



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/15147/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House, London
On 13 September 2017**

**Decision & Reasons
Promulgated
On 18 September 2017
Given orally on 13 September
2017**

Before

THE PRESIDENT, THE HON. MR JUSTICE MCCLOSKEY

Between

ISAAC OPPONG

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation

For the Appellant: Mr M Moriarty, of Luqmani Thompson and Partners
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION

1. The Appellant, a national of Ghana now aged 47 years, applied unsuccessfully to the Respondent, the Secretary of State for the Home Department (the "Secretary of State"), for leave to remain in the United Kingdom on the basis that he is a stateless person. By a decision made on behalf of the Secretary of State dated 13 February 2015, this application was refused. The First-tier Tribunal (the "FtT") dismissed the ensuing appeal. The Appellant appeals with permission to this Tribunal.

2. The most significant milestones in the history of these proceedings are the following:
- (a) On 16 September 2003 the Appellant was notified of the Secretary of State's refusal to accept his postal human rights and asylum claim, being informed of the need to make the claim in person. This elicited no response.
 - (b) On 24 September 2003 the Appellant married a Dutch citizen - a mere marriage of convenience the Secretary of State would hold.
 - (c) By a fortuitous encounter the Appellant was discovered to be overstaying in the United Kingdom on 24 February 2004.
 - (d) This prompted an application for a residency permit based on his marriage, on 25 February 2004.
 - (e) On 03 March 2004 this application was refused on the basis of an assessment that the marriage was one of mere convenience.
 - (f) On 05 July 2004 the Appellant's appeal against this refusal was dismissed.
 - (g) On 20 October 2006 the Appellant became appeals rights exhausted.
 - (h) On 05 January 2007 the Secretary of State made directions for the removal of the Appellant to Ghana. In response the Appellant, on 15 January 2007, claimed asylum.
 - (i) On 27 January 2007 the Appellant's asylum claim was set aside clearly unfounded.
 - (j) Directions for the removal of the Appellant to Ghana, dated 02 February 2007, were not implemented following intimation by the Ghanaian High Commission that the Appellant's asserted Ghanaian nationality was disputed.
 - (k) As the Appellant had also claimed to be a citizen of Niger, further directions for his removal to that country were issued on 06 April 2007. However, on 17 April 2007 the Appellant was refused entry to Niger.
 - (l) On 02 August 2007 the Appellant was convicted of the offence of securing the avoidance, postponement or revocation of enforcement action by means including deception, contrary to Section 24 of the Immigration Act 1971. He was sentenced to imprisonment and deportation was recommended.
 - (m) In due course, on 06 December 2007, a Deportation Order was made.

- (n) Following intermittent legal proceedings and substantial correspondence involving the Appellant's legal representatives, on 09 September 2014 the Secretary of State agreed to revoke the decision to refuse limited leave to remain as a stateless person and to treat the Appellant's further leave to remain application as one to revoke the deportation order.
 - (o) On 13 February 2015 the Secretary of State made a further decision refusing the Appellant statelessness application and issuing a certificate under section 94B of the 2002 Act.
 - (p) On 17 March 2016, following a judicial review challenge, a consent order was made the terms whereof required the Secretary of State to withdraw the last mentioned decision and to reconsider the Appellant's representations.
3. The last mentioned step was the impetus for the impugned decision of the Secretary of State giving rise to the successive appeals which have followed.
4. For the reasons proffered in the decision letter, the Secretary of State's decision maker concluded that the Appellant is a national of Ghana. The following passage is also noteworthy:

".... Your sole objective, having arrived in the UK in 2003, is to remain here by whatever means possible You have willingly and purposely lied about your nationality and other relevant details whenever you felt it would benefit or help achieve your aim of remaining in the UK - which has to date been successful as you have remained here illegally for some 12 years."

The decision maker then considered, and rejected, various claims and assertions by the Appellant relating to relationships and involvement with two named female persons. This is considered to be evidence of the continuing use of deception by the Appellant.

5. The decision letter continues:

"Your deportation is conducive to the public good and in the public interest because you have been convicted of an offence which has caused serious harm

Therefore, in accordance with paragraph 398 of the Immigration Rules, the public interest requires your deportation unless an exception to deportation applies."

This is followed by a detailed consideration of the Appellant's parental relationship with four children in the United Kingdom and their circumstances, followed by a conclusion that none of the exceptions in paragraphs 399 and 399A of the Immigration Rules applies. Article 8 ECHR was then considered in a free-standing way, giving rise to the following conclusion:

"Full consideration has been given to the best interests of your children and these can be made [sic] by your family united relocating to Ghana. It has been explained at length in this letter why it is believed that both you and [Ms R] and your three younger children are citizens of Ghana who have no leave in the UK and are all therefore liable to be removed to Ghana, with the onus on you and your partner to decide if [I] will relocate with the family unit. It is therefore considered that your family unit can continue in Ghana. In addition, your three Ghanaian children will be free to enjoy the social and cultural benefits that they have an unquestionable right to as Ghanaian citizens and [I] would also be free to enjoy the benefits of his Ghanaian cultural heritage. Should there be disruption to your family life, such as your being removed ahead of your family members, then this would not amount to a very compelling circumstance either."

Thus it was concluded that no very compelling circumstances over and above those identified in paragraphs 399 and 399A of the Rules outweighing the public interest in the Appellant's deportation had been demonstrated.

6. Finally, the Secretary of State rejected the Appellant's claim that he is a stateless person, reiterating the assessment that he is a citizen of Ghana. This entailed disbelieving the Appellant's discrete assertion that the copy Ghanaian passport which has been in his possession at all material times had not been issued properly.
7. The grant of permission to appeal to this Tribunal identifies two arguable errors of law infecting the decision of the FtT:

"It is an arguable error of law that the Judge may have erred in stating that there was no right of appeal against the decision that the Appellant is stateless

Further, it is arguable that in respect of the Article 8 claim, the Judge did not take into account when coming to his conclusions the fact that a child had been living in the United Kingdom for 12 years and the impact that removal would have on that child."

The Appellant's representatives have applied for permission to adduce further evidence under Rule 15(2A) of the 2008 Rules. This consists of a decision dated 05 June 2017 by the Secretary of State to grant indefinite

leave to remain outside the Rules. The four persons concerned are all stated to be nationals of the Ivory Coast. They are the three aforementioned children of the Appellant and a lady aged 35 years. All have been granted limited leave to remain until 04 December 2019. In the case of the adult lady, the determining factor is stated to be the best interests of the first child noted above, namely I, her son.

8. Mr Wilding, on behalf of the Secretary of State properly addressed the Tribunal first. He acknowledged that there was a failure by the FtT to make necessary findings on the issue of statelessness. The correct analysis is that findings on the issues bearing on the question of statelessness have the potential to be material considerations in the Article 8 ECHR balancing exercise. Whether they have any other function is a matter which I do not have to decide. It suffices therefore for me to record without deciding, the intimation that the Secretary of State will make the case that (i) the FtT lacks jurisdiction to decide the question of statelessness as a matter of law and (ii) ultimately a favourable outcome to the Appellant would avail him nothing on account of the deportation order. These are issues I leave to the FtT.
9. I turn to the materiality of the acknowledged error of law. It was incumbent upon the FtT to properly prepare the scales in the Article 8 proportionality balancing exercise. The failure to make findings on issues bearing upon the statelessness question render the decision of the FtT unsustainable in law because of a failure to identify all material facts and considerations.
10. My preference would be to retain the case in the forum of the Upper Tribunal having regard to the protracted history of the affair. However the nature of the failings on the part of the FtT is such that remittal is appropriate. A clean slate is required in order to induce a sustainable judicial decision. Thus remittal to a differently constituted judicial panel is ordered.
11. I formally admit the new evidence which the Appellant seeks to adduce in the application made to this Tribunal under Rule 15(2A) of the Upper Tribunal Rules. No findings are preserved.
12. I draw attention to the desirability of early consideration being given to the formation of a panel of two senior judges.

Bernard McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Date: 13 September 2017

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