



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

Appeal Number: IA/46103/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 28 October 2015  
Delivered orally**

**Promulgated**

**On 5 November 2015**

**Before**

**UPPER TRIBUNAL JUDGE GOLDSTEIN**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MRS N A K  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr L Tarlow, Home Office Presenting Officer

For the Respondent: Mr A Bajwa, instructed by A Bajwa & Co Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Appellant (hereinafter called the Secretary of State) against the decision of First-tier Tribunal Judge Seelhoff who, following a hearing at Hatton Cross on 1 June 2015 and in a determination subsequently promulgated on 19 June 2015, allowed the appeal of the Respondent, a citizen of Ghana, born on 4 October 1978 (hereinafter called the claimant) against the decision of the Secretary of State dated 31 October 2014, to refuse to vary her leave to remain in the United Kingdom and to remove the claimant by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. Permission to appeal that decision was granted to the Secretary of State by First-tier Tribunal Judge Landes on 4 September 2015, when he noted that the appeal was allowed to the limited extent of the Secretary of State being required to reconsider the case, in that the First-tier Tribunal Judge, was satisfied that the decision before him was not in accordance with the law, because the Secretary of State did not take account of all the relevant circumstances including the existence of a British child.
3. First-tier Tribunal Judge Landes considered that it was arguable that, as set out in the grounds, the refusal was to the contrary, perfectly lawful because as the Judge recognised, the decision was made before the claimant's child was born "and so the (Secretary of State) could not possibly have considered the welfare of an unborn child".
4. Indeed, in that regard, I note that at paragraph 11 of the determination, the First-tier Tribunal Judge had stated, "although the birth of a British child postdates the decision and the Respondent could not have been aware of it at the date of the decision, I am satisfied that it is a material change in circumstances which I am required to take into account".
5. In that regard he was, with great respect to him, entirely wrong and most fairly and realistically, Mr Bajwa for the claimant readily accepted that the Judge's decision was in such circumstances wrong in law in a material way, such as would lead to the conclusion that his determination could not stand and should be set aside.
6. I am wholly satisfied, in common with Mr Bajwa that the First-tier Tribunal Judge did indeed materially err in law for the reasons set out in the Secretary of State's grounds and identified in the grant of permission to appeal. The Secretary of State was not required to consider the best interests of a child yet to be born and such a consideration could not possibly form part of her consideration as to the proportionality of the removal of the claimant in terms of Article 8 of the ECHR. I am therefore surprised that the First-tier Tribunal Judge should have allowed the appeal notwithstanding that he had already unequivocally recognised in the determination, that the Secretary of State could not have been aware of the birth of the British child at the date of decision.
7. For those reasons the decision of the First-tier Tribunal Judge will be set aside as it does disclose a material error on a point of law and it follows that the appeal of the Secretary of State is allowed.
8. There was common ground between myself and the parties, that the proper course was thus to remit this case to be heard afresh on all issues at large (that would of course now include the fact that the child concerned has been born and his human rights have to be considered within the proportionality exercise).
9. Whilst it may be that the claimant will consider other options in the meantime, the fact remains that there otherwise continues to be an

immigration appeal that must be considered afresh before a Judge other than First-tier Tribunal Judge Seelhoff.

10. The appeal will therefore be remitted to the First-tier Tribunal at Hatton Cross in relation to which I am informed by Mr Bajwa that there will be two witnesses including the claimant giving evidence, with a suggested time estimate of two hours. I am told that no interpreter will be required.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Claimant and to the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 30 October 2015

Upper Tribunal Judge Goldstein