



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/31961/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 23<sup>rd</sup> August 2017

Decision & Reasons Promulgated  
On 15<sup>th</sup> September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MR NORMAN WASHINGTON ROPER  
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms S Akinbolu, Counsel

For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Jamaica whose appeal was dismissed by First-tier Tribunal Judge Malcolm in a decision promulgated on 21<sup>st</sup> December 2016. Essentially the judge found that the decision to remove the Appellant was proportionate in Article 8, ECHR terms and therefore went on to dismiss the appeal.
2. Grounds of application were made. In particular it was said that it was the Appellant's case that having been granted leave to remain under the DLR policy in place prior to July 2012 his case fell to be considered in line with that policy. Whilst

Judge Malcolm had referred to the policy and considered that the Respondent had addressed her mind to that policy, she had not engaged with its actual terms. She did not consider whether the Respondent had thus correctly exercised the policy. The grounds refer to chapter 10 of the Respondent's policy on DLR.

3. In these circumstances the grounds say that the decision cannot stand and permission to appeal was sought.
4. First-tier Tribunal Judge Lambert granted permission to appeal on the basis of what was said in the grounds. The Secretary of State lodged a Rule 24 notice opposing the appeal. It was said that the Respondent argued that the judge directed herself appropriately and had given regard to the decision of the Respondent and found that the decision had properly considered the Appellant's circumstances.
5. Thus the matter came before me on the above date.
6. For the Appellant Ms Akinbolu agreed that the point was a very narrow one. She relied on the grounds. Judge Malcolm had not addressed whether a significant change had taken place. The relationships had continued. It was argued that it was not enough for the judge to say in paragraph 55 of the decision that the Respondent had carried out the required active review and a decision had been made. In short the judge's findings were not sufficient on the crucial point mentioned in the grounds.
7. For the Respondent Ms Ahmad relied on the Rule 24 notice and said that the judge had been entitled to proceed as she had done. In particular she had said at paragraph 55 that the Respondent had carried out the required active review and thus there was no error in law. The findings of the judge were open to her. She had found that the Appellant did not meet the Immigration Rules. The findings at paragraph 64 that there would be very significant obstacles to his integration was not challenged. Essentially the Article 8 findings were not challenged in any way and the appeal should be dismissed.
8. I reserved my decision.

### **Conclusions**

9. I refer to the Grounds of Appeal and to paragraph 5 which sets out the relevant parts of the Respondent's policy on discretionary leave. It is said that decision makers must consider whether the circumstances prevailing at the time of the original grant of leave continue at the date of the decision. If the circumstances remain the same and criminality thresholds do not apply a further period of three years discretionary leave should normally be granted.
10. What has happened in this case is that there *was* (my italics) a change in the Appellant's circumstances. In particular as set out in paragraph 39 of the decision and as the Home Office submitted at the hearing before First-tier Tribunal Judge Malcolm, there had been a material change of circumstances in this case. The change

is that the Appellant was no longer in a relationship with Ms Banton, which relationship was arguably the more significant aspect considered when the Appellant was granted discretionary leave.

11. There is no dispute that the Appellant is now no longer in a relationship with Ms Banton which he was when he was granted discretionary leave on the first occasion. The Home Office considered the changed factual scenario and concluded that there had been a significant change of circumstances. In my view this is unarguable – it is a very major step for the Appellant to no longer be in a relationship with Ms Banton and as the judge said in paragraph 55 the Secretary of State did carry out an active review and a decision was made. In my view the judge required to go no further than that. She acknowledged the position. It was per se a significant change and there is nothing perverse and unreasonable in describing it as such.
12. The judge was then entitled to proceed to go on and decide the Article 8 appeal on their merit which is what she did. There was no challenge to the proposition that the Appellant was no longer in a relationship with Ms Banton and the judge noted that this was a subsequent change which was one of significance. She accepted that he had established a private life here and he maintained a family life but noted there was a lengthy period of time, namely between 2001 and 2010 when he was here unlawfully.
13. I do not need to say more about the judge’s reasoning for finding against the Appellant under Article 8 because there was no challenge to any of those findings. The point of appeal before me is, as was acknowledged, a very narrow one but there can be no argument that the ending of the relationship with Ms Banton comes under a “significant change” which was a matter that was bound to be taken into account, and was, in any assessment of whether the Appellant should be granted further discretionary leave by the Secretary of State.
14. In all the circumstances there is no error in law in the decision which must stand.

**Notice of Decision**

15. The making of the decision of the First tier Tribunal did not involve the making of an error on a point of law.
16. I do not set aside the decision.

No anonymity order is required or made.

Signed *JG Macdonald*

Dated 14<sup>th</sup> September 2017

Deputy Upper Tribunal Judge J G Macdonald