



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

Appeal Number: IA/00054/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 January 2016**

**Decision &  
Promulgated  
On 6 April 2016**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE STOREY**

**Between**

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

Appellant

**and**

**MR NATHANIEL WILLIAMS**

Respondent

**Representation:**

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondent: Ms C Querton of Counsel instructed by Rashid & Rashid Solicitors (Merton High St)

**DECISION AND REASONS**

1. The appellant (hereafter the SSHD) challenges the decision of First-tier Tribunal Judge Manyarara dated 4 August 2015 allowing the appeal of the

respondent (hereafter the claimant) on Article 8 grounds. The judge did not accept that the claimant met the Immigration Rules relating to private life but was satisfied he met the relevant rules set out in Appendix FM. The judge also considered the claimant was entitled in any event to succeed outside the Rules.

2. The grounds allege that the judge failed to give adequate reasons for the decision to allow the appeal by failing to give due weight to the fact that the claimant did not meet the requirements of the Immigration Rules and had not weighed properly in the balance or at all the claimant's adverse immigration history, the financial burden the claimant would place on the public purse and the fact that on the judge's own finding at [41] that there would be no significant obstacles to the claimant's re-integration into society in Ghana. Issue was also taken with the judge's decision to take the oral evidence at its highest throughout the hearing.
3. Taking the last ground first, I see no force in the SSHD's contention that the judge had wrongly taken the claimant's oral evidence at its highest. It is clear from [30], read in conjunction with [12]-[20] of the judge's decision that he considered whether certain inconsistencies in the evidence undermined the claimant's and partner's account and properly concluded that they did not, given that there was consistency on core matters relating to the nature and intensity of the family unit which was substantiated by documents that had been put before the judge.
4. Nor do I consider that the SSHD's other grounds identify any material legal error on the part of the judge.
5. The thrust of the grounds is to argue that the judge wrongly approached the assessment of the claimant's case outside the Rules, but that assessment was made in the alternative. Despite the judge's conclusion at [53] that the appeal was being allowed on Article 8 grounds, it is clear that the primary reason he allowed it was because the claimant met the relevant requirements of the Immigration Rules. In this context the grounds have surprisingly little to say. They do not identify any specific rule in respect of which the judge was considered to have erred in law. That feature greatly weakens their force.
6. In any event, I am satisfied that the judge was entitled to find that: (i) the claimant's wife met the definition of partner under GEN.1.2 of Appendix FM; (ii) that the claimant and his wife are both in the UK; (iii) that the claimant did not fall for refusal under Section S-LTR; and (iv) that on the facts of this case the claimant met the requirements of E-LTRP.1.1 and E-LTRP.2.2-2.4, as well as EX.1.
7. The essential reason why the judge considered the family life Rules were met (notwithstanding that the claimant himself had not shown there would be very significant obstacles to his re-integration into society in Ghana), was because he was satisfied that it was unreasonable in all the

circumstances to expect the British citizen children to leave the United Kingdom because the eldest child was at a critical stage in her studies having started high school and the two elder children had formed friendships both at school and socially. Also relevant to the judge's assessment was the fact that his wife was a British citizen who had been employed by ATOS as a disability analyst having previously worked for the NHS as a psychiatric nurse but could not continue to work for the NHS because of her health conditions, and that the claimant was the biological parent of one of the children.

8. There is not complete clarity in the judge's treatment of whether the claimant met the Rules governing the "partner route" under which the additional requirement at EX1.(b) is that the applicant show, inter alia, that there are "...insurmountable obstacles to family life with the partner continuing outside the UK". That said, it is sufficiently clear that the judge found the fact that it would not be reasonable to expect the children to leave the UK, when coupled with the serious hardship his removal would pose for his British citizen wife, did entail insurmountable obstacles. But even if the judge were considered unjustified in finding EX.1.(b) was satisfied, EX.1 is met if EX.1(a) is met and I see no proper basis for interfering in the judge's finding that it would not be reasonable to expect the children to leave the UK. That finding was made in close accordance with established case law principles.
  
9. It is notable that the grounds make much play of the point that the judge did not engage with "the public interest in this case" and the fact that the claimant had remained in the UK after his leave had expired; and they seek to support these points by reference to various reported cases dealing with the Rules and Article 8, including Dube (ss.117A-117D) [2015] UKUT 00090 and Bossade (ss.117A-D-interrelationship with Rules) [2015] UKUT 00415(IAC). However, the Upper Tribunal made clear in Bossade that the Immigration Rules represent the view of the SSHD as to where the balance affecting the public interest has been struck and that approach has been re-affirmed by the Court of Appeal in the recent case of Secretary of State for the Home Department v JZ (Zambia) [2016] EWCA Civ 116 at[35]:

"35. The correct approach for any decision-maker applying rules 398 to 399A of the Immigration Rules is now well-established. The task is not to carry out a freestanding analysis of the article 8 factors. The Secretary of State has already carried out that exercise in drafting rules 398 to 399A. Those rules form a complete code explaining how article 8 operates in cases where a foreign criminal is resisting deportation. The decision-maker must take account of the proposed deportee's Convention rights through the lens of the Immigration Rules. The rules emphasise the high public interest in deporting foreign criminals. In a case to which rules 399 and 399A do not apply, very compelling reasons will be required if they are to constitute "exceptional circumstances" which outweigh the public interest in

deportation. For a fuller exposition of these now well-established principles, see *MF (Nigeria) v Secretary of State for the Home Department* [2013] EWCA Civ 1192; [2014] 1 WLR 544, *Secretary of State for the Home Department v AJ (Angola)* [2014] EWCA Civ 1636, *LC (China) v Secretary of State for the Home Department* [2014] EWCA Civ 1310 and *Secretary of State for the Home Department v Suckoo* [2016] EWCA Civ 38.

10. If the judge had sought to treat the relevant Rules as containing additional public interest considerations not stated therein, he would have been erroneously “double-counting” the public interest.
11. If the grounds had disclosed legal error in the judge’s assessment of the claimant’s ability to meet the requirements of the Rules, there would then have been arguable force in the points raised, since it is not apparent, for example, that the judge gave due consideration to the fact that he had come to the UK in 2004 on a visit visa and had stayed without lawful authority or that he had proper regard to other considerations set out in ss.117B of the 2002 Act. But, to repeat, there was no such legal error.
12. For the above reasons I conclude that the appellant’s grounds do not disclose a material error of law and accordingly the decision of the First-tier Tribunal to allow the appeal on the basis that the claimant met the requirements of the rules set out in Appendix FM must stand.

Signed



Date

Judge of the Upper Tribunal