IAC-BH-PMP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/30927/2014

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke
On 9th March 2015

Determination Promulgated
On 24th April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

OLOLADE KAMALDEEN AJOSE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Adejumobi, Legal Representative of Immigration Advice Service
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. On 2nd December 2014 Judge of the First-tier Tribunal Andrew gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal De Haney in which he dismissed the appeal against the respondent's decision to revoke a residence card issued to the appellant as an extended family member in accordance with the provisions of paragraph 8(5) of the Immigration (European Economic Area) Regulations 2006.

2. In summarising the grounds of application Judge Andrew noted that it was contended that the judge had not considered Article 8 issues despite these being raised in a skeleton argument before him and the grounds of appeal. Judge Andrew considered this amounted to an arguable error on a point of law.

3. At the hearing I heard submissions from both representatives in relation to the claimed error on a point of law and then reserved my decision which I now give.

Claimed Error on a Point of Law

4. Mr Adejumobi drew my attention to the bundle of documents submitted on 13th February 2015 which contained a copy of relevant parts of the 2006 Regulations, particularly Schedule 1 which refers to Section 84(1)(a) of the Nationality, Immigration and Asylum Act 2002, giving a right of appeal on human rights grounds to appeals brought under the Immigration (European Economic Area) Regulations 2006. He also referred me to his skeleton argument making that point and providing copies of *JM (Liberia)* [2006] EWCA Civ 1402 and *Ahmed (Amos; Zambrano; Reg 15A(3)(c) 2006 EEA Regs)* [2013] UKUT 00089 (IAC) in support of the argument that the judge should have dealt with the Article 8 claim raised.

5. Mr Adejumobi also put it to me that he thought the Upper Tribunal was about to produce a decision relating to the issue in this appeal although, at the date of preparing this decision, no precedent on this matter has been put before me.

6. In his grounds of appeal Mr Adejumobi refers to the passage at paragraph 43 of *Ahmed* quoting submissions by Counsel to the Upper Tribunal and paragraph 79 of that decision in which the Tribunal allowed that appeal on Article 8 ECHR grounds on the basis that the Court of Appeal decision in *JM (Liberia)* entitled them to do so.

7. Mr Harrison drew my attention to the response of 12th December 2014 which quotes from the letter of revocation by the respondent dated 7th February 2014. This, he contended, made it clear that although arrangements should be made for the appellant to leave the United Kingdom and that if he did not do so voluntarily, his departure might be enforced, he would first be contacted again and given a separate opportunity to make representations against the proposed removal.

8. The respondent argues that, as no removal was being considered, there was no need for the Tribunal to conduct an Article 8 analysis at first instance. The response also refers to the decision in *R (Daley Murdock)* [2011] EWCA Civ 161 and also *Patel UKSC 72* [2013] which, it is argued, showed that the respondent did not have to issue a removal decision with an immigration decision. The respondent emphasises that, when a removal decision comes, an appellant would have ample opportunity to make representations on why he should not be required to leave the United Kingdom. It was therefore submitted that there was no material error in the decision of Judge De Haney as there was no prejudice to the appellant in him not dealing with the human rights claim.

9. Mr Adejumobi did not expand upon his initial submissions although he requested that, if an error were found, the matter should be remitted to the First-tier Tribunal for hearing a fresh as the Article 8 issue had not been dealt with. No issue was taken that the appellant was not entitled to a residence card.

Conclusions and Reasons

10. The decision shows that the judge was aware that the appellant's representative, both in the grounds of appeal and in a skeleton argument, wished to proceed on the

basis of an alleged infringement of the appellant's Article 8 rights. It is also evident, from the case law to which the appellant's representative has already referred and the provision of Schedule 1 to the 2006 Regulations, that the judge could have proceeded to deal with Article 8 issues. I am not satisfied that the reference to paragraph 43 of *Ahmed* (which only refers to submissions made by Counsel before the Upper Tribunal) obligates the First-tier Tribunal to hear an Article 8 claim in all appeals to which the 2006 Regulations apply although the Tribunal in *Ahmed* did not feel constrained in allowing the Article 8 appeal. Such a course of action is also consistent with *JM (Liberia)* where it was concluded, in effect, that where an immigration decision in question gives rise to an imminent threat of removal and thus an imminent potential violation of ECHR rights, the Tribunal is obliged to deal with it.

11. However, I conclude that the issue before me is whether or not the judge was materially in error in failing to deal with the Article 8 claim in circumstances where, as stated in the revocation letter itself of 7th February 2014, the appellant was told (page 2) that:

> "As you appear to have no alternative basis of stay in the United Kingdom you should now make arrangements to leave. If you fail to do so voluntarily your departure may be enforced. In that event we would first contact you again and you would have a separate opportunity to make representations against the proposed removal."

12. In the response the respondent has emphasised that the revocation letter showed that no removal was currently being considered and there was therefore no need for the Tribunal to conduct an Article 8 human rights exercise. The appellant would have the opportunity to bring his human rights claim if and when removal directions were issued.

13. With the above in mind, I am led to conclude that the judge's failure to deal with the Article 8 claim put before him is not material as the appellant has suffered no prejudice thereby. That is because of the future opportunity clearly given to the appellant to bring such a claim if and when a decision to remove him is formally made by the respondent. At that stage the appellant's Article 8 claim can be considered in the light of all the circumstances which then appertain. Therefore, I do not conclude that the judge's decision amounts to a material error and can stand.

Notice of Decision

The decision of the First-tier Tribunal does not show a material error on a point of law and shall stand.

Anonymity

No anonymity direction was made by the First-tier Tribunal nor was one requested before me.

Signed Date **23rd April 2015**

Deputy Upper Tribunal Judge Garratt