IAC-AH-DN-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/43013/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8th May 2015	**On 21st May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR SAMUEL LARBI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Fisher (Counsel)
For the Respondent: Mr C Avery (Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Somal, promulgated on 20th January 2015, following the hearing at Nottingham on 15th January 2015. In the determination, the judge allowed the appeal of Samuel Larbi. The Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Ghana, who was born on 14th October 1962. He appealed against the decision of the Respondent Secretary of State dated 13th October 2014, rejecting his application to remain in the UK as a the partner of a British citizen wife, namely Ms Thembani Eunice Dube, a person present and settled in the UK because he could not meet the financial requirements test and the English language requirements.

The Judge's Findings

3. The judge was satisfied that the financial threshold requirement of £18,600 for a couple was met because,

> "He has produced the required documentary evidence to confirm this. He has produced evidence to show the amount of tax payable, paid and unpaid for the last financial year, his SA302 statement of account and evidence of his ongoing self-employment through evidence of payment of class 2 NI contributions as shown by his bank statement and evidence of direct debits for NI paid to the HMRC made from his bank account" (paragraph 11).

4. With respect to the English requirement test, however, the judge was less persuaded holding that,

> "However, I do not find the Appellant has shown he has passed the English language test requirements as he has provided an English certificate from EMDQ, which is not on the Secretary of State's list of approved providers. I find the Appellant cannot meet the requirements under the five year route as a partner as he cannot meet the English language requirements" (see paragraph 11).

5. Nevertheless, the judge did find both the Appellant and the Sponsor "to be honest and credible". She found them to be "in a genuine and subsisting relationship" and there were photographs produced to confirm this. They had been in a relationship since 2011 and had then moved in together and got married.

6. It was against this background, that the judge held that,

> "There are insurmountable obstacles to family life with his partner continuing outside the UK, as she is a British citizen and all her family live in the UK. It would be unreasonable for him to return as he has lived in the UK for almost ten years, although I am mindful that he has spent the vast majority of his life in Ghana. The Appellant has a wife and is married having been in a long term and stable relationship ... . She has a long-standing full-time job and has no connection with Ghana. She is not from Ghana and she has never been to Ghana ..." (paragraph 12).

The judge did give consideration to whether the relationship would continue "with indirect contact and visits from the Sponsor and vice versa" (paragraph 13) but rejected this as being impracticable.

7. The appeal was allowed.

The Grounds of Application

8. The grounds of application state that the judge erred in allowing the appeal on the basis that Section EX.1 was to be treated as free-standing. The case of **Sabir [2014] UKUT 00063** has confirmed that it is not free-standing. If an Appellant does not meet the requirements of the Rules, then compelling circumstances have to be established for the purposes of Article 8. The fact that the Appellant failed to meet the requirements of the relevant Immigration Rules (as he failed to meet the English language test) meant that the compelling circumstances had to be properly shown and they were not.

9. On 3rd March 2015, permission to appeal was granted on the basis that **Gulshan [2013] UKUT 640** establishes the correct approach and compelling circumstances have to be established for the purposes of Article 8. The judge had misdirected herself when assessing proportionality.

Submissions

10. At the hearing before me on 8th May 2015, Mr Avery, appearing on behalf of the Respondent Secretary of State, relied upon the Grounds of Appeal. He submitted that the judge had failed to demonstrate in her reasoning what was compelling or exceptional part of these facts, such that the Rules did not fall to be applied in their normal manner. The Rules are a strict code. The circumstances identified by the Tribunal cannot be said to be compelling or exceptional. The Appellant may well have a British citizen wife and she may be in employment, and she may have family here, but these are not obstacles preventing her relocation. English was spoken in Ghana. She could obtain employment there. Moreover, the Appellant himself could return to Ghana. He had a lengthy stay there. He had spent the majority of his life in Ghana. His youth and formative years had been spent there. He was fully familiar with its culture and customs. There is nothing about his private life that cannot be continued in Ghana and his position in the UK was always precarious such that paragraph 117B of the Immigration Act 2014 militated against him.

11. For her part, Ms Fisher submitted that the essential question was whether the judge had fallen into making an error of law. She had not. She drew my attention to her skeleton argument. She suggested that the judge had given sufficient reasons. Furthermore, in the case of **Boultiff v Switzerland [2001]** the Strasbourg Court had held, particularly in a deportation case, that it would not be reasonable for a wife to relocate to Algeria as a Swiss national, even though she did speak French because, "The applicant's wife has never lived in Algeria, she has no other ties with that country and indeed does not speak Arabic" (paragraph 53). Ms Fisher suggested that this was a complete answer to the appeal by the Secretary of State.

12. Second, the objective evidence from the COIS Report highlights the high unemployment rate amongst women in Ghana. The Ghana web article of 16th July 2011 is headed, "The growing unemployment crisis in Ghana" and refers to how, "The worst affected groups of the Ghanaian job crisis include women, young people, the disabled and the elderly". The judge was right to have taken this into account.

Third, the Respondent had relied upon the case of **Sabir** to assert that EX.1 was not free-standing. However, the Appellant did meet EX.1 and the Respondent had erred in relying on **Sabir**. The Appellant met E-LTRP2.2(b) and that he must not be in breach of the Immigration Rules unless EX.1 applies. He met the eligibility criteria. He also met the financial requirements set out in E-LTRP3.1, 3.2.

13. Finally, it was not the case that the Rules here are a strict code because in **Ganesabalan [2014] EWHC 2712** the court had established that unlike other Rules which have a built-in discretion based no exceptional circumstances, Appendix FM and Rule 276ADE are not a "complete code" so far as Article 8 is concerned. This meant that the judge was correct in applying the Rules as she did. As for Section 117B of the 2014 Act this had plainly been taken into account by the judge.

No Error of Law

14. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. In **Agyarko [2015] EWCA Civ 440**, handed down by the Court of Appeal only two days earlier on 6th May 2015, Sales LJ observed that,

> "The phrase 'insurmountable obstacles' as used in this paragraph of the Rules clearly imposes a high hurdle to be overcome by an applicant for leave to remain under the Rules. The test is significantly more demanding than a mere test of whether it would be reasonable to expect a couple to continue their family life outside the United Kingdom" (see paragraph 21).

15. Sales LJ was referring to Section EX.1. However, on the facts of this case, the judge had clearly found that the Appellant's wife would meet with "insurmountable obstacles" because she had no connection with Ghana, had never been to Ghana, and had a stable and long term job in the UK, where her entire family resided (paragraph 13). That was a finding which, on the facts of the case, was open to the judge.

16. Second, this line of reasoning is not inconsistent with Strasbourg jurisprudence because in **Boultiff v Switzerland [2001]** the European Court of Human Rights had held, in relation to a Swiss national wife, that she also faced insurmountable obstacles to relocating to Algeria, even though she spoke French, given that "Wife has never lived in Algeria, she has no other ties with that country, and indeed does not speak Arabic" (paragraph 53). Third, it is clear that the judge has given sufficient reasoning.

17. The Tribunal in **Budhathoki [2014] UKUT 00341** has held that,

> "It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issues raised in a case. ... It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons ...."

18. This the judge had clearly done. Fourth, if the Appellant's wife cannot relocate to Ghana, then there are insurmountable obstacles to family life with that party continuing outside the UK, and this satisfies the requirements of EX.1.

19. Finally, the judge was correct to interpret the Article 8 jurisprudence as she did because Appendix FM and Rule 276ADE are not a "complete code" as has been established in **Ganesabalan [2014] EWHC 2712**. There is no prior threshold which dictates whether the exercise of discretion should be considered. In this case, the judge was satisfied that the basis for the exercise of discretion had been put forward.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 16th May 2015