Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: IA/24690/2014**
IA/24692/2014
IA/24693/2014
IA/24694/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Decision and Reasons Promulgated**
On 16 September 2015	**On 26 November 2015**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

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ANONYMITY DIRECTION MADE

Respondents

Representation:
For the Appellant: Mr Harrison (Home Office Presenting Officer)
For the Respondents: Unrepresented

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

(SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. The appellant ('the SSHD') appeals against a decision of First-tier Tribunal Judge Roopnarine-Davies dated 10 February 2015 in which the respondents' appeals were allowed to the limited extent that the decision was not in accordance with the law and remained outstanding.

2. The Judge provides two reasons for taking the course that she did, which I deal with in turn.

3. First, the Judge correctly noted that the respondent's application was made prior to the new Immigration Rules introduced from 9 July 2015. The Judge concluded that the new Rules do not apply to such applications in light of Edgehill v SSHD [2015] EWCA Civ 402. However Singh v SSHD [2015] EWCA 74 has decided that upon the introduction of the new paragraph A277C – with effect from 6 September 2012 – the SSHD was entitled to take into account the provisions of Appendix FM and paragraphs 276ADE–276DH in deciding private or family life applications even if they were made prior to 9 July 2012. The result is that the law as it was held to be in Edgehill only obtained as regards decisions taken in the two-month window between 9 July and 6 September 2012. Singh is declaratory of the law as it interprets Immigration Rules in place at the time of the decision. This is a case in which the SSHD decision under appeal was made on 22 May 2014, and as such she was entitled to apply the new Rules. It follows that the First-tier Tribunal erred in law in deciding otherwise.

4. I do not accept the submission set out in the skeleton argument provided to me by the first respondent that the SSHD conceded that the proper course was remittal. The Judge does not refer to any concession on the part of the SSHD and states *"I came to the view…"*.

5. Second, the Judge considered that the SSHD had not taken material matters into account. The decision letter is a detailed document that addresses the children's best interests and the relevant circumstances before her at the time. If there was additional evidence or detail to be considered it is difficult to see why this could not be addressed by the Tribunal. MK (section 55 - Tribunal options) Sierra Leone [2015] UKUT 00223 (IAC) is authority for the proposition that one of the options available to the Tribunal where it finds there has been a breach of section 55 is remittal. MK serves as a reminder that the decision in AJ (India) v SSHD [2011] EWCA Civ 1191 is authority for the proposition that where the First-tier Tribunal decides that a decision of the SSHD is not in accordance with the law on

account of a failure to discharge the first of the s 55 duties the Tribunal is not obliged to remit the case to the Secretary of State for a fresh decision.

6. The Judge has not found a breach of section 55 on the part of the SSHD but has rather found the analysis lacking. In any event, even if the Judge was entitled to consider the s 55 duty as having been breached he should have gone on to consider whether this should result in a remittal to the SSHD or whether he could and should consider the matter himself. In failing to consider this, the Judge has erred in law. Further, there is no indication that the Judge has considered the detailed bundle of evidence available to determine the correct option in this case and whether it was indeed remittal. This is a case in which the SSHD has already considered best interests and there was no need for this to be done again simply because there was more detailed and updated evidence available. The Judge has given no consideration has been given to this evidence or the desirability of finality and promptness in decision-making.

7. I accept that the position regarding the first appellant's husband and her youngest child is uncertain. At present the only appellants are the mother and her three older children. At the time of the application the first appellant and her husband were separated. Since the date of decision they have lived together as a family unit and have another child. Although I do not understand there to be removal directions made in respect of the husband / father, he has no leave to remain and the SSHD's contention that the family members can return as a family unit remains sound. It would however be helpful for the SSHD to clarify the immigration status of the husband and youngest child.

8. By paragraph 7.2 of the relevant practice statement for appeals on or after 25 September 2012, I must be satisfied that:

> "... 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."

9. In all the circumstances I am satisfied that it would be proportionate to remit the case to the First-tier Tribunal given the nature and extent of fact finding that needs to be made regarding the children's circumstances and whether it would be reasonable to expect them to return to Nigeria.

Decision

10. The decision of the First-tier Tribunal involved the making of a material error of law and I set it aside.

Directions

(1) The SSHD shall file upon the First-tier Tribunal and serve upon the first respondent a position statement outlining the immigration status of the first appellant's husband and youngest child, whether immigration decisions have been made in relation to them and if so whether any appeals should be linked to these appeals.

(2) 14 days before the hearing the respondents shall file and serve evidence to support the submission that it would be unreasonable for the children to be removed with their mother and if appropriate father, as part of a family unit.

(3) The hearing shall be listed on the first available date at Manchester IAC. TE 2 hrs.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
17 September 2015