



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12012/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 23 July 2018

Decision & Reasons Promulgated
On 27 July 2018

Before

Deputy Upper Tribunal Judge Pickup

Between

Musea Aman
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Ms Spencer-Boylton, instructed by Manuel Bravo Project

For the respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Moxon promulgated 26.7.17, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 8.8.16, to refuse his application for LTR on human rights family grounds.
2. The appellant previously claimed international protection on the basis that he was from Eritrea. The claim was rejected and his appeal dismissed in 2014, with that judge

concluding that he was not credible and that he was not Eritrean. At that time the appellant disclosed no family life in the UK and article 8 ECHR was not pursued.

3. In the application which is the subject of this appeal, the appellant claimed a relationship with a partner since 2014 and that they have had a child. A second child has now been born to the couple. At the First-tier Tribunal appeal hearing, the appellant's representative confirmed that the sole issue was family life with partner and children article 8 ECHR.
4. Relying on the previous decision and the evidence before the tribunal, Judge Moxon concluded that the appellant is not Eritrean and went on to find that in fact he is Ethiopian.
5. Judge Moxon accepted that the appellant was in a genuine relationship with his partner, an Eritrean national with refugee status in the UK, and that he is the father of her two children. However, he did not live with her and they could not meet the requirements of the Rules. The judge concluded that family life with partner and children could be continued in Ethiopia, despite the partner's claim to be an Eritrean and having been deported from Ethiopia to Eritrea, and that this would be reasonable and consistent with the best interests of the children.
6. First-tier Tribunal Judge Baker granted permission to appeal on 26.1.18, on the basis that it is arguable that the First-tier Tribunal erred in the assessment of the position of the refugee partner being able to live with the appellant in Ethiopia, "having been deported from Ethiopia in the past in the absence of evidence to identify from background evidence it would be reasonable for her to do so."

Preliminary Matters

7. At the outset of the hearing, Ms Spencer-Boylton sought to adduce new evidence not before the First-tier Tribunal, being expert evidence purporting to address whether an Eritrean would be able to enter Ethiopia as the spouse/partner of an Ethiopian. Whilst no formal report is yet available, a 'preliminary opinion' was provided. I was not prepared to consider this evidence at the stage of considering whether there was an error of law in the decision of the First-tier Tribunal, which can only be done on consideration of the evidence that was then before the tribunal.

Grounds

8. The grounds are unsatisfactory and begin with the assertion that the appellant is a citizen of Eritrea, which is not what the tribunal found. The grounds address article 8 family life only and there is no appeal against the finding of the tribunal that the appellant is Ethiopian. That finding must stand.
9. There is no merit in the grounds in relation to section 117B of the Nationality, Immigration and Asylum Act 2002 and the alleged inability of the appellant to speak English. He gave evidence through an interpreter and adduced no evidence that he could speak English.

10. Neither is there any merit in the grounds relating to private life; there is nothing in the facts of this case to suggest that the little weight consideration in respect of private life developed whilst immigration status is unlawful or precarious should not be applied.
11. The only ground with potential merit is against the finding that family life could continue in Ethiopia. The judge considered this on the basis that although the partner had allegedly been deported from Ethiopia, she would be returning as the partner of an Ethiopian and the mother of his children. She had previously lived in Ethiopia and spoke the national language. Further, the relationship was developed whilst the appellant's immigration status was unlawful and precarious. The partner must be taken to have realised that if the relationship was to be pursued, it would likely have to be in Ethiopia. There were no medical reasons why she or the children could not relocate to Ethiopia. The judge also found that the appellant would have family or friends to support his integration in Ethiopia and that those supporting him financially in the UK could equally do so in Ethiopia. The judge went on to consider the best interests of the children, noting that the eldest child was only 2 years of age so that their focus will be on their parents, and concluding that their best interests was to follow their parents in Ethiopia.
12. The burden was on the appellant to demonstrate that family life could not be enjoyed in Ethiopia so that article 8 was engaged. The judge concluded at [59] that the appellant failed to demonstrate that he and his family could not relocate to Ethiopia. The criticism is that there was no evidence to demonstrate that she could return to Ethiopia, but the failure of evidence was on the part of the appellant. The fact that the appellant has belatedly sought to obtain and adduce such evidence serves to highlight that no such critical evidence was put before the tribunal.
13. Of course, as the partner has refugee status with her dependent children in the UK, it would be a matter of choice as to whether she and the children would accompany the appellant to Ethiopia. The judge concluded that in fact she would do so and that it would be reasonable and not unduly harsh to expect the family members to do so. The mere fact that she stated she would not do so, does not render the finding in error.
14. However, even if she would not do so, as the grounds assert and as she stated in evidence, and the appellant were to be returned to Ethiopia alone, there would have to be compelling circumstances insufficiently recognised in the application of the Rules in order to justify granting leave to remain outside the Rules. The best interests of the children might well be to remain in the UK and to have both parents involved in their lives, but there are other competing and weighty factors including the public interest in immigration control.
15. It has to be borne in mind that the Rules could not be met and under section 117B of the Nationality, Immigration and Asylum Act 2002 the children are not qualifying children. Given the precarious nature of the relationship and the appellant's poor immigration history, the judge was satisfied that the interference to family life was proportionate to the legitimate public interest sought to be protected. The reasoning provided is cogent and adequate. It is complained of that the judge made no

assessment of compelling circumstances. However, the grounds fail to identify any such compelling circumstances that ought to have been taken into consideration. There were no compelling circumstances in this case.

16. It follows that in reality, whether or not the partner would choose to join the appellant in Ethiopia, the decision of the respondent was proportionate, as found by the judge, so that the outcome of the appeal would be the same.
17. In the circumstances, no material error of law is disclosed in the grounds, even if the judge was in error in finding that the partner could return to Ethiopia as the appellant's partner.

Decision

18. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed.

A handwritten signature in black ink, appearing to read 'J. Pickup', is centered on the page.

Signed

Deputy Upper Tribunal Judge Pickup

Dated