



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

Appeal Number: IA/48871/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 4<sup>th</sup> May 2016**

**Decision & Reasons  
Promulgated**

**On 19<sup>th</sup> May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**PARUL VAGHELA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Bunting, Counsel, instructed by Bukhari Chambers  
Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Farmer (the judge), promulgated on 29 September 2015, in which she dismissed the Appellant's appeal. That appeal was against the Respondent's decision of 17 November 2014 to remove the Appellant from

the United Kingdom by way of directions under section 10 of the Immigration and Asylum Act 1999.

2. Before the judge the Appellant's case was founded exclusively upon Article 8. She considered the evidence, made numerous findings of fact, and reached conclusions on all material issues.
3. One, and only one, aspect of her decision stands out as being of potential concern. In paragraph 5, when setting out the evidence before her, the judge refers to "the first appellant." There was only ever one Appellant. Paragraph 19 (which is found in amongst the findings) again refers to a "first appellant." The contents of this paragraph do not appear to relate to the Appellant's case. Paragraphs 20 and 21 refer to "they", indicating two Appellants rather than the one.
4. At all other points in the twenty-nine paragraph decision only one Appellant is referred to.
5. The Appellant's challenge to the judge's decision is straightforward: the erroneous references to more than one Appellant render the decision as a whole unsafe.
6. Permission was granted by First-tier Tribunal Judge Shimmin on 21 March 2016.

### **The hearing before me**

7. Mr Bunting relied on the concise grounds. He submitted that the judge's errors were not simply slips. I should look at the decision holistically. Anxious scrutiny had not been accorded to the Appellant's case. Reliance was placed on the Court of Appeal's judgment in ML (Nigeria) [2013] EWCA Civ 844.
8. Mr Bramble also asked me to consider the decision as a whole. The judge referred correctly to only one Appellant again and again. If one struck out the 'offending' references to twin Appellants, the decision was sustainable. The errors were not material.

### **Decision on error of law**

9. Having given this case a good deal of thought, I conclude that the erroneous references to more than one Appellant are not material.
10. I have considered the decision as a whole and in light of the need for anxious scrutiny to be given to all cases.

11. The judge makes correct reference to the Appellant as being “the appellant” in no fewer than twenty-two paragraphs of her decision. All of the evidence cited therein relates specifically to the Appellant’s own case and not that of any other. In respect of the section of the decision concerning findings and conclusions, accurate references to *the* Appellant and her case are made in eighteen of the twenty-one relevant paragraphs.
12. There is a specific finding in paragraph 11 that no significant obstacles existed in relation to the Appellant’s ability to return to India. That is a crucial finding in respect of the Article 8 as a whole and it relates solely to *the* Appellant. There then follow seven paragraphs containing perfectly adequate findings and reasons in support of this core finding on return. These all refer to *the* Appellant and her own case.
13. The judge’s conclusion in paragraph 22 on the inability to satisfy Appendix FM relates solely to *the* Appellant, as does her assessment of Article 8 outside of the Rules (paragraphs 23-28). The findings and reasons containing therein are in and of themselves fully sustainable.
14. In respect of the judge’s first reference to the “first appellant” in paragraph 5, it really cannot be said to be any more than a slip. What follows in that paragraph is entirely related to the Appellant’s own case. The erroneous reference is immaterial.
15. The presence of paragraphs 19-21 is odd, and one can certainly appreciate why the Appellant sought to challenge the decision: the appearance of anxious scrutiny as well as its actual application is important. The contents of paragraph 19 are just not related to the Appellant’s case.
16. I conclude that paragraphs 19-21 have been inadvertently left in or copied in from another decision drafted by the same judge, and they can be properly excised from the decision on the Appellant’s case. As I have set out previously, the vast majority of the judge’s references, findings and conclusions relate to the Appellant’s case, both before and after paragraph 19. Taking the decision holistically, and having regard to everything I have said earlier, the core conclusions on paragraph 276ADE and Article 8 outside of the Rules are not materially dependent upon paragraph 19. Paragraphs 20 and 21 add little and are only really statements of conclusion. As with paragraph 19, these are not related to the Appellant’s case and do not form part of the judge’s conclusions thereon.
17. In my view the position in the present appeal can be distinguished from that in ML (Nigeria). There, the judge had made multiple factual errors when setting out and considering the appellant’s case. He referred to evidence that did not exist and skeleton arguments which had not been provided. In short, the judge had committed a litany of factual errors which plainly rendered the whole exercise unsustainable.
18. In the Appellant’s case the judge has accurately described the evidence in all respects save for the single aberration in paragraph 19. That paragraph

is not an inaccurate portrayal of the way in which the Appellant put her case. Rather, it is a paragraph that should not be there at all. Further, it does not in fact contain adverse credibility findings.

19. I appreciate that the judge in ML (Nigeria) had also included a reference to another case (see paragraph 7). However, that error was one amongst numerous others. The woeful state of the decision under scrutiny by the Court of Appeal is not in my view comparable to the judge's single error in the present case, having regard to what I have said previously. The reference in paragraph 19 does not take on a "sinister turn."

### **Anonymity**

20. I make no direction.

### **Decision**

**The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.**

**The Appellant's appeal to the Upper Tribunal is dismissed and the decision of the First-tier Tribunal stands.**

Signed

Date: 18 May 2016

H B Norton-Taylor

Deputy Judge of the Upper Tribunal

### **TO THE RESPONDENT FEE AWARD**

No fee was payable and so there can be no fee award.

Signed

Date: 18 May 2016

Judge H B Norton-Taylor

Deputy Judge of the Upper Tribunal

