



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/05516/2015**

THE IMMIGRATION ACTS

**Heard at Bradford
On 21 April 2017**

**Sent to parties on:
On 23 May 2017**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

**Mr Abdelsalam Naeim Abdelsalam Elsayed
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Shaikh (Counsel)

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

DECISION AND REASONS

1. This is the appellant's appeal, to the Upper Tribunal, brought with the permission of a judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (Judge Fisher hereinafter "the judge") dismissing his appeal against a decision of the Secretary of State for the Home Department of 3 September 2015, refusing to grant him leave to remain on human rights grounds.

2. The appellant is a national of Egypt. He was born on 8 May 1980. He entered the UK in March of 2009 and claimed asylum. His claim was refused and a subsequent appeal failed. It is now accepted by the appellant that his asylum claim was a false one, not least because he had claimed to be from Palestine. He now accepts that, in fact, he had come to the UK for a better life rather than in fear of persecution.
3. Having failed in his asylum claim he applied for an EEA Residence Card, an application which was again unsuccessful, and whilst there was an allegation that he had acted dishonestly in pursuing that application the judge found that dishonesty had not been made out.
4. In making the human rights application which led to the refusal which has, in turn, led to this appeal, the appellant failed to mention, in response to specific questions, that he had previously claimed asylum in the United Kingdom. Nor did he disclose a previous use of various aliases. He relied upon Article 8 of the European Convention on Human Rights (ECHR) and, specifically, upon his relationship with a British citizen, one [GH]. It was not disputed before the judge that [GH] suffers from muscular dystrophy.
5. The judge made some favourable findings from the appellant's perspective. In particular, despite the history of dishonesty, he accepted that the relationship with [GH] was genuine and subsisting. He also accepted that, as at the date of the hearing before him, she was pregnant and that he was the prospective father. He accepted that there was family life within the meaning of Article 8.
6. As to more negative findings and conclusions the judge, as noted, found that he had been guilty of dishonesty as to his past history, when making his current application. There was also of course, as part of the background, the dishonest asylum claim. The judge decided that in consequence of this, the appellant could not satisfy the requirements of what might be termed the Article 8 related immigration rules and that, in particular, his dishonesty when applying had meant the requirements of paragraph S-STR.2.2. of Appendix FM had not been met. It does not appear that, in fact, it was argued before the judge that the requirements of the Immigration Rules were met and no criticism has subsequently been made of the judge's consideration of matters within the Rules.
7. Having decided that the requirements of the Rules were not met, the judge turned to the arguments concerned with Article 8 outside those Rules. He concluded that the appellant had been working illegally and had sought to lie about the extent to which he had been doing so (see paragraph 23 of the Judge's decision). He relied, for that finding, upon some notes which had been taken in a notebook by an Immigration Officer of information which had been given by the proprietor of a business for whom the appellant had been so working. The judge noted the appellant's partner's significant health difficulties (I say significant because muscular dystrophy is obviously a serious and difficult condition) but in the context of her care needs and

whether these could be catered for in the absence of the appellant, he noted what he described as;

“A paucity of satisfactory medical evidence concerning the sponsor and her precise medical and care needs as well as details of the options available to her in the absence of the appellant”.

8. In that context he rejected a submission made by Ms Shaikh (who had also represented the appellant before him) that general material concerning muscular dystrophy coupled with [GH]’s evidence ought to be sufficient. So, there were some positive considerations and some negative ones with respect to Article 8 outside the Rules.
9. The judge, having made his findings, reminded himself that, as a consequence of Section 117B (1) of the Nationality, Immigration and Asylum Act 2002, the maintenance of effective immigration control was in the public interest. He added that he was satisfied substantial weight should be attached to that consideration given that it is expressed in primary legislation. He also took the view that there was a “very strong public interest” that those applying to remain in the UK should be candid with the relevant authorities about their past. He noted that both parties had been aware of the appellant’s precarious immigration status when the relationship had commenced. As to whether the sponsor would be able to cope with a child in the appellant’s absence he took the view that there would be “ample time” for the appellant to return to Egypt to make an entry clearance application disclosing all relevant facts, and then for him to be able to return to the UK prior to the projected date of birth in January 2017. As to the possible application of *Chikwamba v SSHD* [2008] UKHL 40, he took the view that that case was now of limited relevance given that it had been decided prior to the coming into force of Section 117B.
10. Ms Shaikh advanced four separate written grounds of appeal when challenging the judge’s decision. In summary, it was argued that the judge had erred in failing to take proper account of the evidence which had been before him regarding [GH]’s health and, in that regard, had arrived at conclusions unsupported by the evidence. It was argued that he had erred in placing significant weight on the pocket notebook entries referred to above and had not properly resolved the conflict between what was contained in the notebook and what the appellant himself had said about his previous working. It was argued that the judge had failed to properly consider the relevance of *Chikwamba*. Finally, it was argued that the judge had failed to consider what was said to be “the disproportionate interference with the appellant’s evolving family life”.
11. Permission to appeal was granted on 7 November 2006. The grant was not limited and it was observed, therein, that there was a degree of overlap between the grounds. Permission having been granted there was a hearing before the Upper Tribunal (before me) so that it could be considered whether the judge had or had not erred in law and, if he had, what should

flow from that. Representation at that hearing was as stated above and I am grateful to both representatives.

12. Ms Shaikh, essentially, relied upon the points made in her written grounds. Mr Duffy argued that the first two grounds amounted to perversity challenges in circumstances where the judges reasoning and conclusions had not been perverse. *Chikwamba* was only applicable in circumstances where if a person were to go abroad to seek entry clearance, such an application would inevitably succeed. That was not the case here. So it did not assist. What was said in ground 4 was really the same as what had been said in ground 1.
13. As I indicated to the parties, I have concluded that the judge did not err in law and that, accordingly, his decision should stand.
14. As to the first ground, the judge was clearly aware of [GH]'s health difficulties. What was important, though, was the nature and extent to which those difficulties led to care needs, what those care needs were and whether they might be met in other ways in the absence of the appellant. Although the judge did not expressly say so it seems clear that he had in mind, as to the latter consideration, the sort of support which may be provided by Social Services Departments and the extent to which needs might be met by funds payable in the form of benefits for those who have disabilities.
15. The judge was entitled, in the context of there being a need for specific information as to these matters, to have regard to the lack of what he perceived to be sufficiently clear, detailed and specific evidence. After all, the burden was upon the appellant to demonstrate the decision under appeal had interfered with his Article 8 rights in a way which was impermissible. The judge did not, as a matter of law, have to wholly accept, in the face of a lack of such evidence, everything which had been said about care needs by [GH] or the appellant and he was not obliged to reach conclusions favourable to the appellant simply upon the basis of what he described as "background material" relating to the relevant medical condition. I have concluded that this ground is really a disagreement with the view taken by the judge and that it does not identify an error of law.
16. As to the second ground, the appellant had acknowledge working illegally but had simply said he had not done so to the extent his employer had indicated to an Immigration Officer according to the notebook entries). I do not think it can be said that the judge failed to adequately resolve the conflict in the evidence. He clearly resolved it against the appellant. Given that there was conflicting evidence it was, essentially, a matter for the judge as the fact-finder to decide which version he preferred. Of course, although he did not expressly make this point, it is worth noting that he had found other examples of dishonesty in the appellant's history and that the appellant's own position amounted to an acceptance that he had worked illegally in any event. Against that background it does not seem to me it can be viably argued that the judge's approach was perverse or irrational and I

can find no real suggestion of any misdirection in the way he approached matters which were properly for him to decide. I have concluded, therefore, that this ground does not demonstrate an error of law on the part of the judge.

17. As to the third ground, there may be arguments as to whether or not *Chikwamba* remains as relevant as it once was since the coming into force of Section 117 B. Be that as it may though, the real point being made in *Chikwamba* concerned the futility of requiring a person to go abroad to seek entry clearance in circumstances where the outcome would be inevitable success. The judge, here, did not think that the appellant's case was such a case because he would need, said the judge, to demonstrate that he had sufficient English language skills. So, the entry clearance application would not be, if I can put it this way "a shoo-in". But in any event it seems to me it was entirely open to the judge to conclude that *Chikwamba* did have a limited relevance. I do not find this ground to be made out.
18. As to ground 4, I do not see any basis for concluding that the judge, as the ground argues he did, failed to consider the appellant's family life as an evolving entity. He was simply taking an overall view of matters on the basis of the material before him. As to the related complaint that he had erred in thinking there would be ample time for the appellant to make an entry clearance application and, if successful, return prior to the birth of the child, the burden was upon the appellant. On the face of it one would think the judge's view as to that was not incorrect but the real point is that the judge had not been provided with any evidence emanating from the appellant which addressed the question of timescales. On the limited material before him it was open to the judge to decide as he did. Once again, therefore, the ground is not made out.
19. Matters have, in fact, now moved on. I understand that [GH] has given birth to a child who is, of course, a British citizen. It may be that the appellant will, in due course, be advised (if he has not had such advice already) to make a fresh application on human rights grounds in light of the birth of that child. That, though, is entirely a matter for him and his advisors. I have concluded that the judge did not make an error of law and it must follow that, therefore, his decision shall stand.
20. Finally I have not made any anonymity order. None was made by the First-tier Tribunal and none was sought either before that tribunal or me.

Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and shall stand.

No anonymity order is made.

Signed

Upper Tribunal

M R Hemingway: Judge of the

Dated: 18 May 2017

No fee award is made.

Signed

Upper Tribunal

M R Hemingway: Judge of the

Dated: 18 May 2017