



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/21513/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at : Field House

**Decision & Reasons
Promulgated**

On: 23 January 2018

On: 25 January 2018

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**SO
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Dhanji, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr S Kutas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nigeria born on 25 April 1975. He claims to have arrived in the United Kingdom on 8 February 2003. On 16 February 2007 he was arrested whilst attempting to board a Belfast bound ferry and presented a forged British driving licence as identification. On 1 March 2007 he applied for asylum. On 26 March 2007 he was convicted of possession/ control of a false identity document and sentenced to 6 months' imprisonment. His asylum claim was refused and a decision was made to deport him. A Deportation Order was made on 30 October 2007 and on 26 March 2008 he was removed to Nigeria.

2. On 19 May 2008 the appellant was granted entry clearance to the UK as a spouse and re-entered the UK on 25 May 2008. On 30 October 2014 he arrived in the UK from Italy. It was discovered that he was the subject of a Deportation Order and that he was divorced from his wife and removal directions were set for his removal. Following various unsuccessful applications, the appellant was removed to Italy on 24 March 2015. On 10 April 2015 an application was made on behalf of the appellant for the Deportation Order to be revoked. On 30 July 2016 the respondent made a decision refusing to revoke the Deportation Order and refusing the appellant's human rights claim.

3. The appellant appealed against the decision to refuse his human rights claim. His appeal was heard before First-tier Tribunal Judge Davey on 20 July 2017, on the basis of submissions only. On behalf of the appellant it was argued that the Deportation Order had, by implication, been revoked by the consequence of the grant of leave to enter on 19 May 2008. It was also argued that the respondent's decision was in breach of the appellant's Article 8 human rights. The appellant's human rights claim was based on his right to have a family life with his daughter, a British citizen born on 26 August 2009 and it was argued that the interference with the appellant's family life was disproportionate.

4. In his written decision promulgated on 2 October 2017, Judge Davey rejected the argument that the Deportation Order had been revoked by the grant of leave to enter. With regard to the appellant's human rights under Article 8 of the ECHR, he concluded that the respondent's decision was not disproportionate. He accordingly dismissed the appeal on all grounds.

5. Permission to appeal to the Upper Tribunal was sought on behalf of the appellant on the grounds that the judge had made an error of law by providing conflicting decisions, since he had indicated at the hearing that he would allow the appeal under Article 8, albeit reserving his position as to the implied revocation of the deportation order, yet he had dismissed the appeal in his written decision.

6. Permission was granted on 26 October 2017.

7. Judge Davey was invited to comment on the grounds and his response was sent to the parties in a Memorandum on 8 December 2017, in the following terms:

"At the hearing on the 20 July 2017 I said, after the conclusion of all the submissions that I intended to allow the appeal on the Article 8 ECHR ground. However I said, as I always do in such circumstances, that there is no decision until the same is in writing and promulgated. I did reserve my decision.

On reflection upon the documentary evidence and submissions I decided, rightly or wrongly, for the reasons given to dismiss the Article 8 claim and other arguments, I did not cut short or limit the submissions made by either party...

...There are no 'conflicting decisions'...

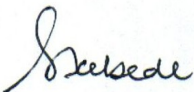
I set out in my decision why I rejected the Article 8 claim. It did not seem to me necessary to explain or give reasons why my view had changed on the merits of that claim: To do so served no evident purpose nor make any difference to the outcome...”

8. At the hearing both parties made submissions. I was provided with a copy of the Home Office Presenting Officer’s notes of the hearing before Judge Davey. Mr Dhanji relied on the statement and attendance note from counsel who had presented the appellant’s appeal before Judge Davey, and the Presenting Officer’s note, confirming that the judge had indicated at the end of the hearing that he would allow the appeal under Article 8. He submitted that there had been procedural irregularity and unfairness in the subsequent dismissal of the appeal without the judge providing reasons for changing his mind and without inviting submissions in response or reconvening the hearing. He relied upon the decision of the Tribunal in K v Secretary of State for the Home Department (Rwanda) [2003] UKIAT 00047 in that respect. Mr Kutas, in his submissions, relied on Judge Davey’s response and on the case of SK (Sri Lanka) v Secretary of State for the Home Department [2008] EWCA Civ 495 in submitting that reconvening would have served no useful purpose.

9. Having considered the respective records of the hearing before Judge Davey there seems to be no challenge to the fact that the judge announced that he was going to allow the appeal on Article 8 grounds. I accept Mr Kutas’ argument, relying on Judge Davey’s comments, the judgment in SK and the relevant 2014 First-tier Tribunal Procedure Rules, that it was the written decision which was the relevant decision in the appellant’s appeal and not the oral indication of the judge. However, and as Mr Kutas acknowledged, the position in such circumstances where the judge has had a change of mind is that fairness usually dictates that the hearing should be reconvened. I do not consider that the circumstances before me are the same as those in SK where it was found that reconvening served no useful purpose, since in that case there had already been a further reconsideration and determination by another Tribunal. In the circumstances it seems to me that, given the judge’s change of mind and the lack of notice given to the parties and opportunity to make further submissions, fairness and justice require that the appeal be heard again by another Tribunal.

DECISION

10. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Davey.

Signed 
Upper Tribunal Judge Kebede
2018

Dated: 24 January