IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/06365/2014

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 10 February 2016	**On 17 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

MN
~~**(ANONYMITY DIRECTION NOT MADE)**~~

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S. Najma, Kher Solicitors
For the Respondent: Mr. D. Mills, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Cheales promulgated on 15 December 2014 in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to vary leave to remain and to remove the Appellant from the United Kingdom.

2. Permission to appeal was granted as follows:

> "The determination is brief and it is considered that there is merit in the grounds asserted by the appellant, especially as this appeal is also against the decision to remove under Section 47 of the Immigration, Asylum and

> Nationality Act 2006 and there has been no consideration of Article 8 in this determination."

3. Ms Najma provided a skeleton argument.

4. At the outset of the hearing Mr. Mills conceded that the Appellant had an arguable Article 8 case and that the case should be remitted to the First-tier Tribunal for re-hearing. However, he submitted that there was no error in the decision in relation to the immigration rules.

5. Ms Najma agreed that the case should be remitted for re-hearing of the Article 8 case. She accepted that the Appellant's appeal could not succeed under the immigration rules.

Error of law

6. The decision deals with the immigration rules in paragraphs [9] and [10]. The judge found that the Appellant did not meet the requirements of the rules. It was accepted by Ms Najma that this is the case, and these two paragraphs of the decision stand.

7. In relation to Article 8, this is not dealt with at all. The Appellant was unrepresented at the hearing. He attended together with his wife. Both the Appellant and his wife gave evidence, as can be seen from paragraphs [4] and [7] of the decision. The decision records at paragraph [11] "The Appellant has a serious mental illness and appears now to be married." However, there is no evidence in the decision that the judge took into account the Appellant's mental illness, or that he took into account the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance.

8. Even given that there appears to have been very little documentary evidence before the judge, given that the Appellant was unrepresented, that it was found by the judge that he had a serious mental illness, and that he was married, the judge's failure to address Article 8, which was raised in the grounds of appeal, is an error of law. It is not enough for the judge to say in paragraph [11] "It is open to him to make a fresh application if he wishes". It should have been clear to the judge that the Appellant had a case to make under Article 8, and he should have dealt with it.

Notice of decision

The decision involves the making of an error on a point of law. I set the decision aside, excepting those parts that deal with the appeal under the immigration rules, (paragraphs [9] and [10]).

The appeal is remitted to the First-tier Tribunal for a re-hearing of the Appellant's Article 8 claim.

Signed Date 12 February 2016

Deputy Upper Tribunal Judge Chamberlain