



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/20655/2013

THE IMMIGRATION ACTS

Heard at Field House

On 26 June 2014

Determination

Promulgated

On 21 July 2014

Before

**THE HONOURABLE MR JUSTICE HADDON-CAVE
UPPER TRIBUNAL JUDGE COKER**

Between

MR OLUSEGUN ADESOLA DAIRO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss R. Mehra, Counsel

For the Respondent: Mr R. Hopkin, Home Office Representing Officer

DETERMINATION AND REASONS

1. This is an appeal against the Determination and Reasons of First Tier Judge Russell promulgated on 1st April 2014 whereby he dismissed the Appellants' appeal against the Respondent's decision dated 2nd April 2013 whereby the Respondent refused to grant the Appellants residence cards.

2. The background facts are set out in the Determination and Reasons and so not need rehearsing.
3. This appeal can be disposed of relatively briefly because the issues raised are simple.
4. The First-tier Tribunal Judge, Judge Russell, said there were three limbs to the appellants' claim: the Chen point, the Zambrano point and Article 8 ECHR (see paragraph 9 of the Determination and Reasons). The judge observed in paragraph 13 that whilst the Secretary of State had focused in her decision dated 2 April 2013 on the Chen point (namely whether or not the appellant had comprehensive medical cover) the Secretary of State had not expressly considered the Zambrano point or the Article 8 ECHR point. The judge was plainly in error in that finding. The Decision letter did consider both these matters.
5. The Judge then went on to consider for himself only the Chen point (in paragraphs 15 to 18 of the Determination and Reasons) but not the other two points. The sole basis, therefore, of the judge's decision was, as set out in paragraph 18, that he found that the appellant had not established that he had comprehensive sickness insurance as required by the Regulations. The Judge failed to deal with either of the other two points, namely the Zambrano point and the Article 8 ECHR point. He also failed to deal with an issue under the Chen point as regards sufficiency of reasons. For these reasons the judge's decision is materially deficient and cannot stand.
6. The Appellant's Counsel urged us to proceed to re-make the decision ourselves this afternoon.
7. The practice statement dated 25 September 2013 in relation to disposals of appeal in the Upper Tribunal reads as follows:

"The Upper Tribunal is likely on each such occasion to proceed to remake the decision instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

 - (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
 - (b) the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal."
8. A close reading of the practice statement at paragraph 7.2(b) reveals that it is focused on two aspects: (1) whether there is a decision in the appeal which should be remade and (2) whether the Upper Tribunal is satisfied that the nature or extent of any judicial fact-finding which it is necessary to make in order to determine or remake that decision is one

such that having regard to the overriding objective it is appropriate to make in the Upper Tribunal or to remit.

9. There are, therefore, three problems with re-making the decision today. The first is that we would have no less than three decisions in this case to remake: (1) the Zambrano point, (2) the Article 8 ECHR point and (3) the partial Chen point on sufficiency of reasons. Second, in relation to those three matters it is not a matter of re-making the decisions because we do not even have the benefit of a decision of the First-tier Tribunal. Third, it is quite plain that each would involve significant evidence and submissions. However, in our judgment, it would not be in accordance with the overriding objective or the purpose of this procedure for the Upper Tribunal to determine such matters given the nature and extent of such evidence that would need to be called.
10. For those reasons, we allow the appeal by the appellant but remit the matter to First-tier Tribunal Judge Russell to determine the three points which have been identified which should have been dealt with in his original Determination and Reasons, namely the Zambrano point, the Article 8 ECHR point and the Chen sufficiency of reasons point.

Conclusions

There is an error of law such the the decision is set aside
We set aside the decision.

The appeal is remitted to First-tier Tribunal Judge Russell to conclude his determination

Signed

Date

Mr Justice Haddon-Cave