



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number AA/06109/2013

THE IMMIGRATION ACTS

**Heard at Centre City House
On 7th April 2015**

**Determination Promulgated
On 15th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**K T J
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Chaggar (Counsel, instructed by Hasan Solicitors)

For the Respondent: Mr N Smart (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The background to this case is set out in the determination of First-tier Tribunal Judge Lagunju of the 23rd of February 2014. For the reasons set out the Appellant's asylum appeal was dismissed but the appeal was allowed under Article 8. By notice of the 6th of March 2014 the Secretary of State sought permission to appeal to the Upper Tribunal challenging the findings made in respect of Article 8. There was no challenge by the Appellant to the findings made in respect of the asylum claim.

2. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Osborne on the 26th of March 2014 on the basis that it was arguable that the First-tier Tribunal Judge had given excessive weight to the delays that had occurred in the case and the finding that removal would be unjustifiably harsh was not justified on the reasoning provided.
3. The first hearing before the Upper Tribunal took place before me on the 20th of November 2014 at Sheldon Court in Birmingham. Following submissions made by the Appellant's representative and the Senior Home Office Presenting Officer I indicated that so far as the Article 8 findings were concerned the determination did contain an error of law. At the hearing the determination was set aside and the case adjourned for re-hearing on that aspect of the case with the Appellant and Secretary of State to serve evidence in advance of the renewed hearing.
4. The hearing was listed for the 7th of April 2015 at City Centre House in Birmingham. At the hearing Ms Chaggar for the Appellant indicated that his instructions were to withdraw his appeal. By rule 17 of the Upper Tribunal Procedure Rules such an application can be made orally, as here. The principles to be considered in such circumstances are set out in the case of SM (withdrawal of appealed decision: effect) Pakistan [2014] UKUT 64 (IAC).
5. Applying the principle that in immigration cases the Secretary of State ought to be the primary decision maker in immigration cases it is appropriate that the Appellant's application to withdraw his appeal is allowed. The effect of that action is that, there having been no challenge to the dismissal of his asylum appeal, the decision of First-tier Tribunal Judge Lagunju to dismiss the asylum appeal remains.
6. So far as Article 8 is concerned that part of Judge Lagunju's determination was set aside at the first hearing before the Upper Tribunal. The Secretary of State's decision on the Appellant's Article 8 aspect of his application was set out in the Refusal Letter of the 14th of June 2013 at paragraphs 35 to 58. The reasons set out are now, effectively, unchallenged and form the basis of the decision in this case in respect of Article 8.
7. The hearing was concluded with the Appellant's appeal being withdrawn and with my indicating that there would be a short determination setting out the consequences of the proceedings.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involved the making of an error on a point of law in respect of the position under Article 8 of the ECHR, the decision in that respect was set aside.

The extant appeal by the Appellant has been withdrawn.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Fee Award

I setting aside the First-tier Tribunal determination and the appeal being subsequently withdrawn by the Appellant I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 7th April 2015