



IAC-FH-NL-V1

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

Appeal Number: IA/05826/2015

**THE IMMIGRATION ACTS**

**Heard at UT (IAC) Field House  
On 6<sup>th</sup> April 2016**

**Decision &  
Promulgated  
On 15<sup>th</sup> April 2016**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR JOSHUA ATO ANNOBIL  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Brocklesby-Weller, Senior Home Office Presenting Officer

For the Respondent: Ms D Ofei-Kwatia, Counsel instructed by Hodders Law Solicitors

**DECISION AND REASONS**

1. I shall refer to Mr Annobil as the Claimant. He is a citizen of Ghana who applied for indefinite leave to remain here as someone who had been a work permit holder for 5 years, that he was entitled to remain here on the

basis of 10 years continuous residence and also that to remove him would be a breach of his rights under Article 8 ECHR. That application was refused and his subsequent appeal to First-tier Tribunal Judge Clapham was allowed under the Immigration Rules. The Secretary of State raised grounds of application.

2. It was said that the appeal was allowed (at an earlier date) as not in accordance with the law by First-tier Tribunal Judge Thanki. It had been remitted to the SSHD as the SSHD had failed to acknowledge in their initial decision that the considerable delay in concluding the Appellant's request for reconsideration had been attributable to an administrative error on her part. The SSHD had corrected that.
3. In the instant appeal Judge Clapham found at paragraph 38 that the reasons for refusal letter (RRFL) issued as a response to the remittal by Judge Thanki did not appear to proceed on the basis of Judge Thanki's findings - he was wrong to conclude that.
4. The SSHD had acknowledged within the refusal letter that it was her error which had caused the delay in response to the Claimant's application for reconsideration of his 2006 application. She therefore went on to consider her discretion on the issue again as directed by Judge Thanki. However, as detailed in the RFRL, reconsideration requests do not extend leave under the provisions of Section 3C and even if they did the Claimant had no leave to extend under such provisions having not been given a right of appeal on 10 February 2006 decision. The Claimant had not made a fresh application. A more timely decision by the SSHD would still have resulted in the Claimant having a gap in continuity of over 28 days. As such it was said that by failing to take into account that discretion had already been exercised, Judge Clapham had made a material error in law.
5. In granting permission to the Secretary of State, First-tier Tribunal Judge Holmes pointed out that the Claimant's leave expired in February 2006. Thus the appeal under the Immigration Rules arguably ought to have been dismissed. Furthermore, the judge had not made a decision on the Article 8 "private life" appeal.
6. There was no Rule 24 notice lodged by the Claimant nor was there any cross-appeal.

### **The Hearing**

7. For the Secretary of State reliance was placed on the grounds. The delay had been unfortunate and was the fault of the Secretary of State but nevertheless, for reasons given, the appeal could not succeed under the Immigration Rules.
8. In terms of Article 8 Judge Clapham had not carried out a 276ADE assessment, there was no mention of insurmountable obstacles and there

were no proper findings made under Article 8. I was asked to set the decision aside and re-make the decision dismissing the appeal.

9. For the Claimant it was said that the judge had given his reasoning as to why the Secretary of State should have exercised her discretion differently. If an error of law was found then there was a fresh bundle from the Appellant so that the Tribunal did now have all the bank statements necessary for the appeal to be allowed under the work permit scheme which tied in with his claim that to return him to Ghana would be unlawful.
10. It was clear that the judge fell into error in not dealing with Article 8 properly but I was asked to send the case back to the First-tier Tribunal on all matters.

### **Conclusions**

11. It has to be said that it is not very clear from the judge's decision what the contentious issues in this appeal were and he appears to have been distracted by the procedural history and wrongly focussed on whether the Secretary of State had dealt with the points taken by Judge Thanki.
12. Both parties were critical of the judge's decision particularly in relation to his findings on Article 8 ECHR where he seems to say that the Claimant should succeed under Article 8 without actually making a judicial finding to that effect in the notice of decision. That is an error in law in itself - and could be easily corrected - but the reasoning to allow the appeal under Article 8 is extremely limited. It takes no account of the Immigration Rules, the weight to be given to them, the issue of proportionality and the public interest. It is deeply flawed and both parties agreed it could not stand in its present form.
13. There was also no serious dispute, as I understood it from Ms Ofei - Kwatia that the Appellant's leave had expired some time ago as indicated by Judge Holmes. It is clear enough that on any basis the Judge's decision cannot stand.
14. I have come to the view that the case should be remitted to the First-tier Tribunal. The Appellant's case seems to be that he has now presented the necessary documentation to succeed under paragraph 134 of the rules in relation to his claim for indefinite leave to remain as a work permit holder. Rather than try and separate what can and cannot be argued at the next hearing the safest course seems to me to remit the appeal in its entirety.
15. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be re-made is such that it is appropriate to remit the case to the First-tier Tribunal to be re-heard by any judge apart from Judge Clapham.

**Decision**

16. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
17. I set aside the decision.
18. I remit the appeal to the First-tier Tribunal.
19. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald