



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/47892/2014

THE IMMIGRATION ACTS

Heard at Field House
On 11 June 2015

Decision and Reasons Promulgated
On 15 June 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Grace Titilola Badru Gansallo
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Ms V Sharkey

For the respondent: Ms A Holmes, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Grace Titilola Badru Gansallo, date of birth 5.1.57, is a citizen of Nigeria.
2. This is her appeal against the decision of First-tier Tribunal Judge Green promulgated 17.2.15, dismissing her appeal against the decision of the Secretary of State, dated 27.11.14, to remove her from the United Kingdom under section 10 of the Immigration and Asylum Act 1999. The Judge dealt with the appeal on the papers placed before the Tribunal on 13.2.15.

3. First-tier Tribunal Judge McCarthy granted permission to appeal on 22.4.15, on the basis that it was an arguable error of law for the judge to assume that the appellant's daughter and grandchildren were not British citizens but citizens of Nigeria. In that light, at §25 of the decision, Judge Green concluded that it was entirely reasonable to expect the appellant's daughter, her husband and their children to return to Nigeria with the appellant and continue family life there.
4. Thus the matter came before me on 11.6.15 as an appeal in the Upper Tribunal.

Error of Law

5. For the reasons set out herein, I find that there was such error of law in the making of the decision of the First-tier Tribunal that the determination of Judge Green should be set aside.
6. As stated, Judge Green had to deal with the appeal on the papers before the Tribunal. At §17(i) the judge stated that the daughter Fumi's immigration status was unclear and no evidence was presented that she or her children are British citizens.
7. There was much confusion in the hearing before me as to the correct chronology and as to what evidence was in fact put before the First-tier Tribunal that the appellant's daughter or grandchildren are British citizens. The appellant was not previously represented. The Tribunal was also hampered by incomplete information, including clarity as to whether the appellant made a fresh application in 2014, as implied in §2 of the decision, and if not what she had stated in the previous application of June 2013.
8. The chronology set out in §1 of the decision is largely correct. It is relevant to point out that the application made on 7.6.13 was refused on 22.7.13 with no right of appeal and the appellant was refused permission to apply for Judicial Review on 20.3.14. Reading the Secretary of State's decision of 27.11.14, it appears that the appellant did not make a new application but rather that on 6.6.14, following the conclusion of the Judicial Review application, the Secretary of State sent the appellant a One Stop notice and request for additional grounds. The appellant did not help her position by the fact that her representatives did not reply and the appellant did not reply to direct communication, although Royal Mail Tracking confirmed she had received the request on 2.7.14. In the absence of response and any further representation, the Secretary of State proceeded to consider the appellant's immigration status on the basis of private and family life under the Rules and whether there were compelling or exceptional circumstances justifying granting leave to remain outside the Rules on the basis of Article 8 ECHR. This consideration resulted in the decision to remove the appellant, which is the subject matter of this appeal.
9. The First-tier Tribunal Judge is not to be criticised for not being aware, as the document is not in the case file, but in the full June 2013 application the appellant had clearly stated her relationship to her British citizen daughter and it also appears that the daughter's birth certificate had been submitted with that application. Ms Jones also points out that in the covering letter to the June 2013 application, the

appellant's representatives clearly stated that the appellant's daughter is a British citizen. Further, the daughter's British citizenship is referred to at §15 of the previous Tribunal decision of First-tier Tribunal Judge Tiffen, promulgated 14.3.12. A further copy of the birth certificate has been submitted in relation to the appeal to the Upper Tribunal. In the light of the birth certificate and the information referred to above, Ms Holmes did not challenge that the appellant's daughter is a British citizen.

10. It is not entirely clear what of the above chronology and above information was made available to Judge Green and, as stated, the appellant did not assist herself by failing to respond to requests for any and all grounds of appeal. In the circumstances, I am not satisfied that Judge Green has any responsibility for the error in the decision. Nevertheless, given the evidence now available suggesting that the appellant's daughter is a British citizen, it necessarily follows that the decision of the First-tier Tribunal was made under a mistake of fact.
11. Ms Sharkey contends that as the judge was mistaken as to the nationality of the appellant's daughter and grandchildren and that in consequence the subsequent Article 8 family life proportionality assessment was necessarily flawed by failing to take into account that the daughter and grandchildren are British and cannot be required to leave the UK. It does not necessarily follow that it is unreasonable or unjustifiably harsh to expect the daughter and grandchildren to relocate to Nigeria with the appellant, but the true circumstances are certainly relevant to the proper conduct of the proportionality assessment. In the circumstances, the decision of the First-tier Tribunal cannot stand and must be set aside.
12. In the light of the fact that the decision of the Secretary of State of 27.11.14 failed to acknowledge that the appellant's daughter, and perhaps also her grandchildren, are British citizens, I find that the decision was not in accordance with the law. It is clear from the June 2013 application that the appellant had raised the issue of her relationship with her British citizen daughter. The decision is flawed in failing to take account of this highly relevant fact and needs to be remade.
13. In considering the remaking of the decision in the appeal, I find that the decision of the Secretary of State of 27.11.14 was not in accordance with the law and thus there is no valid decision before the Tribunal.

Conclusions:

14. For the reasons set out herein, I find that the making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside set aside the decision.

There is no valid decision before the Tribunal which can be appealed. It remains for the Secretary of State to make a decision which is in accordance with the law.



Signed

Deputy Upper Tribunal Judge Pickup

Dated 12 June 2015

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: There is no valid decision and thus no valid appeal before the Tribunal.



Signed

Deputy Upper Tribunal Judge Pickup

Dated 12 June 2015