



Upper Tribunal
Immigration and Asylum Chamber

Appeal Number: IA/43728/2014

THE IMMIGRATION ACTS

Heard at Field House
On: 9 October 2015

Decision & Reasons Promulgated
On: 12 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

BETWEEN

MR PWC
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mr S Walker, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision, promulgated on 7 May 2015, of First-tier Tribunal Judge Stokes (hereinafter referred to as the FTTJ).
2. Permission to appeal was granted by Upper Tribunal Judge Lindsley on 1 September 2015.
3. On 13 November 2009, the appellant entered the United Kingdom with leave to enter as a spouse of a person settled here, which was valid until 13 January

2012. An in-time application for leave to remain in the United Kingdom on the same basis was rejected. The appellant resubmitted that application on 17 January 2012 and it was refused with no right of appeal. Thereafter, the appellant requested a reconsideration of the earlier decision and furthermore requested that his case be considered under Article 8 ECHR with regard to a relationship with a different partner.

4. The respondent considered that the appellant met the suitability, relationship and eligibility requirements of Appendix FM to the Immigration Rules, however as the appellant's stepchild was over the age of 18, paragraph EX.1 did not apply. With regard to paragraph EX.2, the respondent did not accept that a "*mere wish, desire or preference*" to live in the United Kingdom amounted to insurmountable obstacles to family life continuing outside this country. Furthermore, it was not accepted that the appellant could meet any of the requirements of paragraph 276ADE of the Rules. Reference was made to the appellant's claim that his partner could not relocate to Jamaica because she cares for her elderly mother and that his stepdaughter, who is at university, enjoyed a close relationship with her father but these were not considered to amount to exceptional circumstances meriting a grant of leave outside the Rules. The Secretary of State also commented adversely on the appellant's continued unlawful presence and employment in the United Kingdom since his leave to enter expired.
5. At the hearing before the FTTJ, the appellant and his partner, MD, provided oral evidence. The FTTJ noted that there were no credibility issues, but dismissed the appeal on the basis that there were no insurmountable obstacles to family life being continued in Jamaica.
6. The grounds of application consisted of fifteen handwritten pages, which argued that the FTTJ's decision did not show respect to the human rights of the appellant, his partner and other relatives as well as the appellant's complaints about his former partner whom he described as violent and bullying.
7. UTJ Lindsley granted permission on the basis that it was arguable that it was not the role of the FTTJ to review the reasonableness of the respondent's decision, as she appeared to do at [27] of her decision. Furthermore, a degree of hardship had been presented to the tribunal in relation to the mother of the appellant's partner were the couple to have their family life outside of the United Kingdom.
8. The respondent lodged a Rule 24 response to the grant of permission. The appellant's appeal was opposed and it was argued that the FTTJ directed herself appropriately. In relation to the ground on which permission was granted, the respondent argued that the FTTJ had properly considered the degree of hardship the mother of the appellant's partner would face were the appellant and his partner to leave the United Kingdom. The appellant's grounds were said to amount to no more than mere disagreement with the

negative outcome and did not establish a material error of law.

9. At the hearing before me, the appellant reiterated his criticisms of the FTTJ's decision. In essence, he was of the view that the FTTJ had become confused between his partner's brother and her mother's brother and he wondered if other mistakes had been made; albeit he was unable to direct me to any. He told me that his partner's mother was not accompanied to Jamaica by her brother rather the family met her there. His partner's mother was elderly and sickly and needed the support of his partner round the clock.
10. The appellant did not believe that he would be able to find work in Jamaica owing to his long absence, the fact that he had sold his tools and car to come to the United Kingdom and that he had no paper qualifications. I asked him why he could not return simply to apply for entry clearance, however he said that he would be sleeping on the street, his partner's finances were not in a strong enough state to provide for him and that his return to Jamaica would ruin their relationship.
11. The appellant appeared to me to be preoccupied with the manner in which he was treated by LH, his former partner and became quite distressed when recounting these matters. He repeated much of what he said in his grounds regarding LH's physical and verbal abuse, cruelty, control of his finances, extortion and manipulation. The content of those grounds, which contain much credible detail, is very concerning. I explained that these events were not relevant to the decision of the FTTJ as these matters were not ventilated before her. Instead, I encouraged the appellant to seek urgent legal advice in relation to a possible claim that his marriage had broken down owing to domestic violence.
12. During his submissions, Mr Walker commented that it was "clear" from the appellant's evidence that domestic violence was involved in his relationship with LH but that an application could be made in that regard. Otherwise, he drew my attention to various paragraphs of the FTTJ's decision in which reference was made to various aspects of the appellant's circumstances and that of his partner and her family.
13. In response, the appellant stressed that it would be very difficult for his partner's family if the appellant and his partner lived in Jamaica. While his partner had a brother in the United Kingdom, that brother lived an hour away and had his own family. He argued that his partner's daughter was a young adult and was not that helpful. She did not do for his partner's mother, what his partner did.
14. At the end of the hearing, I concluded that no error of law was made by the FTTJ.
15. Permission to appeal was granted, partly, owing to what the FTTJ said at [27] of the decision and reasons; *"I find that the Respondent's conclusion that the hardship*

did not amount to an insurmountable obstacle was a rational one and was sufficiently explained in the refusal letter." While this comment gives an impression that the FTTJ was merely and erroneously reviewing the reasonableness of the respondent's decision, a reading of the decision as a whole demonstrates that this was not the case. Prior to making the comment at [27], the FTTJ set out and assessed, at considerable length, between [16] and [26] of the decision, all the matters relied upon by the appellant in his appeal. It is only after considering all the evidence before her and concluding that there were no insurmountable obstacles to family life taking place in Jamaica, that the FTTJ made any substantial reference to the respondent's decision. She directed herself appropriately.

16. Reference was also made, in the grant of permission, to evidence of a degree of hardship being before the FTTJ. This was indeed the case. The decision of the FTTJ, at [24] demonstrates that she had regard to the correct legal tests regarding the meaning of the term insurmountable obstacles.
17. The particular issue said to be a cause of potential hardship, is the health of the mother of the appellant's partner. However, at [21] the FTTJ correctly records that the lady's kidney disease is in remission; that her consultant described her as "very well;" that she had travelled to Jamaica for 3 months and that she would not be seen again by her consultant until a year had elapsed. At [26], the FTTJ considered the fact that the partner's mother was able to travel abroad and remain there for some time without jeopardising her health; at [22] that the partner's mother had her own accommodation and a son in London, at [20], lived with her adult granddaughter and that no referral to social services had been made.
18. The FTTJ gave careful consideration to the care of the partner's mother and concluded that there would be no significant degree of hardship were the appellant and his partner to relocate to Jamaica. Alternatively, in considering the appellant's Article 8 claim outside the Rules, the FTTJ found at [35] that a temporary separation for the appellant to seek entry clearance did not interfere disproportionately with his protected rights. At [20] it is noted that the appellant's partner earns in excess of £18,600 per annum and at [22] that she has relatives of her own in Jamaica who could offer the appellant "initial support".
19. The decision of the FTTJ comprehensively addressed all the issues before her. If the FTTJ was mistaken as to one particular relative, this was not a material error in view of the clear evidence that the partner's mother is well, would not be living alone were his partner to accompany him to Jamaica and that she is able to travel abroad for extended periods of time. The decision of the FTTJ does not display a material error of law and is therefore upheld.
20. No anonymity direction was made by the FTTJ, however, given the revelations as to the treatment the appellant appears to have suffered during his relationship with LH, I consider it appropriate to make the following

anonymity direction:

“Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. “

Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the FTTJ is upheld.

Signed:

Date: 11 October 2015

Deputy Upper Tribunal Judge Kamara