



Upper Tribunal
Immigration and Asylum Chamber

Appeal Number: IA/35100/2013

THE IMMIGRATION ACTS

Heard at Field House
On 17 March 2014

Promulgated on:
On 18 March 2014

Before

Upper Tribunal Judge Kekić

Between

**Ahmed Eltayeb Suliman Eltayeb
(anonymity order not made)**

Appellant

and

**Secretary of State for the
Home Department**

Respondent

Determination and Reasons

Representation

For the Appellant:

Ms G Mellon, Counsel

For the Respondent:

Ms R Pettersen, Home Office Presenting Officer

Background

1. This appeal comes before me following the grant of permission to the respondent by First-tier Tribunal Judge Lever in respect of the determination of First-tier Tribunal Judge Walters who dismissed the appeal by way of a determination dated 29 January 2014.

2. The appellant is a citizen of Sudan born on 18 August 1981 although it is said that he has lived in Egypt for most of his life. He appeals the respondent's decision, on 9 August 2013, to curtail his spouse visa following the breakdown of his marriage some ten months earlier. The appellant arrived in the UK on 1 May 2012 with leave until 26 June 2014 and the appellant's wife informed the Secretary of State that the marriage had broken down in October 2012. The Secretary of State noted that the appellant had taken no steps to notify her of his changed circumstances.
3. The Secretary of State decided to curtail the appellant's extant leave under paragraph 323(ii) with reference to paragraph 281(iii) of HC 395. These rules respectively state:

323. A person's leave to enter or remain may be curtailed:

.....

(ii) if he ceases to meet the requirements of the Rules under which his leave to enter or remain was granted;....

281. The requirements to be met by a person seeking leave to enter the United Kingdom with a view to settlement as the spouse or civil partner of a person present and settled in the United Kingdom or who is on the same occasion being admitted for settlement are that:

.....

(iii) each of the parties intends to live permanently with the other as his or her spouse or civil partner and the marriage or civil partnership is subsisting;...
4. The judge found that the marriage had indeed ended but he rejected the appellant's attempts to persuade him that he was a victim of domestic violence. He also considered Article 8 but found that the appellant had no family life here and that his private life was of short duration and did not engage the human rights convention. Accordingly, he dismissed the appeal.

Appeal hearing

5. At the hearing I heard submissions from the parties on whether or not the judge made errors of law. The appellant was present and the proceedings were translated to him by the court interpreter.
6. For the appellant, Ms Mellon submitted that the judge had made four errors; he had wrongly stated that the respondent had considered the amended rules when reaching her decision, he had failed to deal with the amended rules himself, he had failed to deal with the issue of whether the appellant had ties to Sudan and he had been wrong to raise the issue of removal to Egypt given that the Secretary of State did not propose to return the appellant to that country.
7. Ms Pettersen submitted that the decision had been made in the context of a curtailment of leave and had to be considered in that light. The Secretary of

State had considered Article 8 but found that the appellant had only been here for a short time and that removal would not interfere with the limited private life he had established.

8. In response, Ms Mellon submitted that there had to be an analysis of the appellant's ties to Sudan and that had not been investigated at all.
9. At the conclusion of the hearing I reserved my determination which I now give.

Findings and Conclusions

10. I have taken into account the submissions made and the determination of the First-tier Tribunal. I have also considered the rules under which the decision was made.
11. I would state at the outset that I do not consider that it makes any difference at all to the Article 8 assessment as to whether the decision was made to curtail leave or whether there had been an application by the appellant. The fact remains that the respondent decided to consider the appellant's Article 8 rights but for reasons which are not clear to me, given the respondent's general view that the amended rules dealing with Article 8 are a complete code, this was done in isolation from the rules.
12. It is plain that, although the judge stated that the respondent had considered the new rules (amended on 9 July 2012) in reaching her decision, the refusal letter makes no reference to them, relying solely upon paragraphs 323 and 281. Given that the decision was made over a year after the amendment, they plainly apply to the appellant. It is maintained in the grounds that it was specifically argued before the judge that paragraph 276ADE(iv) applied, i.e. the provision pertaining to an applicant aged over 18 who had lived in the UK for less than 20 years but had no ties with the country to which he would have to go if required to leave the UK. Although this is not apparent from the determination or the Record of Proceedings and there is no skeleton argument on file, I am of the view that it is a rule that the judge should have taken into account, especially as he himself showed he was aware of the rule change (determination: paragraph 57). Ms Mellon is, therefore, right to argue that the judge erred in holding that the Secretary of State had looked at these provisions (when she had not) and also erred in failing to consider them himself.
13. The judge is also criticised for his remarks about Egypt and the lack of examination into the appellant's ties with Sudan. The refusal letter makes a reference to the appellant being able to have a private life in Sudan so it may be that the Secretary of State was minded to return him there. However, it is

right that there has been no investigation into the nature of the ties he may have with that country, either by the Secretary of State or the judge, and the judge gives no reason for why he accepted the appellant had lived in Egypt most of his life, given his other adverse credibility findings. His findings that the appellant could enjoy private life in Egypt are odd given that there had been no decision to remove him to that country.

14. For all these reasons, I concur with Ms Mellon that the judge erred and that the Secretary of State also erred. The Secretary of State should have made it clear whether she planned to remove the appellant to Sudan or to Egypt. If the former, she should have investigated whether he had ties with that country, it being his claim (which will have to be assessed) that he had never been there, although it seems his mother and brother reside there. She should have considered whether the appellant fell to be considered under paragraph 276ADE(iv) when assessing Article 8, rather than considering Article 8 outside the rules. These shortcomings in her decision make it unlawful and necessitate a remittal to her for a lawful decision to be made.

Decision

15. The First-tier Tribunal Judge made errors of law. His decision is set aside. I re-make the decision and allow the appellant's appeal to the limited extent that the respondent's decision was not in accordance with the law. The appeal is remitted to the Secretary of State for a lawful decision to be made.

Signed:

Dr R Kekić
Judge of the Upper Tribunal

17 March 2014