IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/07938/2014
AA/07940/2014, AA/11211/2014
AA/11213/2014, AA/11216/2014
AA/11214/2014, AA/11218/2014
IA/42223/2013, DA/00311/2014

THE IMMIGRATION ACTS

Heard at Field House and decision given orally on 14 January 2016	**Decision & Reasons Promulgated On 29 January 2016**

Before

The President, The Hon. Mr Justice McCloskey

Between

MA
FM
OA_1
AA_1
OA_2
FA
AA_2
AA_3
AA_4

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: Ms J Fisher, of Counsel, instructed by Powell Spencer and Partners Solicitors
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. In my judgement the decision of the First-tier Tribunal suffers from a series of material errors of law. First, there is a failure to make necessary findings on an extensive list of material issues. This conclusion follows from a very simple analysis of the text itself. It applies particularly to paragraphs 136, 137, 138, 140 and 145. That is not necessarily an exhaustive list.
2. In all of these passages the common denominator is that the judge poses material questions but fails to answer them in the form of clear and unambiguous findings. This stands out as an egregious legal infirmity in the determination.
3. Secondly, while the judge does make some key findings I conclude that they are inadequately reasoned. Paradigm illustrations are found in paragraphs 142 to 144. These paragraphs are couched in conclusionary terms. They suffer from a necessary degree of analysis of evidence and appropriate findings. This is illustrated in particular by the opening part of paragraph 142 in which the judge refers vaguely and obliquely to “extensive evidence” considered without providing the slightest hint of what the main aspects of that evidence were and what his findings in relation thereto actually are.
4. This is linked with a third clearly ascertainable error of law in the determination, namely the judge’s consideration of the credibility of the parents and his application of Section 8 of the 2004 Act. I consider that in his treatment of this topic it was incumbent on the judge to engage with the Secretary of State's decision which contained a series of passages relating to credibility. Paragraphs 25 to 31 of that decision refer. There is no nexus whatsoever in the determination between the judge’s consideration of credibility and the assessment and conclusions of the Secretary of State in the decision letter. This too stands out as a striking lacuna in the decision of the First-tier Tribunal.
5. The next clear error of law in the determination is the judge’s failure to engage with applicable country guidance. Mr Wilding has submitted that duly analysed, the judge, although not referring to the country guidance decision itself, and not identifying its essential elements, has in fact managed to apply it. If correct, this would be an admirable feat of mental gymnastics, of Olympic gold proportions. I find that in a case of this nature a failure to engage in the most elementary way with the country guidance is a clear error of law.
6. The next error of law contaminating the determination is the judge’s consideration and application of Section 55 of the Borders, Citizenship and

Immigration Act 2009 Act. Suffice to say on this issue that this judgment fails all of the touchstones identified in the decision of this Tribunal in JO (Nigeria). Fundamentally there is a failure to separate the children individually or, alternatively, to provide a reasoned basis for dealing with them in combinations and in any event to identify their best interests. These are not expressed and cannot realistically be implied anywhere in the relevant passages of the judgment.

7. Furthermore, the judge conflates the exercise of identifying the best interests with countervailing proportionality factors, instead of clearly segregating these two quite separate issues.

   These two steps require to be taken separately. Paragraph 155 of the determination in my judgement makes this particularly clear. This is linked to a related deficiency in the judgment, namely the judge's failure to conduct the Razgar staged approach to Article 8 of the Convention. The correct approach would, in principle, have avoided these errors. The difficulty here is that the correct approach was not adopted and an error strewn path followed in consequence.

8. A further error of law infecting the determination is the judge's failure to separate the claims made one from each other. There was an obligation to undertake a reasonable and adequate individual assessment of the claims but the judge has failed to do so.

9. Finally, linked to the first of the errors which I have identified, is the judge's treatment of the issue of the childrens' education in paragraph 136 and the availability of medical treatment to them in Kuwait in paragraph 137. The inadequate and incomplete assessment of these issues forms part and parcel of the first error of law diagnosed.

10. For this combination of reasons I conclude that the decision of the First-tier Tribunal is unsustainable in law and must be set aside. I should make clear that I find no merit in the challenge based on the time taken to write the determination. That is not a sustainable ground in this particular case.

Order

11. The decision of the First-tier Tribunal is set aside. The appeal is remitted to a differently constituted tribunal for a fresh hearing and new decision.

Signed: Gerard McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Date: 25 January 2016