



**The Upper Tribunal
(Immigration and Asylum Chamber)
AA/00213/2015**

Appeal number:

THE IMMIGRATION ACTS

**Heard at North Shields
On March 10, 2016**

**Promulgated
On March 29, 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

[R B]

~~(NO ANONYMITY DIRECTION)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Mr Selway (Solicitor)

Respondent

Mr Dewison (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria. The appellant applied for asylum on July 17, 2014. The respondent refused the application on December 17, 2014.
2. The appellant appealed this decision on January 6, 2015 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. The appeal came before Judge of the First-tier Tribunal Handley on May 12, 2015 and in a decision promulgated on May 29, 2015 he refused the appellant's asylum claim and her claim under articles 2 and 3 ECHR.
4. The appellant sought permission to appeal on June 15, 2015 and permission to appeal was granted solely on the basis the Judge had failed to deal with the appellant's article 8 claim in circumstances where she claimed to have been here since at least 2005 and had children who had each been born here.
5. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I make no Order.
6. The matter came before me on the above date.
7. I indicated to the representatives that there appeared to be an obvious error in law. The original grounds of appeal clearly raised article 8 and the Judge had touched on her circumstances which made a decision on that aspect of her claim an obvious requirement.
8. Although Mr Dewison submitted that the Judge had referred to the partner's claim that had included the appellant I pointed out to him that the Judge had been dealing with her claim and if he found no merit then he should have dealt with it accordingly.
9. The Judge's finding on her asylum claim were upheld on appeal but as there were no findings on her article 8 claim I find there is an error in law.
10. Part 3, Section 7.1 to 7.3 of the Practice Statement states:

“Where under section 12(1) of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b) (i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).

The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary."


11. I suggested that this matter be remitted back to Judge of the First-tier Tribunal Handley to complete the job he commenced in May 2015. Any findings on credibility are retained and in particular his findings between paragraphs [32] and [37], [39] and [42] should form the starting point of any assessment of any article 8 claim.
12. I am conscious of the fact the first appeal was heard in May 2015 and I therefore direct that the parties serve any additional evidence in accordance with the current Procedural Rules.

DECISION

13. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law on the basis no assessment under the Immigration Rules or under article 8 ECHR was undertaken. The asylum decision is upheld.
14. The appeal is remitted back to the First-tier Tribunal for these issues to be addressed hearing under Section 12 of the Tribunals, Courts and Enforcement Act 2007.
15. These remaining matters should be dealt with by Judge of the First-tier Tribunal R Handley, if at all possible, as he has already heard the earlier evidence and the error is not one that precludes him from dealing with the remainder of the case.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis