



IAC-FH-NL-V1

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

Appeal Numbers: IA/49524/2014  
IA/49527/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 23 February 2016**

**Decision &  
Promulgated  
On 8 April 2016**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**and**

**Z Y  
F Y**

**(ANONYMITY DIRECTION MADE)**

Appellant

Respondents

**Representation:**

For the Appellant: Mr I Jarvis, Home Office Presenting Officer

For the Respondents: Ms D Ofei-Kwatia, Counsel instructed by JS Solicitors

**DECISION AND REASONS**

1. The Appellant in this appeal is the Secretary of State for the Home Department and the Respondents were the Appellants before the First-tier Tribunal. They are mother and daughter respectively. I shall be referring to the parties in this decision as the Secretary of State and the Claimants for the sake of clarity.

2. The first Claimant applied on 30 June 2014 for leave to remain in the United Kingdom as the unmarried partner of a settled person and her daughter applied as her dependant. The Secretary of State refused their applications on a number of grounds under the partner route and under the parent route and also decided to refuse their application outside the Immigration Rules on Article 8 grounds.
3. The Claimants appealed against that decision and their appeal was heard by First-tier Tribunal Judge Majid who in a decision promulgated on 30 August 2015 allowed both their appeals purportedly, it appears, under the Immigration Rules.
4. The Secretary of State took issue with that decision and sought permission to appeal. Permission was granted on the basis that it was arguable as asserted in the grounds that the Judge had erred in failing to give reasons for allowing the appeal and in failing to engage with the reasons for refusal letter. The grounds drafted by the Secretary of State argue firstly, that there was a material misdirection of law, namely that the Judge had not adequately identified the provisions of law under which the appeals had been allowed, and, notwithstanding his self-direction, that it was not possible to ascertain from the Judge's reasons why the parties had won and lost.
5. Further, the second ground asserts there was a failure to give adequate reasons in support of material findings. The Judge had indicated at paragraph 5 that the decision of the Secretary of State had raised no other objection to the Claimant's application for leave to remain other apparently than the birth of her baby girl. This, it is asserted, was incorrect and the Secretary of State refused the Claimant's application under the provisions of the Rules set out in the grounds.
6. The matter now comes before the Upper Tribunal to determine whether or not there was an error or errors of law in the decision of the First-tier Tribunal. The first ground relates to the adequacy of reasons given for the decision. In the case of **MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)** the President stated, as recorded in the head note, that it is axiomatic that a determination discloses clearly the reasons for a Tribunal's decision. It is clearly a duty under public law to give sufficient reasons so that each party knows why they have won or lost. I find that the decision of Judge Majid did not fulfil that public law duty.
7. The refusal letter sets out a number of bases why the applications were refused. The Respondent refused the application under the partner route, the parent route and under paragraph 276ADE of the Immigration Rules. The decision of the judge does not disclose that he engaged properly or at all with the grounds for refusal and the only matter that he appears to have addressed is the birth of the baby girl. He concluded that on that basis the refusal could not be maintained and there is no adequate

reasoning in the decision leading to this conclusion. On that basis the decision cannot stand.

8. However, it is clear from having heard submissions by both representatives today that there was a discussion between the parties prior to the hearing of the appeal before the First-tier Tribunal which was brought to the attention of the judge. That has been agreed by Mr Jarvis and by Ms Ofei-Kwatia, who was the advocate at the hearing. The child had been born since the refusal and consequently the refusal had no regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. What was discussed between the parties was that the matter should be reconsidered by the Secretary of State and that was communicated to the judge. Mr Jarvis suggested that an appropriate course of action would be a finding that the decision was not in accordance with the law and an order requiring the Secretary of State to consider s55.
9. In those circumstances I conclude that the decision should be set aside and I re-make the decision. Due to the ongoing requirement for the Secretary of State to consider the best interests of the child the decision was not in accordance with the law and that the Secretary of State should consider the position of the child. The appeal is allowed to the extent that the decision was not in accordance with the law and in the light of the guidance in **MK (section 55 - Tribunal options) Sierra Leone [2015] UKUT 223 (IAC)**, I make an order requiring reconsideration and a fresh decision.

### **Notice of Decision**

The decision of the First-tier Tribunal contained a material error of law and I set it aside. The appeal is allowed to the extent that the matter of s55 is outstanding before the Secretary of State for a lawful decision thereon.

I make an anonymity direction as the appeal involves a child.

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

Unless and until a Tribunal or court directs otherwise, the appellants are 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

Deputy Upper Tribunal Judge L J Murray