



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

Appeal Number: IA/11416/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20th February 2015**

**Decision & Reasons
Promulgated
On 5th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**IFEANYE ONENESS ADIKWU
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Melvin, Home Office Presenting Officer

For the Respondent: Ms Easty, Counsel, for Waterstone, Solicitors London

DECISION AND REASONS

1. The Appellant in these proceedings is the Secretary of State however for convenience I shall now refer to the parties as they were before the First-tier Tribunal.
2. The Appellant is a citizen of Nigeria born on 20th November 1970. He appealed against the decision of the Respondent dated 16th January 2014

refusing him leave to remain in the United Kingdom under the Immigration Rules HC 395 as amended. His appeal was heard by Judge of the First-tier Tribunal Majid on 31st October 2014. The appeal was allowed in a determination promulgated on 6th November 2014.

3. An application for permission to appeal was lodged. Permission was granted by Judge of the First-tier Tribunal Chambers on 5th January 2015. The application states that the grounds submit that it is unclear on what basis the appeal was allowed and that the judge failed to give adequate reasons. First-tier Tribunal Judge Chambers found that these grounds are arguable and granted permission.

Determination

4. The Presenting Officer submitted that the Respondent is challenging Judge Majid's decision because he gave no adequate reasons for finding that the Home Office made a serious error in refusing the Appellant's application. He submitted that nowhere in the determination does the judge say what this error is or why he is allowing the appeal.
5. The Presenting Officer referred to paragraph 17 of the determination which refers to the case of **Chahal [1996] ECHR 54** submitting that this is irrelevant.
6. The Presenting Officer submitted that it is trite law that the judge has to explain his reasons in his determination and in this determination the judge does not say what his decision is, why he made his decision and why he disagrees with the refusal letter. He submitted that none of the points made by the judge are explained.
7. He referred to Article 8 and the Article 8 case law and submitted that the judge has not indicated that he has allowed the appeal under Article 8, so the decision cannot stand. He submitted that the decision is not reasonable. The judge has not addressed the issues and no reasons have been given. He submitted that the judge has made no findings of fact to back up his decision.
8. He submitted that there has been no fair hearing and the appeal should be remitted back to the First-tier to be heard before another judge, other than Judge Majid.
9. The Appellant's representative submitted that the error application relating to paragraph 17 is incorrect as although this paragraph may be irrelevant there is no error of law. I accepted that.
10. The representative submitted that with regard to the substantive decision it is clear that the judge has allowed the appeal under Article 8 of ECHR. I was referred to paragraph 10 of the determination. She submitted that the Appellant's first appeal was in 2013. This was allowed and remitted to the Respondent for failing to exercise her discretion properly. She submitted that a fraud was perpetrated on the Appellant's bank account and money

was taken out of the account without the Appellant's knowledge which meant that when the Respondent paid the cheque with the Appellant's application into her account there were not sufficient funds to cover it. She submitted that had the Respondent presented the cheque when it was first received by her this would not have happened, so the delay on the part of the Respondent meant that this application was refused.

11. She submitted that the Appellant has been here for twelve years and when he applied for leave to remain he had been here for ten years lawfully. She submitted that had the fraud not taken place his application would have been accepted. She referred me to the refusal letter and submitted that this fraud has been accepted as true by the Respondent. She referred me to paragraph 10 of the determination which refers to this and states that the Respondent made an error when dealing with the Appellant's case and has treated the Appellant badly.
12. I was referred to the refusal letter at paragraph 3 on page 3 which deals with this matter. This paragraph refers to the matter but points out that the Appellant had a period of 28 days to resubmit the application which he did. This second application was rejected because the cheque was not endorsed by the Appellant. The letter states that it was because of this that the Secretary of State was not prepared to exercise her discretion and waive the breach. The Respondent accepted the situation relating to the first application.
13. I was then referred by the representative to paragraph 18 of the determination in which the judge deals with Article 8. At 18A compelling circumstances are considered and at 18D the case of **Izuazu** is referred to. She submitted that it is clear from the determination that the judge allowed the appeal on Article 8 grounds. This is again referred to at paragraph 19. The representative submitted that when the background is considered the determination can be assessed and understood. She submitted that the Record of Proceedings should be looked at, as this as well as the refusal letter explains the background of this claim. She pointed out that the judge does not refer to the Record of Proceedings anywhere in the determination. However it cannot be said that if the judge had referred to it matters would have been explained.
14. The representative submitted that the Respondent is saying that the determination is unsatisfactory because it is not clear what Rule the judge was making his decision under but she submitted it is clear that he is allowing the appeal under Article 8.
15. The representative submitted that the Respondent has not exercised her discretion properly, did not take payment promptly and has not dealt with the defrauding of the Appellant's bank account. She submitted that but for the administrative error and the fact that there was no money in the account because of the fraudulent withdrawal, this Appellant's application would have been accepted. She submitted that even if I find there is an error in the determination it is not a material error.

16. The Presenting Officer submitted that the determination is not clear. The judge has not made clear findings. He has not said that the appeal should be allowed under Article 8 of ECHR and what the Appellant seems to be saying is that the appellant should be allowed to stay because of his long residence but the Rules now state that twenty years is the period for long residence to be successful. He submitted that this applies to this Appellant's claim.
17. The Presenting Officer submitted that the determination cannot stand as it is and that proper findings are required. He submitted that it also has to be decided whether this claim can succeed under the ten-year rule or under Article 8 of the Human Rights Act.

DECISION

18. I have taken into account the submissions of both parties. I find that when I read the determination I am unable to follow it and am unable to understand what the Respondent is accused of doing wrong. I do not know why the judge has allowed the appeal or under what Rule the appeal is allowed or if it is allowed under Article 8 of ECHR.
19. There is no doubt that the judge has not made clear findings in the determination and has not given adequate reasons for his decision. There are no findings of fact backing up his decision and although the determination states that the Respondent was at fault it is not clear how she was at fault.

Notice of Decision

20. Because of inadequate reasoning I find that the Appellant has not had a fair hearing and I am remitting this case back to the First-tier Tribunal for a substantive hearing on all grounds.
21. Judge Majid's decision is set aside.

No anonymity direction is made.

Signed

Date 04/03/2015

Deputy Upper Tribunal Judge Murray