



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

Appeal Number: OA/12673/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 9 September 2014**

**Determination
Promulgated
On 18 September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR MARTIN ALPHA LAMIN BANGURA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms. Lee Ong, Home Office Presenting Officer.
For the Respondent: No appearance.

DETERMINATION AND REASONS

1. No application for anonymity has been made in these proceedings and there is no reason why such an order should be made.

2. This is a respondent appeal but I shall henceforth refer to the parties in the original terms detailed in the determination of Judge of the First-tier Tribunal Majid following a hearing at Taylor House on 25 April 2014 resulting in a determination promulgated on 30 April 2014.
3. The appellant is a citizen of Sierra Leone who appealed against a decision of the respondent on 25 April 2014 refusing him leave to enter the United Kingdom under the Immigration Rules HC 395 (as amended). Albeit that the determination does not confirm it, the appeal was against a decision under paragraph 297 of the Rules.
4. Judge Majid's determination allowed the appellant's appeal under the Immigration Rules and under the ECHR.
5. The respondent was granted permission to appeal by Judge of the First-tier Tribunal Perry. His reason for so doing are as follows:-
 - "1. The respondent seeks permission to appeal, in time against a decision of the First-tier Tribunal (Judge Majid) who, in a determination promulgated on 30th April 2014, allowed the appeal against her refusal to grant the appellant's application for entry clearance as a dependent child of a person who is settled in the United Kingdom.
 2. The Tribunal concluded its determination with the words 'I am persuaded that the appellant merits the benefit of the Immigration Rules HC 395 (as amended) as well as the provisions of the ECHR'. It is arguable, as the applicant contends, that despite extensive citation of case law the Tribunal did not explain how or why the appellant met the requirements of the Immigration Rules. It is further arguable that the Tribunal failed to explain why the appellant's circumstances were insufficiently recognised by the Immigration Rules (so as to merit a grant of leave outside those Rules) and how in any event such a proposition could be reconciled with the Tribunal's earlier finding that the appellant's circumstances fell within the compass of the Rules."
6. Ms. Lee Ong originally thought that today's hearing was a resumed one following a decision that a material error existed within Judge Majid's determination. The Tribunal's file does not corroborate that position. In fact it shows that the appeal was adjourned by reason of the sponsor being on holiday on the date of first listing in the Upper Tribunal. Thus the appeal came before me today. Accordingly I allowed Ms. Lee Ong some time to consider her position and submissions.
7. She went on to rely on the written grounds which sought permission to appeal and contended that there is a clear error of law in the judge's determination, including the non-referral to any specific Immigration Rule, a failure to consider relevant case law on sole responsibility and the

resulting application of that case law to the facts found in the instant appeal.

8. The sponsor was unrepresented. He explained that he could not afford to be represented at today's hearing. I assured him that as a consequence he would not be prejudiced and that I would assist him in dealing with the issues that fell to be considered at today's hearing. I carefully explained to him what those issues are and the procedure that had brought about today's hearing. He was fully aware of how the appeal had come to be allowed, but felt that as the respondent was represented at the First-tier Tribunal hearing, any issue that she now raised ought to have been dealt with at that stage.
9. The judge's determination runs to 31 paragraphs and eight pages. However, there are few paragraphs which contain material specific to this particular appellant. The balance of the determination comprises of observations on issues that need to be considered in an appeal along with case law relating to children and Article 8. There is no citing of any case law in relation to the issue of sole responsibility. It is not at all clear how this appeal came to be allowed under either the Immigration Rules or the ECHR. There is an inadequate consideration of the material aspects of the relevant Immigration Rule along with a failure to explain why the appeal should also be allowed on human rights grounds.
10. As is asserted the judge has failed to make clear in the determination what provision of the Immigration Rules the appellant is able to meet, and in granting leave outside of those Rules the judge has erred in law by failing to provide reasons as to why the appellant's circumstances were not "sufficiently recognised" by the Rules. There is here an inadequacy of reasoning as found by Judge Kelly in the grant of permission. I find the judge has materially erred and the determination is therefore set aside in its entirety and the appeal will proceed to a de novo hearing.
11. In deciding whether to set aside the decision of the First-tier Tribunal under Section 12 of the Tribunal's Court Enforcement Act 2007, I can dispose of the appeal in one of two ways, either by remitting the case to the First-tier Tribunal or by remaking the decision. The choice is regulated by paragraph 7 of Part 3 of the Practice Directions of the Immigration and Asylum Chamber of the Upper Tribunal which only contemplates remittal and very limited circumstances. This is such a case. The effect of the cumulative errors detailed above have been to deprive a party - the respondent (Secretary of State for the Home Department) - before the First-tier Tribunal of a fair hearing, or other opportunity for the parties' case to be put to and considered by the First-tier Tribunal. The sponsor here wished to file a full witness statement outlining his case. That has not been done. There is also the prospect of him once more securing representations. In all these circumstances I remit the case to the First-tier Tribunal subject to the attached directions. I do so with the consent of both the appellant's sponsor and the respondent's representatives.

Signed

Date 18 September 2014.

Deputy Upper Tribunal Judge Appleyard

DIRECTIONS FOR REMITTAL TO THE FIRST-TIER TRIBUNAL

1. The appeal is to be listed at Taylor House on the first available date.
2. The time estimate for the hearing is two hours.
3. No interpreter is required.
4. In the event of either party wishing to file and serve additional evidence this must be done no later than five working days prior to the date of hearing.

Signed

Date 18 September 2014.

Deputy Upper Tribunal Judge Appleyard