



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/12990/2017

THE IMMIGRATION ACTS

Heard at Field House, London  
On the 22<sup>nd</sup> January 2019

Decision & Reasons Promulgated  
On the 14<sup>th</sup> February 2019

**Before:**  
**DISTRICT JUDGE MCGINTY**  
**SITTING AS A DEPUTY UPPER TRIBUNAL JUDGE**

**Between:**  
**EVERTON [H]**  
(Anonymity Direction not made)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brissett (Legal Representative)

For the Respondent: Mr Tarlow (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Russell promulgated on the 8<sup>th</sup> August 2018.

2. Within his decision, First-tier Tribunal Judge Russell did not accept that the Appellant was not in a genuine and subsisting relationship with Ms [JB] and that further there would not be very significant difficulties for the Appellant to reintegrate back into life in Jamaica, such that the Judge found that there was not a breach of the Appellant's Human Rights under Article 8 in respect of either his family life or private life, were he to be returned.
3. The Appellant now seeks to appeal against that decision for the reasons set out within the Grounds of Appeal. That is a matter of record and is therefore not repeated in its entirety here, but in summary, it is argued both in the original grounds and the renewed grounds of appeal that the Judge failed to take account of two crucial pieces of evidence contained within the Appellant's bundle, the first being evidence that the Appellant and Ms [B] were engaged and had been prayed over at an engagement ceremony at their place of worship and secondly, that Ms [B] had stood as a surety for the Appellant for the sum of £1,000, when he had made an application to be released on bail.
4. Although permission to appeal was initially refused by First-tier Tribunal Judge Beale, permission was then granted by Upper Tribunal Judge Perkins on the 19<sup>th</sup> December 2018, who found that the grounds identified two pieces of evidence which arguably warranted more detailed contention than a generic assurance by the Judge that he considered all the evidence, comprising a detailed supporting statement from the leadership of the church the Appellant and his alleged partner claimed to attend, and secondly evidence that the Appellant was bailed to reside with his claimed partner in 2015 and that it could be a matter of grave concern if they were not in fact then living at the same address. Upper Tribunal Judge Perkins therefore gave permission to appeal on all grounds.
5. Within the Secretary of State's Rule 24 Reply dated the 9<sup>th</sup> January 2019 it is argued the First-tier Tribunal Judge directed himself appropriately and neither piece of documentary evidence either individually or cumulatively could have displaced the adverse points found against the Appellant in respect of his claimed

relationship with his partner. It is said of note was a failure by the Appellant's mother to provide any supporting statement to that effect. It is said that in any event even if the relationship were genuine it was formed at a time when the Appellant had no leave to remain and was in highly precarious circumstances, a point said to be noted by the Judge in the alternative at paragraph 29. It is argued both the Appellant and his partner were both of Jamaican heritage and the Appellant had not demonstrated he had no links or ties to his home country and had spent the majority of his life there. It is said his partner was in gainful employment and that there was nothing in the facts of the appeal that could have lead the Tribunal to find there were insurmountable obstacles to family life continuing in Jamaica or in the alternative that exceptional circumstances existed when refusal of leave to remain would lead to unjustifiably harsh consequences when considering the strong public interest in the case.

6. At the oral appeal hearing before me, Mr Brissett on behalf of the Appellant submitted that credibility was the heart of the appeal and whether or not the Appellant was in a genuine subsisting relationship. He argued that had the Judge considered the evidence from Senior Pastor Lovel Bent, that the Judge may well have reached a different conclusion and that Ms [B] stood as surety for the Appellant and one would not stand as surety unless one knew someone very well. He also mentioned that he had been bailed to live at her address.
7. In his oral submissions in reply, Mr Tarlow relied upon the Rule 24 Reply which I have already noted and taken into account. However he conceded that from the Judge's decision, it could not be said specifically that the Judge had taken account of the evidence from the Pastor or the documentation regarding the Appellant having been bailed and his bail conditions, looking at paragraph 22 of the decision. He conceded that there was an error in that the Judge seemingly did not properly consider those two material pieces of evidence, but argued that the error was not material.

8. Both legal representatives agreed that if there was a material error, the case should be remitted back to the First-tier Tribunal for re-hearing before a differently constituted Tribunal.

#### My Findings on Error of Law and Materiality

9. Although at paragraph 20 of the decision, the First-tier Tribunal Judge stated that he had considered “what evidence there is in the matter, whether referred to directly or not”, when one actually looks at the Judge’s findings in respect of whether or not the Appellant was in a genuine subsisting relationship with Ms [B], he noted at (c) that “*there is no supporting evidence in the form of letters or statements from friends, colleagues or relatives about the relationship. The lack of a statement from the Appellant’s mother is remarkable, given the Appellant says that he lived with her for 11 years until moving in with Ms [B]*”. No reference is there made to the evidence given by Pastor Lovel Bent, who is a Senior Pastor at the New Life Assembly Church in London, who in his letter dated the 19<sup>th</sup> October 2017, contained at page 23 of the Appellant’s bundle stated that “*I write to confirm that Mr Everton [H], has been known to me for 3 years, since he started visiting New Life Assembly Church, Dulwich. He is now an active member and regularly attends our services together with Ms [JB] who has been known to us for over 20 years. The NLA Church Elder also wrote as follows:*

*‘The family of Mr [H] formally requested the hand of our church member, Sister [JB], in marriage and that according to the traditions of the NLA Church family, we the NLA leaders accept and gave our consent’.*

The Pastor stated that subsequent to the approval being given the New Life Assembly Church prayed for them both on the 19<sup>th</sup> October 2014 and that they both live together. He wrote “*As part of my pastoral care responsibilities I have personally observed the relationship between Mr [H] and Ms [B] and can state unequivocally that he has been a great partner, a wonderful, caring man and well-respective in our congregation*”.

10. Significantly, the Judge's reference to there being no supporting evidence in the form of letters or statements from friends, colleagues or relatives about the relationship, in my judgement does indicate that in fact the Learned First-tier Tribunal Judge has failed to take account of that evidence of Pastor Bent. There is no evidence anywhere to the Judge actually having seen or considered the contents of that document and the clear evidence given by Pastor Bent that he personally can attest to the fact that they are in a relationship.
11. Further, as argued by the Appellant, within the Appellant's bundle there was also the bail application in respect of the grant of bail to Mr [H] at page 25 of the bundle, where one of the two sureties for the Appellant was said to be [JB] in the sum of £1,000, with the Appellant being bailed to live at her address at [~] Road, [~]. There is no reference within the decision to show that in fact the Judge had properly considered that evidence, that the Appellant had actually been bailed by the Tribunal to live at Ms [B]'s address, with her standing as surety for him.
12. Although it is argued on behalf of the Secretary of State that any failure of the Judge to take account of his evidence was not material, given the adverse credibility findings made by the Judge in respect of the relationship, clearly, when making findings regarding whether or not a relationship is genuine, the First-tier Tribunal Judge has to consider the evidence as a whole. It cannot be said in this case that the decision of the First-tier Tribunal Judge would have been the same irrespective, had he actually considered this evidence, and there is clearly a possibility that the Judge might have reached a different conclusion, had all of the Appellant's evidence been taken into account. I therefore do find that the failure of the Judge to take account of this evidence does amount to a material error of law in this case, such that the decision of the First-tier Tribunal should be set aside in its entirety and the matter be remitted back to the First-tier Tribunal for consideration before any First-tier Tribunal Judge other than First-tier Tribunal Judge Russell.

Notice of Decision

The decision of First-tier Tribunal Judge Russell does contain a material error of law and is set aside. The case is remitted back to the First-tier Tribunal for rehearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge Russell.

I do not make an anonymity direction in this case, no such anonymity direction having been sought before me and no such Anonymity Order being made by the First-tier Tribunal.

Signed

*RFMcGinty*

District Judge McGinty  
Sitting as a Deputy Upper Tribunal Judge

Dated 22<sup>nd</sup> January 2019