



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

Appeal Number: IA/40278/2013

THE IMMIGRATION ACTS

Heard at Field House

**On 21 August 2014
Prepared 21 August 2014**

**Determination
Promulgated
On 2 September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR SEEDY SAIDY

Respondent

Representation:

For the Appellant: Ms K Pal, Home Office Presenting Officer

For the Respondent: Ms L Tinubu, Cambridge Immigration Legal Centre

DETERMINATION AND REASONS

1. In this determination the Appellant is referred to as the Secretary of State and the Respondent is referred to as the claimant.
2. The claimant, a national of Gambia, date of birth 4 May 1974, appealed against the Secretary of State's decision dated 18 September 2013 to make removal directions under Section 10 of the Immigration and Asylum

Act 1999, a human rights/asylum claim having been refused , a form IS.151A having been served on 28 May 2013.

3. The claimant's appeal against that decision came before First-tier Tribunal Judge Thew who, on 12 June 2014, allowed the appeal under Article 8 of the ECHR. The Secretary of State was granted permission to appeal by First-tier Tribunal Judge Chambers on 2 July 2014.
4. The core of the Secretary of States's challenge is one relating to reasons being given and in particular it is also said that the judge considered the Article 8 issues and its outcome before considering whether there were compelling circumstances not sufficiently recognised under the Rules as the first step in the process.
5. It is clear that at paragraph 70 of the determination the judge set out an element of the case of Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640 (IAC). Mr Justice Cranston set out, with reference to the well-recognised cases of MF [2012] UKUT 00393 and Nagre v SSHD [2013] EWHC 720 (Admin), the consideration of whether the claimant can succeed under the Rules and if not whether there are compelling circumstances not sufficiently recognised under the Rules to consider Article 8 and the merits of an Article 8 claim outside of the Rules.
6. Having set out that format the judge at paragraphs 71 to 72 of the determination proceeded to highlight a number of material factors which persuaded her that Article 8 factors were sufficiently engaged to allow the appeal on that basis. It is unfortunate that the judge did not set out, as might be expected the correct approach identified in Razgar and put in order in a coherent fashion the appropriate analysis of the questions that needed to be addressed. However, the Secretary of State's grounds of appeal are not founded upon that as a material error of law, rather the issue of whether or not there has been a proper approach to the

consideration of those compelling circumstances prior to the assessment of Article 8 outside of the immigration rules.

7. In the circumstances, although for my part I would have regarded that as an error of law, in the light of the point not being taken and the arguments that I have heard I am satisfied that it is not necessary to consider that matter any further.
8. The judge had a range of information before her, not least some which the Secretary of State had addressed in the Reasons for Refusal Letter, particularly in relation to the effects on the younger child of the Claimant's partner, particularly Niamh, and what impact it might have upon her of the Claimant's removal bearing in mind the evidence that the judge had received on the extent to which the Appellant played a part in her life and indeed in the life of his family generally with the stepchildren and his partner.
9. On a plain reading of the judge's determination it is certainly arguable that the judge first decided that the appeal should be allowed under Article 8. Then in paragraph 83 of the determination the judge set it out that the issues under Article 8 amounted to compelling reasons not sufficiently recognised and then said "on the evidence before me I conclude that they do."
10. Ms Tinubu submits that the Secretary of States objection is one of form or a procedural objection to layout rather than to the substantive merits She sought to persuade me that elements recited in paragraphs 71 to 82 were sufficient to show there were compelling circumstances not sufficiently recognised under the Rules.
11. I have reached the conclusion that the determination is poorly drafted and unstructured in parts. However, it seemed to me that the judge did conclude that there were circumstances that were compelling, particularly

affecting a child and the impact upon her of the disruption and so forth associated with the complications relating to the appeal. In the circumstances the other factors, whilst I might not have found them so compelling, the judge plainly thought they were important matters and particularly in relation to the implications of removal to the Gambia for the child an issue, which was properly recognised by Ms Pal, not dealt with under the Rules but rather under statute being Section 55 of the BCIA 2009.

12. It seemed to me understandably that the person settling the grounds of the application felt that there was an issue that needed to be addressed. I do not criticise either the person who drafted of the grounds or indeed the judge who granted permission.
13. Whilst there was in effect an argument being run by the Claimant with reference to a near-miss approach it did not seem to me that added to the point and nor were the submissions by Ms Pal particularly directed at those.
14. In the circumstances, whilst I might not have reached the same decision, let alone for the reasons given, that does not disclose an error of law in making the findings of fact and the decision derived from them. I have in mind the decisions of *R (Iran) [2005] EWCA 982* and *E & R [2004] QB 1044 (CA)* which identify the scope which has been much repeated by the Court of Appeal seeking to restrict the Upper Tribunal from substituting its own and different views to that reached by a First-tier Tribunal Judge. In these circumstances, although the grounds are not without merit, I do not find that the errors of presentation and of analysis demonstrate that there is an absence of adequate reasons or that the judge has failed to consider compelling circumstances. The presentation as the judge made it prior to the conclusion on compelling circumstances was poor but did not disclose a material error of law in the overall assessment of the important issues raised in the appeal.

15. The Secretary of State's appeal is dismissed. The original Tribunal's decision stands.

Signed

Date

Deputy Upper Tribunal Judge Davey