



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/12782/2013

THE IMMIGRATION ACTS

Heard at Field House
On 1 August 2014
Prepared 1 August 2014

Determination Promulgated
On 26 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

ENTRY CLEARANCE OFFICER - ACCRA

Appellant

and

WILLIAMS GODFREY

Respondent

Representation:

For the Appellant: Miss A Everett, Senior Presenting Officer
For the Respondent: Mr S Unigwe, Counsel, instructed by Melvyn Everson & Co

DETERMINATION AND REASONS

1. In this determination the Respondent is hereafter referred to as the claimant and the ECO is referred to as the ECO rather than as the Appellant.
2. The claimant, a national for Sierra Leone, date of birth 15 November 1996, appealed against the decision of the ECO, dated 2 May 2013, refusing leave to enter under the Immigration Rules. The appeal against that decision came before First-tier Tribunal

Judge Majid on 30 April 2014 and in a determination promulgated on 6 May 2014 the judge allowed the appeal seemingly under the Immigration Rules, paragraph 297, and under Article 8 of the ECHR.

3. Permission to appeal that decision was given to the ECO by First-tier Tribunal Judge Holmes on 13 June 2014 on the basis that it was arguable that the judge had failed to provide adequate reasons for whatever decision he had made on the issues that were in dispute and that it was unclear whether the appeal was allowed or dismissed under the Immigration Rules or merely allowed on Article 8 ECHR grounds. First-tier Tribunal Judge Holmes correctly identified that there was no adequate assessment of proportionality of the refusal in the light of the (unspecified) failure to meet the requirements of the Rules.
4. The ECO's decision had proceeded with reference to paragraph 297(1)(e) of the Immigration Rules (the Rules) on the basis that sole responsibility had not been established. The evidence provided by the Appellant's mother and Miss Lardner essential addressed the issue of "sole responsibility" and really did not in the written evidence address whether or not there were serious and compelling family or other considerations which made the exclusion of the Appellant undesirable.
5. The representations made by a Miss Ukachi-Lois may for their part have been entirely coherent in addressing both paragraph 297(1)(e) and (f) but if so, unfortunately those do not translate into the way the decision was set out. As Mr Unigwe entirely correctly accepts, the determination ultimately makes no findings whatsoever on the claim in relation to sole responsibility and without making reference to the wording of subparagraph (f) simply refers to the Appellant being in desperate need of his mother's and other people's care, whoever they may be, and to the Appellant being in serious need of help from the UK. The uncle, Eustace bako Johnson's statement which is not in any part, recited by the judge is contained within a statutory declaration, dated 20 February 2013. It simply indicates in brief that he, because of his travelling arrangements, was not in a position to provide the kind of support that a 17½ year old child would require.
6. The statement of the appellant's mother, Hillina Lardner similarly does not address matters in terms of there being either a desperate need nor serious need. Although self-evidently she would wish to be joined in the UK, where she has indefinite leave to remain, by her son. One cannot have anything other than sympathy for Mrs Lardner in having gone through that process and no doubt complied with those matters advised by her representatives, that she attends today to hear of the significant deficiencies in the determination of the judge.
7. It is clear law from the cases of ER [2004] QB 1044 CA and R(Iran)[2005] EWCA982 that the parties to an appeal are entitled to proper, sufficient or adequate reasons. Unfortunately the determination is bereft of an adequate explanation of reasons. Albeit as Mr Unigwe rightly maintains, the judge at least made some findings but one cannot determine exactly what they were and how they were arrived at.

8. Accordingly I find that the judge gave no adequate or sufficient reasons for the finding that the Appellant could succeed under the Immigration Rules. This is not to say he might not be able to do so but on the face of it I cannot tell whether or not that was a likely prospect.
9. Similar the judge having recited the case of Razgar [2004] UKHL 27 and various other cases simply says this:

“25. Applying the Razgar test, one cannot escape the conclusion that the Appellant is in a familiar relationship. ‘Family life’ is interfered with in such a serious manner that Article 8 is engaged. One cannot see that preventing the Appellant from entering this country to join his mother will serve the attainment of any legitimate goal. Therefore refusal of leave to the Appellant to enter this country is disproportionate and contrary to the spirit of ECHR protections.”
10. Apart from the conflation of elements of Razgar, the fact of the matter is the judge gives no explanation as to the significance of the interference, assuming as I do the re-establishment of a family life is an aspect of Article 8 of the ECHR. Rather, the judge simply fails to address whether the issue of interference is in accordance with the law or whether it is necessary in a democratic society to do so, having regard to the way the fourth question is posed in Razgar. Similarly there is simply a completely inadequate explanation by the judge in relation to proportionality and the factors to be taken into account, not least the public interest, irrespective of the Secretary of State's own views of these matters.
11. In the circumstances therefore the finding in paragraph 29 of the determination

“I am fully conscious of the ‘legal requirements’ stipulated by the Immigration Rules. What came through from the oral evidence and the documents was the fact that this Appellant is in desperate need of his mother’s and other people’s care. Naturally the affidavit of his father’s brother dated 20 February 2013 supports the idea that he is in serious need of help from the UK.”
12. It is troubling that there is no such explanation or reasoning of a serious need of help from the United Kingdom. Be that as it may I do not find that is properly an explanation of either the appeal in relation to sole responsibility under the Rules or in relation to the necessary compelling circumstances arising for family or other considerations under paragraph 297(1)(f) of the Rules.
13. Thus the finding, if it can be called that, without reasons in paragraph 30 does not take the matter anywhere. I find the original Tribunal made errors of law and the original Tribunal’s decision cannot stand.

14. Having heard submissions from the parties I am satisfied that this is an appropriate case, since there is no adequate decision and no adequate findings of fact, to return to the First-tier Tribunal for it to be remade again.

Directions

- (1) Return to the First-tier Tribunal for remaking on all issues.
- (2) Not to be heard by First-tier Tribunal Judge Majid.
- (3) Time estimate 1½ hours.
- (4) Any additional statements including any statement from the Appellant relating to the issues in the appeal to be served not later than 14 days before the hearing of the appeal.
- (5) No interpreter required.
- (6) Bundles of documents relied upon by the parties to be provided to the First-tier Tribunal not later than 14 days before the further hearing.
- (7) A chronology to be provided by the Appellant's representatives.
- (8) Skeleton arguments if relied upon by the parties to be provided 14 days before the date of further hearing.

Signed

Date 19 August 2014

Deputy Upper Tribunal Judge Davey