



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/01390/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Rolls Building, London

**Decision & Reasons
Promulgated**

On 13 February 2018

On 22 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCARTHY

Between

**LINFORD BENJAMIN GRANT
(ANONYMITY ORDER NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Harding, instructed by Grange & Castle Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of FtT Judge S D Lloyd that was promulgated on 29 March 2017. Judge Lloyd decided to dismiss the appellant's appeal against the respondent's decision of 22 December 2015 refusing his human rights claim on private and family life grounds.
2. After considering the grounds of application, the rule 24 response and Mr Harding's skeleton argument, and after hearing from Mr Harding and Mr Melvin, I concluded there was no legal error and dismissed the appeal to the Upper Tribunal. I announced my decision at the end of the hearing and

gave brief reasons, but indicated that I would reserve my full reasons, which I now give.

3. The first issue is whether Judge Lloyd was required by law to carry out the two-stage process recommended by the Supreme Court in paragraphs 58 and 60 of *R (MM (Lebanon) & others) v SSHD and another* [2017] UKSC 10. The general provisions of the immigration rules envisage a two-stage process, the second involving a fact-sensitive consideration of any human rights issues outside the Rules. The duty of the tribunal hearing appeals against any adverse decision of the Secretary of State is to ensure that the ultimate disposal of the application is consistent with the ECHR.
4. It is evident from the decision and reasons statement that Judge Lloyd was alert to this approach since at paragraph 11 he recorded that Mr Chohan (representing the appellant) had conceded that the appellant did not meet the requirements of the immigration rules and relied solely on article 8 ECHR. Judge Lloyd had no power to go behind this concession even if he had wanted because it was a concession in relation to the facts.
5. In any event, Judge Lloyd at paragraph 32 kept the provisions of the immigration rules in mind, where he says:

"However, to draw from the immigration rules, I did not find that this would amount to an insurmountable obstacle. The 'insurmountable obstacle' test is not the one that I am applying directly under article 8, but the rules remain a lens through which proportionality can be assessed, being reflective of the UK government's assessment of the balance to be struck in private and family life claims."

His reference to insurmountable obstacles can only be a reference to paragraph EX.1 of appendix FM. I am satisfied this shows that Judge Lloyd considered the appellant's appeal not only by direct application of article 8 but also through the lens of the immigration rules. He did so because of the need to consider UK government policy; if the appellant would benefit from the immigration rules/ policy, then to deprive him of such benefit might be arbitrary and disproportionate.

6. I conclude there is nothing in this first ground to show legal error.
7. The second issue is whether Judge Lloyd carried out the classic structured five-stage approach to the assessment of article 8 proportionality. I do not accept judges are required to use this structure, even though it has become commonplace. Lord Thomas, at paragraph 83 of *Hesham Ali (Iraq) v SSHD* [2016] UKSC 60, provides the following advice to judges regarding the approach to article 8:

83. One way of structuring such a judgment would be to follow what has become known as the "balance sheet" approach. After the judge has found the facts, the judge would set out each of the "pros" and "cons" in what has been described as a "balance sheet" and then set out reasoned conclusions as to whether the countervailing factors outweigh the importance attached to the public interest in the deportation of foreign offenders.

8. This provides an alternative to the approach set out in paragraph 17 of *R (Razgar) v SSHD* [2004] UKHL 27. I am satisfied Judge Lloyd has used a

balance sheet approach. He has set out and assessed all the factors in the appellant's favour (including the length of time he has been in the UK, his relationship and the medical and care needs of his wife), and weighed them against the public interest, which of course includes the statutory provisions of s.117B of the Nationality, Immigration and Asylum Act 2002. Judge Lloyd carried out a balancing exercise of the competing interests.

9. Within this second ground is a related issue of whether Judge Lloyd gave no weight to the private life the appellant has developed in the UK whilst an overstayer. The law requires little weight to be given and not no weight. I have considered the decision and reason statement as a whole and note that in paragraph 22 Judge Lloyd does exactly what is required and gives little weight to the appellant's private life established whilst he was an overstayer.
10. Also within this second ground is a question as to whether Judge Lloyd had proper regard to the European Court of Human Rights judgment in *Paposhvili v Belgium* [2017] Imm AR 867. In light of the Court of Appeal's judgment regarding the ambit of that decision in *AM (Zimbabwe) v SSHD* [2018] EWCA Civ 64, I find there is nothing in this argument because the medical evidence regarding the appellant's wife does not show she comes close to meeting the relevant thresholds.
11. The third issue is whether Judge Lloyd applied the wrong legal test in relation to whether it was proportionate to expect the appellant's wife to relocate to Jamaica. I am aware that Judge Lloyd did not find the appellant to have provided a credible account or credible evidence about the situation he would find if he returned to Jamaica (see paragraphs 17 to 21). Judge Lloyd also concluded that he had not been given an up to date picture of the medical and care needs of the appellant's wife (see paragraphs 24 to 27).
12. In this context, Judge Lloyd considers the impact on the family life between the appellant and his wife should the appellant be expelled from the UK. He first considers whether family life could continue in Jamaica were the appellant's wife to move with him. He concludes that it would because the level of care in Jamaica would be sufficient. Judge Lloyd then considers the alternative scenario that the appellant's wife remains in the UK without him. As Judge Lloyd is exploring alternative scenarios, it is not correct to say he applied the wrong legal test.
13. Having considered the grounds and the decision as a whole, I find the arguments presented amount to no more than disagreement with the judicial findings made. As Judge Lloyd found, the appellant had a poor immigration history, he and his wife had started their relationship in full knowledge that he had no right to stay and that he might be required to leave. It is unsurprising that the decision was made, given the evidence of the situation in Jamaica and of his wife's medical and care needs was not good.
14. It follows that there is no basis on which to set aside Judge Lloyd's decision.

Decision

The appeal to the Upper Tribunal fails.
FtT Judge S D Lloyd's decision does not contain an error on a point of law and is upheld.

Signed

Date

13 February 2018

Deputy Upper Tribunal Judge McCarthy