Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/15319/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 19 February 2015	**On 20 February 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS HOROJA SALLAH
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr S Whitwell, Home Office Presenting Officer
For the Respondent: Miss S Bassiri-Dezfouli, Counsel (instructed by DV Solicitors)

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Parkes on 15 January 2015 against the decision of First-tier Tribunal Judge Majid who had allowed the Respondent's appeal against the Appellant's decisions dated 6 March 2014 to refuse to grant the Respondent leave to remain outside the

Immigration Rules and to remove her. The decision was promulgated on 28 November 2014.

2. The Respondent is a national of Gambia, born on 17 March 1981. She had entered the United Kingdom as a visitor on 20 December 2001, with leave to enter valid until 20 June 2002. The Appellant thereafter remained in the United Kingdom without leave. On 15 September 2009 the Respondent made her application for further leave to remain, which was refused on 6 March 2014.

3. Permission to appeal to the Upper Tribunal as sought by the Appellant was granted by Judge Parkes because he considered that it was arguable that the judge had failed to show that he had considered the relevant Immigration Rules or had applied sections 117A-D of the Nationality, Immigration and Asylum Act 2002 when considering the public interest in the proportionality assessment.

Submissions – error of law

4. Mr Whitwell for the Secretary of State relied on the grounds of onwards appeal and submitted that this was a clear case of legal error in relation to what was in substance an Article 8 ECHR claim, as the grant of permission to appeal indicated. Section 117B had not been considered at all. Insufficient weight had been given to the public interest and to the Immigration Rules when conducting the proportionality assessment. Key authorities had been ignored. The decision should be set aside and remade at a fresh hearing.

5. Miss Bassiri-Dezfouli for the Respondent candidly accepted that the judge had not mentioned section 117B and that it was not easy to defend the decision. Nevertheless she invited the tribunal to uphold it.

6. There was nothing which Mr Whitwell wished to add.

The error of law finding

7. At the conclusion of submissions, I indicated that I found that the judge had fallen into material error of law, such that the decision would be set aside. It would not be possible to preserve any findings of fact and the appeal would have to be reheard before another judge. I reserved my determination which now follows.

8. Judge Majid's decision is difficult if not impossible to follow. It seems he purported to allow the appeal under the Immigration Rules but he failed to specify which rule or rules were applicable. There followed what can only be described as a rambling and disjointed series of personal and irrelevant observations about the law, which I regret to say I have seen in other decisions from the same judge. These it has to be said stray far from the principle of judicial impartiality.

9. I consider that there were a number of grave problems with the judge's decision, beginning with the legal framework. It was unclear which Immigration Rules, if any, the judge had considered. The judge was required by law to give express consideration to section 117B in particular when considering the Article 8 ECHR claim. The judge ought to have shown that by such reference that he had adequately weighed the relevant public interest considerations, one of which was the Appellant's adverse immigration history. Important health cases such as N v SSHD [2005] UKHL 31 received no mention, despite the Secretary of State reliance on such authority: see paragraph 21 of the reasons for refusal letter. The tribunal has already observed the judge's free expression of his personal views.

10. It is plain that the Appellant's complaints are fully justified. The decision cannot stand and the tribunal accordingly sets aside the decision. There has not been an effective hearing because of the judge's incompetence. There is no alternative but to return the appeal for a fresh hearing in the First-tier Tribunal. No findings are preserved.

11. There was no application for an anonymity direction and the tribunal sees no need for one.

DECISION

The making of the previous decision involved the making of an error on a point of law. The tribunal allows the onwards appeal to the Upper Tribunal, sets aside the original decision and directs that the original appeal should be heard again before a differently constituted First-tier Tribunal. The date has been fixed 15 August 2015, at Taylor House, not before First-tier Tribunal Judge Majid.

Signed **Dated 19 February 2015**

Deputy Upper Tribunal Judge Manuell