



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/18414/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 19th June 2014

Determination Promulgated
On 9th July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

ADEDAPPO ADENIHUN OJO
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No legal representation
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction and Background

1. The Appellant appeals against a determination of Judge of the First-tier Tribunal N Manuel, promulgated on 5th December 2013.

2. The Appellant is a Nigerian citizen, born 23rd March 1984 who applied for leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant.
3. The application was refused on 7th May 2013, the Respondent making a combined decision to refuse to vary leave to remain, and to remove the Appellant from the United Kingdom by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006 (the 2006 Act).
4. The Appellant appealed and his appeal was heard by Judge Manuel (the judge) on 11th November 2013. The judge dismissed the appeal under the Immigration Rules.
5. The Appellant applied for permission to appeal to the Upper Tribunal contending that the appeal should have been allowed on the basis that the section 47 decision to remove was unlawful, relying upon Adamally and Jaferi [2012] UKUT 00414 (IAC).
6. Permission to appeal was granted by Judge of the First-tier Tribunal Colyer who found the grounds arguable, having considered Ahmadi [2013] EWCA Civ 512.
7. Following the grant of permission to appeal the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 accepting that the judge had erred in law and that the removal decision pursuant to section 47 of the 2006 Act was unlawful.

The Hearing

8. There was no attendance on behalf of the Appellant. I considered rule 38 of the 2008 Procedure Rules, and was satisfied that the Appellant and his representatives had been notified of the hearing, and I considered that it was in the interests of justice to proceed with the hearing.
9. Mr McVeety relied upon the rule 24 response, contending that the decision of the First-tier Tribunal should be set aside, but re-made with all findings preserved, save that the section 47 removal decision was unlawful.

My Conclusions

10. The judge erred by failing to determine that the Respondent's removal decision made under section 47 of the 2006 Act was not in accordance with the law because it had been made at the same time as the decision refusing leave to remain. The Respondent's decision was made on 7th May 2013, the day before section 51 of the Crime and Courts Act 2013 was introduced, which made it lawful to make the two decisions at the same time and to serve them in the same document.
11. There was no challenge to any of the other findings made by the First-tier Tribunal, and those findings stand and are preserved.
12. Therefore the Appellant's appeal is dismissed because the requirements of paragraph 245DD(b) of the Immigration Rules are not satisfied for the reasons given by the

First-tier Tribunal. This is not a case where human rights were raised before the First-tier Tribunal.

Decision

The determination of the First-tier Tribunal contained an error of law and is set aside. I substitute a fresh decision.

The Appellant's appeal is dismissed under paragraph 245DD(b) of the Immigration Rules.

The appeal is allowed only to the extent that the Respondent's decision to remove the Appellant is not in accordance with the law, and that decision therefore remains outstanding before the Respondent.

Anonymity

There was no anonymity direction made in the First-tier Tribunal. There has been no application for anonymity, and no anonymity order is made by the Upper Tribunal.

Signed

Date 30th June 2014

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The appeal has been allowed only in respect of the decision to remove under section 47 of the 2006 Act. No fee is payable to appeal a section 47 decision and therefore no fee award is made.

Signed

Date 30th June 2014

Deputy Upper Tribunal Judge M A Hall