim to face a risk of harm in the Gambia, and her claim to have no family support in the Gambia, and the conclusion that her return to the Gambia would be disproportionate and unduly harsh. Moreover it was not possible to ascertain from the decision how the Judge had arrived at this conclusion, because the reasoning offered in the decision did not justify it.

Future conduct of the appeal

5. Since both parties were agreed that the decision upon the Article 8 claim had to be set aside and remade, the focus of the hearing then turned to the mechanism for doing so. Neither the Appellant, nor any of her family members had attended the hearing, at the instruction of her solicitors. Since the majority of those who would give evidence in relation to the Article 8 claim live close to the Bradford hearing centre (where the appeal was originally heard) it was agreed that it would be most expedient for any future hearing to take place there. Legal Aid would not be available for that hearing since it would be confined to the Article 8 claim
6. I have in these circumstances considered whether or not to remit the Article 8 appeal to the First Tier Tribunal for it to be reheard, as requested by both parties. In the circumstances of the appeal I am satisfied that this is the correct approach. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for her case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012. Having reached that conclusion, with the agreement of the parties

Decision

7. The decision promulgated on 23 March 2016 did involve the making of an error of law sufficient to require it to be set aside and the appeal to be reheard. Accordingly the decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal with the following directions;
- i) The decision upon the Article 8 appeal is set aside. The appeal is remitted to the First Tier Tribunal for rehearing of the Article 8 appeal. The findings of fact set out in paragraphs 52-63 of the decision are preserved. The appeal is not to be listed before Judge Robson.
 - ii) No interpreter is required for the hearing of the appeal.
 - iii) The Appellant must inform the Tribunal by 5pm on 15 July 2016 what further evidence she seeks to rely upon.
 - iv) The appeal is to be listed on the first available date at the Bradford hearing centre after 19 July 2016.
 - v) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Deputy Judge of the Upper Tribunal JM Holmes

Dated 6 July 2016