



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/05718/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 4th April 2018

**Decision &
Promulgated**

On 18th April 2018

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

MR H.G.G.

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ume-Ezeoke, Counsel

For the Respondent: Ms Ahmad, Counsel

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction is made because much of the evidence refers to the Appellant's partner's minor child.

DECISION AND REASONS

1. The Appellant, a citizen of Jamaica (born 3rd February 1966) appeals with permission against a decision of a First-tier Tribunal (Judge M R Oliver) in which it dismissed the Appellant's appeal against the Respondent's refusal of an application to remain on account of his family life with his partner

(Ms R.S.) and her two-year-old son J. J is referred to as the Appellant's stepson.

Background

2. The judge assessed the application firstly by setting out the Appellant's immigration history. He noted that the Appellant had entered the UK in May 2001 and thereafter had overstayed. In 2005 following his marriage with a person present in the UK, he made application for leave to remain as a spouse. This application was refused by Notice of Decision dated May 2009.
3. Following the breakdown of his marriage, the Appellant then entered into a relationship with Ms R.S., a British national. She records that the relationship did not start until 2009.
4. Further according to Ms R.S.'s statutory declaration dated 28th September 2015, the relationship between her and the Appellant broke down in 2012. She began a relationship elsewhere. This was of short duration but as a result of it, her son J was born on 5th February 2013. J's father left Ms R.S. before J's birth.
5. Towards the end of her pregnancy Ms R.S. and the Appellant rekindled their relationship and began dating again. Ms R.S. suffers from anxiety and depression. She and the Appellant do not presently cohabit, but he helps with looking after J and lending some support to her in caring for him. It is recorded that she finds caring for J a challenge.
6. Suffice to say for the purposes of this decision, the judge gave weight to those factors, but nevertheless when weighing them against the Appellant's immigration history, he concluded that any interference by the Respondent with the Appellant's Article 8 rights, and those of Ms R.S. and J, was proportionate. He dismissed the appeal.
7. The Appellant sought permission to appeal the FtTJ's decision on three grounds:
 - The FtTJ misdirected himself on the evidence relating to Ms R.S.'s medical problems in that she suffers from severe mental health problems and had attempted suicide in the past
 - He misdirected himself as to the weight to be given to the precariousness of the Appellant's stay in the UK
 - He had applied too high a standard of proof to the Article 8 proportionality assessment
8. The Respondent filed a Rule 24 response submitting that the grounds amount to no more than a disagreement with the weight that the judge had placed on the evidence. No submission had been made that the Appellant could in any way meet the Immigration Rules and, given that he was not cohabiting with Ms R.S., the grounds had not identified how the Appellant would have been able to access EX.1 of the Immigration Rules.

Further there was nothing in the assertion that the judge had incorrectly applied the relevant standard and burden of proof in [11].

Error of Law Hearing

9. I heard submissions from Mr Ume-Ezeoke on behalf of the Appellant. He relied on the grounds seeking permission but sought to emphasise that the judge had failed to give adequate and proper consideration to Ms R.S.'s medical problems. Equally the judge had failed to give proper weight to the contribution made by the Appellant and reliance placed on him by Ms R.S. in caring for J. So far as J was concerned the Appellant was a father to him.
10. He submitted that the FtTJ had placed too much emphasis on the fact that the Appellant was in the UK without leave and was therefore in a precarious position. He said that if the factors set out above had been properly weighed in the balance then there was a possibility that the appeal would be allowed. The decision should be set aside and the matter remitted to the FtT for a fresh hearing.
11. Ms Ahmad on behalf of the Respondent referred firstly to the criticism made of the judge in the grounds, saying that the judge had in some way minimised the medical problems suffered by Ms R.S. She pointed out that in the main the medical reports were dated 2014/2015 and dealt with her ongoing problems of depression. There was nothing of a recent nature. The reports confirmed that in fact Ms R.S. had been allocated a family support worker from social services and that her GP was monitoring her situation.
12. She said that the documentary evidence showed that the Appellant only helped out to a limited extent, by taking J to the childminder and having him stay over to sleep on certain nights at his sister's house where he is living. She submitted that the judge was correct therefore to weigh against those factors, the fact that the Appellant had no extant leave in the UK and that he had remained here without leave since 2001. Ms R.S. was well aware of the precariousness of the Appellant's position when she entered into a relationship with him. The judge had weighed those matters and found against the Appellant. The grounds simply amounted to no more than a disagreement with the judge's reasoned findings.

Consideration of Error of Law

13. I find firstly that it cannot be said that the FtTJ has failed to take into account material facts. This challenge is simply not made out. The judge sets out the Appellant's case extensively over several paragraphs [7] to [10] referring to both the Appellant's oral evidence and that of Ms R.S.

14. In coming to his findings the judge clearly refers to the medical evidence submitted because he outlines this in [9]. He found that the medical evidence was limited with regard to the claimed challenge that Ms R.S. faces in caring for J. In any event, as he found, J and indeed Ms R.S. herself are both entitled to help from the NHS and social services. They receive that help. The evidence confirms that there is a support worker for the child, the child has a nursery placement and Ms R.S. has ongoing help from her GP. The judge took account of all this.
15. The judge reminded himself that the Appellant could not meet the Immigration Rules [12]. I find it is clear that he is referring to the Immigration Rules when he sets out the standard of proof [11]. Having found the Appellant could not meet the Immigration Rules he looked to the wider considerations of Article 8. In doing so he self-directed that Section 55 of the Borders, Citizenship and Immigration Act 2009 would come into play. Having noted that the Appellant relied heavily on the mental condition of Ms R.S. and her interaction with J, the FtTJ nevertheless found that the medical evidence was limited.
16. The judge then weighed those matters and balanced the Appellant's immigration history against them. The Appellant has remained in the UK without leave for several years and as such the FtTJ was entitled to say that the Appellant's leave was precarious to say the least. The judge found when weighing all matters in the balance that the dependence which it was said Ms R.S. had on the Appellant did not outweigh the need for immigration control.
17. Having considered the grounds of challenge, submissions made and the evidence concerning the decision as a whole, I find merit in the assertion that the grounds are in reality no more than a disagreement with the findings of the judge and with the weight he attached to the evidence. Weight of evidence is a matter for the judge and it has not been shown that the conclusions reached are arguably perverse or irrational, nor outside the range of findings open to the judge. This is clearly a case in which it was found that the public interest outweighs the Appellant's argument. The conclusion that the Respondent's decision is not a proportionate one is therefore unsustainable.
18. It follows therefore that no arguable error of law is made out, sufficient to vitiate the FtTJ's decision.

Notice of Decision

There is no material error of law in the First-tier Tribunal Judge's decision and the decision therefore stands.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify

him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

C E Roberts

Date

14 April 2018

Deputy Upper Tribunal Judge Roberts