IAC-AH-LEM-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/32685/2014
IA/32691/2014

THE IMMIGRATION ACTS

Heard at Centre City Tower Birmingham	**Decision & Reasons Promulgated**
On 30th September 2015	**On 7th October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE FRENCH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AUDEEN ALETHIA BONNICK
THERON JAVIER PLOWRIGHT
(ANONYMITY ORDER NOT MADE)

Respondents

Representation:
For the Appellant Secretary of State: Mr N Smart, Senior Home Office Presenting Officer
For the Respondents: Ms E Norman, instructed by Bassi Solicitors

DECISION AND REASONS

1. The Secretary of State appeals with permission against a decision of Judge of the First-tier Tribunal C M Mather to allow the appeals of Audeen Alethia Bonnick and of her son Theron Javier Plowright (whom I shall refer to as the Claimants) against decisions to refuse them leave to remain under Article 8 ECHR and to remove them to Jamaica. The applications leading

to the decisions had been lodged on 2nd April 2012. They were ultimately refused and the removal decisions made on 30th July 2014.

2. At the hearing the judge was persuaded that as the applications had been made before the significant changes in the Immigration Rules introduced with effect from 9th July 2012 the appeals before her fell to be decided under Article 8 ECHR without reference to the amended Immigration Rules. In reaching that view she referred to the judgment of the Court of Appeal in **Edgehill v SSHD [2014] EWCA 402**. She did refer (at paragraph 18 of her decision) to Section 19 of the Immigration Act 2014 (which introduced into the Nationality, Immigration and Asylum Act 2002 Section 117) but she made no reference to the specific elements set out at Section 117B of the 2002 Act. In the application to the Upper Tribunal (which now stands as the Grounds of Appeal) it was in essence asserted that the judge should have had regard to the Immigration Rules and should have addressed the specific matters set out at paragraph 117B of the 2002 Act.

3. At the commencement of the hearing Mr Smart for the Secretary of State said that he sought to amend the grounds to refer specifically to the judgment of the Court of Appeal in **Singh v SSHD [2015] EWCA Civ 74**, which had been handed down after the application had been made. I considered that this was not in truth a matter of amendment to the Grounds of Appeal but merely reliance on a more recent judgment of the Court of Appeal which was germane to the issue. Ms Norman for her part quite properly had no objection to reference being made to that judgment. Mr Smart said that paragraph 15 of the decision under appeal, in which the judge had made it clear that she relied upon **Edgehill** as authority for not having regard to the amended Immigration Rules, was simply wrong. It was now clear from **Singh**, notably paragraph 56 of that judgment, that the guidance in **Edgehill** only obtained as regards decisions taken in the two-month period between 9th July and 6th September 2012. The decisions by the Secretary of State under appeal had been made in July 2014 and therefore the applications fell properly to be considered with reference to the Immigration Rules.

4. If the matter was considered beyond the Rules, he said, it was clear that Section 117B of the 2002 Act had to be taken into account in its entirety. This was clear from various decisions of the Upper Tribunal including **AM (S117(B)) Malawi [2015] UKUT 0260 (IAC)** and **Forman (Sections 117 A – C considerations) [2015] UKUT 412 (IAC)**.

5. Ms Norman for her part sought to argue that the judge had not erred in considering Article 8 outside the Rules and that she had made reference to some of the items mentioned in Section 117B of the 2002 Act but had to acknowledge that the judge had not said that she gave little weight to private life established whilst the Claimants were in this country unlawfully.

6. Having considered the decision and reasons of Judge Mather, the Grounds of Appeal and the submissions made I decided that there were clear errors of law in the decision such that it was required to be set aside. I can quite understand why the judge considered herself bound by **Edgehill,** but the position has now been clarified by the Court of Appeal in **Singh**. It is clear that Article 8 cases decided after 6th September 2012, whenever the applications were made, fall to be decided firstly with reference to the Immigration Rules. There had clearly been an error in this regard. Although the judge made a passing reference to the Section of the 2014 Immigration Act, which introduced Section 117 of the 2002 Act, she did not in substance apply the elements of Section 117B as she was required to do. That duty is now clear from the cases referred to by Mr Smart as well as other cases such as **Dube (Sections 117(A) to Section 117(D)) [2015] UKUT 00090 (IAC)**.

7. Ms Norman suggested that it might be possible for me to go on to re-decide the appeal on the basis of the findings made but on examination it was clear that the judge had not addressed all of the matters which needed to be decided and a further hearing was required when new findings on all issues would need to be made. In the circumstances I decided that the appropriate course was to remit the appeals to the First-tier Tribunal for a further hearing. Both representatives agreed that this would in fact be the appropriate way forward, also bearing in mind further levels of appeal. Having regard to paragraph 7.2(b) of the Practice Statements for the Immigration and Asylum Chamber of the Upper Tribunal the appeal will accordingly be remitted to the First-tier Tribunal under the provisions of Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 in accordance with the directions set out below.

Notice of Decision

The decisions of the First-tier Tribunal on both appeals contained material errors of law and those decisions are set aside.

I remit the appeals to the First-tier Tribunal with directions for their reconsideration.

There was no application for an anonymity order and no such order is made.

Signed Date 07 October 2015

Deputy Upper Tribunal Judge French

DIRECTIONS (SECTIONS 12(3)(a) AND 12(3)(b) OF THE TRIBUNALS COURTS AND ENFORCEMENT ACT 2007)

1. The members of the First-tier Tribunal who are chosen to re-decide the appeals should not include Judge of the First-tier Tribunal C M Mather.

2. None of the findings of Judge Mather are preserved and the appeals are to be heard afresh. The appropriate hearing centre is at Birmingham and the time estimate two hours. No interpreter will be required.

3. Each party shall serve upon the other and upon the First-tier Tribunal copies of all witness statements and other documentation upon which reliance is sought to be placed at least seven days before the hearing.

Signed Date 07 October 2015

Deputy Upper Tribunal Judge French