



IAC-AH-LEM-V1

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

Appeal Number: IA/22520/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5th June 2015**

**Decision & Reasons Promulgated
On 6th August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR NABIL BOUROUISA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Lamb, Counsel

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Algeria born on 15th October 1983. The Appellant's immigration history was that on 24th March 2010 he had sought a certificate of approval which was issued. Thereafter on 7th April 2014 the Appellant sought a derivative residence card as the primary carer of a British citizen resident in the UK. That application was refused by the Secretary of State on 13th May 2014.
2. The Appellant appealed and the appeal came before Immigration Judge Veloso sitting at Richmond Magistrates' Court on 30th January 2015. In a decision promulgated on 11th February 2015 the Appellant's appeal was

allowed under the Immigration (European Economic Area) Regulations 2006.

3. The Secretary of State lodged Grounds of Appeal to the Upper Tribunal on 17th February 2015. The grounds are curious. They state that at paragraph 28 of his determination the First-tier Tribunal Judge found that if the Appellant were required to leave the United Kingdom this would impact on his son Adam born on 16th June 2009 to the extent that he would not be able to reside in the United Kingdom. In the same paragraph the judge concluded that the Appellant's wife had stated in her evidence that she would follow the Appellant to Algeria because the alternative would be for her to quit her job and go on benefits. It was submitted by the Secretary of State that the judge had misdirected himself by allowing the appeal under Regulation 15(4a)(c) as the child would still be able to reside in the UK with his mother even if she were to make the decision to give up work and go on benefits.
4. On 1st April 2015 First-tier Tribunal Judge Cox granted permission to appeal. On 15th April 2015 the Appellant's legal representatives filed a response to the grounds of permission pursuant to Rule 24.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal. This is, I note, an appeal by the Secretary of State. To ensure continuity through the appellate process the Secretary of State is referred to herein as the Respondent and Mr Bourouisa as the Appellant. The Appellant appears by his instructed Counsel Mr Lamb. Mr Lamb is familiar with this matter having appeared before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer Mr Walker.
6. This appeal is greatly assisted by the approach adopted by Mr Walker on behalf of the Secretary of State. He acknowledges that the grounds are "a bit misguided". He acknowledges that what is effectively suggested in the Grounds of Appeal is tantamount to encouraging the Appellant's spouse to give up full-time employment and to go onto benefits something which he further acknowledges cannot equate to government policy. He acknowledges the findings of fact and that the Appellant's spouse has been in long-term employment.
7. Mr Lamb submits that there is no material error of law and that the grounds for appealing are putting them even at their highest level unattractive and certainly disclose no errors of law.

The Law

8. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

10. The First-tier Tribunal decision allowing the appeal was based on the Appellant's family circumstances namely that the Appellant's wife was working full-time and that his son Adam was 5 years old and had learning difficulties. I am satisfied that the First-tier Tribunal Judge carefully considered all the available evidence and that her reasons for allowing the appeal were balanced and well explained particularly within paragraphs 26 to 29 of her decision. Furthermore the grant of permission to appeal contends that the employment of the Appellant's wife would enable the Appellant to bring him within the Regulation. I agree with the contention made by Mr Lamb in his Rule 24 response that such an argument is perverse for two reasons. Firstly the Appellant's wife has been working for seven years and this is not a matter when she suddenly found a job deliberately in order to make herself unavailable to care for Adam and secondly it is totally unreasonable to expect her to give up her job and rely on benefit in order to fit into the Secretary of State's argument that she could look after Adam.
11. In such circumstances I am completely satisfied that the grounds for permission to appeal have no substance and that the decision of the First-tier Tribunal Judge is both thorough and well-reasoned and that the First-tier Tribunal Judge's determination discloses no material error of law and the appeal of the Secretary of State is consequently dismissed.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge D N Harris