



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/08626/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 7th September 2017**

**Decision & Reasons
Promulgated
On 3rd October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MR LEIGHTON JAY HARRY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Kumi, Counsel, instructed by Rehoboth Law

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Jamaica, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 14th March 2016 to refuse his application for leave to remain in the UK on the basis of his private and family life. First-tier Tribunal Judge Young-Harry dismissed the appeal in a decision promulgated on 23rd May 2017 and the Appellant now appeals to this Tribunal with permission granted by First-tier Tribunal Judge Parker on 13th July 2017.

2. The issue in this appeal is whether the First-tier Tribunal Judge erred in her approach to the appeal under Article 8 of the ECHR. It is contended in the Grounds of Appeal that the judge erred in her approach to the evidence and to Section 117B of the Nationality, Immigration and Asylum Act 2002.
3. In granting permission First-tier Tribunal Judge Parker considered that there are arguable errors of law in the decision as the judge did not follow the correct procedure or applied the correct legal tests. Judge Parker considered that it is arguable that the judge failed to consider the Appellant's ability to meet the Immigration Rules under Appendix FM and paragraph 276ADE, which are human rights compliant and relevant to the proportionality exercise, before going on to consider Article 8 outside the Rules if the circumstances permitted. The test under Appendix FM as to whether there are "insurmountable obstacles to family life" continuing in Jamaica and under 276ADE as to whether there are "very significant obstacles" to the Appellant's integration in Jamaica were not applied. Instead it appears that the judge undertook an assessment under Article 8 without reference to these Rules.
4. In the Rule 24 notice dated 1st August 2017 the Secretary of State indicated that she does not oppose the Appellant's application for permission to appeal. At the hearing before me Mr Duffy said that he accepted that there was an error of law in the judge's decision in relation to her approach to the consideration of Article 8 in the context of the relevant Immigration Rules. The parties agreed that in light of the judge's approach there were little findings of fact and that nothing in the decision could be preserved.

Discussion and Conclusions

5. I accept the position taken by the Secretary of State that the First-tier Tribunal Judge materially erred in her approach to the assessment of the Appellant's appeal under Article 8.
6. The judge failed to identify the appropriate provisions of paragraph 276ADE and Appendix FM of the Rules and failed to give any consideration as to whether the Appellant met the requirements of these Rules. In these circumstances the judge was unable to undertake a proper analysis of the public interest in this case which is a significant factor in the proportionality assessment.
7. Accordingly the judge made a material error of law such that the decision should be set aside.
8. I agree with the parties that the remaking of this decision requires fresh findings of fact. Therefore, in line with paragraph 7 of the Tribunal Practice statement, in light of the nature or extent of the judicial fact finding required in order to re-make the decision, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law.
The decision of the First-tier Tribunal is set aside.
The appeal is remitted to the First-tier Tribunal for a de novo hearing.

No anonymity direction is made.

Signed

Date: 2nd October 2017

Deputy Upper Tribunal Judge Grimes