



IAC-AH-CJ/FH-CK-V3

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

Appeal Number: IA/00182/2015

THE IMMIGRATION ACTS

Heard at Newport

On 10 February 2016

**Decision & Reasons
Promulgated
On 19 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

[K W]

(~~ANONYMITY DIRECTION NOT MADE~~)

Appellant

Respondent

Representation:

For the Appellant: Mr I Richards, Senior Presenting Officer

For the Respondent: Mr Barnfield, Counsel

DECISION AND REASONS

1. In this decision the Appellant is the Secretary of State for the Home Department and the Respondent is the Claimant. The Claimant, a national of Thailand, date of birth [] 1979, appealed against the Secretary of State's decisions, dated 22 December 2014, to refuse leave to enter and

to curtail existing leave to enter, dated 20 May 2013, and to make removal directions.

2. The grounds of appeal against that decision in the most general terms alleged that the Secretary of State's decisions were unlawful and incompatible with European Convention rights. In addition the Claimant claimed that the decision to curtail leave was unreasonable, irrational, evidently unlawful and also that her previous visits had been lawful and that she had a good immigration history.
3. The matter came before First-tier Tribunal Judge Loughridge (the Judge) who on 13 July 2015 allowed the appeal on Article 8 ECHR grounds.
4. The judge did not address any of the immigration decisions at all but solely considered Article 8 ECHR on the basis that the Secretary of State had not done so and that there had been no proper assessment of the best interests of her three children, under the age of 8 years of age, who were British nationals, living in the United Kingdom with their father [Mr W]. I infer that the judge assumed that there were no issues raised in relation to the Immigration Rules because at paragraph 3 of the decision [D] he abbreviated the grounds solely to Article 8 ECHR.
5. In the circumstances the judge looked at Section 55 of the BCIA 2009, which it was evident the Secretary of State had not considered at any material time, and went on to decide that if the Claimant were removed to Thailand that would be a significant interference in family life and one which was disproportionate.
6. Whilst it is plain that an out-of-country application for leave to enter may not have valid appeal rights, it was clear that there was a potential for appeal against curtailment and removal directions. I raised these matters with the parties who agreed that the issues of curtailment and removal directions were appealable decisions. The Secretary of State's grounds

essentially challenged the fact that the judge had only considered Article 8 ECHR: That was the heart of challenges to both grounds of appeal.

7. The Secretary of State's grounds also relied upon the judge erring in law in making a speculative assessment as to whether or not the Claimant could make an application for a visa as a spouse and speculating on the outcome of claims in relation to the Claimant's husband's earnings and whether the requirements of the Rules could be met.
8. I find that the Original Tribunal erred in law in approach to the appeal grounds not being dealt with. Plainly the various considerations which should have been raised were not dealt with. The fact of the matter was the judge may be right about the considerations in assessing Article 8 in the context of Sections 117A-117D but it does require a proper context and a need to address the other grounds which fell to be considered first.
9. In these circumstances I am satisfied that the Original Tribunal decision cannot stand and the matter will have to be entirely remade in the First-tier Tribunal. In addition it would be appropriate for the Secretary of State to provide a further decision on the issue of the children's best interests in terms of their removal as British nationals.

DIRECTIONS

List for the First-tier Tribunal, two hours.

Any further documents relied upon in connection with any Article 8 ECHR claim to be served not later than ten working days before the further hearing date.

Thai interpreter required.

Relist for hearing at Newport Hearing Centre before any judge other than Judge Loughridge.

Given the age of the children an anonymity direction is made.

DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Unless and until a Tribunal or court directs otherwise, the Appellant 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 Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 2 April 2016

Deputy Upper Tribunal Judge Davey.

P.S. I regret that promulgation being delayed due to the file being miss-located.