



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

Appeal Number: HU/04350/2017

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 18<sup>th</sup> February 2019**

**Decision & Reasons  
Promulgated**

**On 7<sup>th</sup> March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

**MR I.I-S.  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Turner, Counsel

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

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity direction was made by the First-tier Tribunal. I continue that direction.

## **DECISION AND REASONS**

1. The Appellant, a citizen of Ghana, appeals with permission against the decision of the First-tier Tribunal (Judge Welsh) dismissing his appeal against the Respondent's decision of 9<sup>th</sup> February 2017 refusing his application for leave to remain in the UK on the basis of his family/private life. His partner, Mrs O, is a British citizen having been naturalised in 2013.
2. The Appellant entered the UK in September 2003, having been granted entry clearance as a visitor with leave valid until 7<sup>th</sup> August 2004. He has remained in the United Kingdom since this date. In 2011, he started a relationship with Mrs O and they married through a traditional wedding in May 2014 followed by a church wedding in February 2015.
3. In summary, the Appellant's claim is that there are insurmountable obstacles preventing him and Mrs O from being able to enjoy their private/family life outside the UK. Part of the claim relates to the medical evidence concerning Mrs O. These factors are ones which properly should feature in any Article 8 proportionality assessment.
4. The FtTJ after hearing evidence from both the Appellant and Mrs O, made a finding that both were credible witnesses. Nevertheless, he went on to dismiss the appeal.

### **Onward Appeal**

5. The grounds seeking permission essentially challenge the FtTJ's decision on the basis that he had set out an insufficient analysis of the evidence which had been put before him. Therefore insufficient weight had been accorded to certain material elements of the evidence. By way of example, it was said that the medical evidence put forward relating to Mrs O (who has suffered multiple miscarriages), was not properly considered and importantly, there was a lack of reasoning concerning the rights of Mrs O in accordance with **Beoku-Betts [2008] UKHL 39**.
6. Permission to appeal to the UT was granted by the FtT. Thus the matter comes before me to determine whether the decision of the FtTJ discloses material error requiring it to be set aside and re-made.

### **Error of Law**

7. I find I am able to deal with this matter briefly. Before me Mr Turner appeared for the Appellant and Mr Duffy for the Respondent. At the outset of the hearing, Mr Duffy addressed me and indicated that he accepted that the decision contained material error, in so far as the main challenge raised in the grounds amounted to a reasons one.

8. He drew my attention to [16] concerning the medical evidence and to the other factors put forward in evidence on the Appellant's behalf. He acknowledged that the Article 8 proportionality assessment failed to show that a proper consideration of those factors had been given when assessing the proportionality assessment itself. In view of Mr Duffy's submissions, I did not need to call upon Mr Turner to respond.
9. Both representatives were of the view that the appropriate course in this appeal, would be to set aside the FtTJ's decision and remit the matter to the First-tier Tribunal for a fresh hearing in the event that I was satisfied that a material error was disclosed.
10. I agree that the challenges in the grounds are made out and find material error in the FtTJ's decision. The decision is set aside in its entirety and thus no findings are preserved. The matter will be reheard in the First-tier Tribunal before a judge other than Judge Welsh.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of a material error such that the decision is set aside in its entirety. The matter is remitted to the First-tier Tribunal for a fresh hearing on all issues by a judge other than Judge of the First-tier Tribunal Welsh.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed  
2019

C E Roberts

Date

05

March

Deputy Upper Tribunal Judge Roberts