



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

Appeal Number: IA/44425/2013

THE IMMIGRATION ACTS

Heard at Field House

On 16th December 2014

**Determination
Promulgated**

On 22nd January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR BLAISE KOUAO KOFFI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Burrett (Counsel)

For the Respondent: Mr L Tarlow (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge E G Elliman promulgated on 25th January 2014, following a hearing in Richmond on 17th June 2014. In the determination, the judge allowed the appeal of Blaise Kouao Koffi. The Respondent Secretary of State subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of the Democratic Republic of Congo (DRC), and was born on 14th August 1983. He appealed against the decision of the Secretary of State on 9th October 2013 refusing him leave to enter the United Kingdom. The determination of Judge Elliman makes it clear that,

“the decision was taken pursuant to a decision that his removal from the United Kingdom would not be an interference with his rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) following an application based on his rights under Article 8” (see paragraph 1).

The Appellant’s Claim

3. The nature of the Appellant’s claim rests on his alleged genuine and subsisting relationship with a Ms Whelan, and the fact that he takes an active part in his son’s upbringing, and has regular contact with his other children.

The Judge’s Findings

4. The judge heard evidence from three separate witnesses. She found that all the witnesses before her

“gave credible (and consistent in this respect) evidence that the Appellant is a strong father figure to his two stepchildren, that he deals with the practical matters of taking them to school and that he provides discipline to the children and deals with their basic care, that he is loved and respected by the two children and has established himself as a strong and important part of their life. There is no doubt at all that the Appellant has established family life in the United Kingdom with his partner, his son and the two stepchildren with whom he lives. There is a further child of his partner but no details were given of his relationship with that child and it appears that he does not play any significant role in that child’s life. However, he does, I accept, play a significant role in his own son’s life ...” (paragraph 19).

5. The judge concluded that the decision of the Secretary of State did amount to an interference with the Appellant’s family life and held that

“it would undoubtedly do so and would inevitably be hugely disruptive. The Appellant has a partner who is British and two stepchildren in whose lives he plays a significant part. He himself has not been in his home country – the DRC – for fourteen years and neither his partner, his own children nor his stepchildren have ever been to the DRC nor to any African country. ...”. (paragraph 20).

Consideration was also given to the leading case of **ZH (Tanzania) [2011] UKSC 4** and to the obligation upon the Secretary of State under Section 55 BCIA 2009 (see paragraphs 22 to 23). The appeal was allowed.

Grounds of Application

6. The grounds of application state that the judge did not apply the strictures of **Gulshan [2013] UKUT 640** which are to the effect that the position must first be considered under the Immigration Rules, and only then must it be asked whether there are good grounds to consider that there are compelling circumstances, not sufficiently recognised under the Rules, that require a consideration of the same situation under Article 8 ECHR. The judge made no findings that there were arguably good grounds and compelling circumstances not sufficiently recognized under the Rules.
7. On 13th November 2014, permission to appeal was granted.

Submissions

8. At the hearing before me on 16th December 2014, Mr Burrett, of Counsel, on behalf of the Appellant, submitted that the decision of the judge was entirely correct because this decision was made prior to coming into effect of the 2002 Rules on 9 July 2012. This being so, the judge was entirely correct in looking at the position as it used to be following 2010, and applying the **Razgar** guidelines.
9. For his part, Mr Tarlow submitted that these were good grounds at the time that they were drafted, but he would have to concede that following the Court of Appeal judgment in **MM (Lebanon) [2014] EWCA Civ 985**, and the judgment of Lord Atkins (at paragraph 128), all that is required now is a “arguable case that there may be good grounds for granting leave to remain outside the Rules”.
10. In reply, Mr Burrett submitted that this was not a case where the Rules were a complete code, and envisaged every conceivable scenario. There was no relevant Immigration Rule. This was a FLR(O) application. It was determined entirely on the basis of Article 8 ECHR. This being so, the judge was perfectly entitled to look at the jurisprudence under Article 8 ECHR.

No Error of Law

11. I am satisfied that the making of the decision by the judge does not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside this decision. This is a case where the judge at the outset indicated that “the decision was taken pursuant to a decision that his removal from the United Kingdom would not be an interference with his rights under the European Convention for the Protection of Human Rights ...” (paragraph 11), such as to directly engage Article 8 jurisprudence. There were no Immigration Rules applicable. Before making her clear, comprehensive, and fulsome findings, the judge at the outset again stated that,

“it was agreed at the outset of the hearing that the Secretary of State, dealing with an application made in August 2010, had been wrong to consider the Appellant’s position under provisions of the Immigration Rules that did not come into force until 9th July 2012 and were not, (according to the Transitional Provisions of the Rules themselves) to be applied to applications made before that date. It was, therefore, agreed that the appeal was to be considered as a claim that his removal from the United Kingdom would amount to an interference with his rights under Article 8 as a freestanding right ...” (see paragraph 16).

12. In the circumstances, therefore, the judge was entirely within her powers to determine the appeal as she did, namely, on the basis of Article 8 jurisprudence, because anything else would have been a distraction, because it was not relevant to the matter at hand.
13. There is no arguable error of law in this appeal at all.

Decision

14. There is no material error of law in the original judge’s decision. The determination shall stand.
15. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

21st January 2015