



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/28144/2013
IA/28146/2013

THE IMMIGRATION ACTS

Heard at Field House
On 11 July 2014

Determination Promulgated
On 14 July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JOHN AUSTIN OKORIA
EYOWEVE FAITH YEKOVIE
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:

For the Appellant: Mr C Avery, Home Office Presenting Officer
For the Respondent: Ms J Norman, Counsel

DETERMINATION AND REASONS

1. The respondents to this appeal, Mr Okoria and his wife, Mrs Yekovie, are Nigerian citizens born on 5 January 1970 and 8 August 1974 respectively. The appellant is the Secretary of State, who has appealed with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal Bart-Stewart, who dismissed the appeals brought on the grounds that the respondents met the requirements of the Immigration Rules but allowed them on the basis the decisions of the Secretary

of State to remove the respondents under section 47 of the Immigration, asylum and Nationality Act 2006 were not lawful.

2. It is more convenient to refer to the parties as they were before the First-tier Tribunal. I shall therefore refer to Mr Okoria and Mrs Yekovie from now on as “the appellants” and the Secretary of State as “the respondent”.
3. The appellants both sought leave to remain on the basis the first appellant met the requirements of the rules for Tier 1 (Entrepreneur) Migrants under the Points-Based System. He had established an international money exchange business. The respondent was satisfied he had shown £50,000 available to invest in the business but he had not provided mandatory documents showing he was engaged in business activity. The second appellant was refused as his dependant.
4. The appellants appealed, arguing the respondent had failed to carry out a thorough assessment of the documents provided. Providing a contract was not a mandatory requirement. The respondent had also failed to exercise evidential flexibility. The other grounds of appeal were generic. Judge Bart-Stewart found the documents submitted with the application did not entitle the appellants to the points sought for Attributes and also held that the decisions were in accordance with the law. As noted, she allowed the appeals because she found the removal decisions unlawful, apparently on the ground that they were made within the same decision notices as the refusals to vary leave.
5. The grounds seeking permission to appeal pointed out that section 51 of the Crime and Courts Act 2013 came into force on 8 May 2013 so decisions made on 25 June 2013 could lawfully include removal decisions. Permission to appeal was granted on this basis.
6. The appellants have not filed a Rule 24 response opposing the appeal and they have not applied for permission to appeal against the judge’s findings in respect of the rules and evidential flexibility.
7. I heard submissions on the question of whether the judge made a material error of law requiring her decision to be set aside. In fact, both representatives agreed that the appropriate course was to set aside the judge’s decision that the removal decision was not in accordance with the law and to substitute a decision finding the decision was in accordance with the law. Ms Norman confirmed there was no cross-appeal with respect to the judge’s dismissal of the appeals under the substantive rules.

DECISION

The Judge of the First-tier Tribunal made a material error on a point of law and her decision allowing the appeals on the basis the respondent's decisions were not in accordance with the law is set aside.

The following decision is substituted:

The appeals brought under the Immigration Rules are dismissed.
The decisions were in accordance with the law.

No anonymity direction has been made.

Signed

Date 11 July 2014

**Neil Froom, sitting as a Deputy Judge of the Upper
Tribunal**