



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/23063/2016

THE IMMIGRATION ACTS

**Heard at Field House London
On 15 May 2018**

**Decision & Reasons Promulgated
On 23 May 2018**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL McCARTHY

Between

**GAZMIR HALLACI
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Slatter, instructed by Malik & Malik Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal against the decision and reasons statement of First-tier Tribunal Judge S Meah that was issued on 25 July 2017. Permission to appeal was granted by First-tier Tribunal Judge Bird on 22 January 2018.
2. Having considered the grounds of appeal, and after listening to the submissions of Mr Slatter and Mr Tarlow, I have decided there is no legal error in Judge Meah's decision and reasons statement and uphold his decision. To understand my reasons for reaching this conclusion, it is appropriate to first set out how Judge Meah came to his conclusions.

3. Judge Meah dismissed the appellant's appeal against the respondent's refusal decision dated 20 September 2016. That decision was a refusal of a human rights claim.
4. The appellant relied on his private and family life rights established in the UK. The appellant has lived in the UK since 29 November 2009. He initially had leave as a foreign student but that expired on 10 August 2011 and subsequent applications were withdrawn or rejected. Since that time the appellant remained unlawfully in the UK. He made his human rights claim on 4 June 2014, focusing primarily on his relationship with a British citizen.
5. The respondent refused the human rights claims for several reasons. The respondent did not find the appellant satisfied the provisions for leave under the 10-year partner route in appendix FM to the immigration rules because: (i) the appellant did not satisfy the suitability requirements because it was alleged he had used fraud to obtain an English language qualification, (ii) even if he met the suitability requirements, although it was accepted the appellant had a genuine and subsisting relationship with his British citizen partner, there was no evidence of insurmountable obstacles (within the meaning of paragraph EX.1) to the couple continuing family life together outside the UK in Albania, (iii) the appellant had not shown there were very significant difficulties to his integration in Albania and therefore did not meet the requirements of paragraph 276ADE(1) of the immigration rules even if he met the suitability requirements, and (iv) there were no exceptional or compelling compassionate reasons to grant leave outside the immigration rules.
6. Judge Meah decided at [30] that the respondent had not discharged the burden of proof in relation to the allegation of fraud and therefore rejected the respondent's allegation the appellant did not meet the suitability requirements of the immigration rules. The respondent has not challenged that decision and therefore I have no jurisdiction to examine it.
7. At [5], Judge Meah recorded that the respondent had accepted the relationship between the appellant and sponsor to be genuine and subsisting. He also records that since the refusal decision the appellant and sponsor had married, the date of marriage being 17 June 2017. At [9] and [10], Judge Mean sets out the basis on which he must determine the appeal; the only ground available to the appellant was that in s.84(2) of the Nationality, Immigration and Asylum Act 2002, whether the refusal decision was unlawful under s.6 of the Human Rights Act 1998. Given the changes to the appeal regime introduced by s.15 of the Immigration Act 2014. Judge Meah recognises at [10] that he must have regard to the public interest factors listed in s.117B of the 2002 Act, as amended by s.19 of the 2014 Act, because the appellant was relying on article 8 ECHR. It is evident from these observations that Judge Meah focused clearly and properly on the task before him.
8. From [18] to [25], Judge Mean explained why the appellant did not satisfy the exception in paragraph EX.1. From [31] to [36], Judge Meah identified that the

respondent could justify the refusal decision because the appellant did not satisfy the immigration rules and therefore there was public interest in expelling him to maintain effective immigration controls (s.117B(1) applied).

9. At [37], Judge Meah begins his consideration as to whether the refusal decision was proportionate in all his circumstances. He deals first with the question of whether the expulsion was for mere technicalities, in which case the appellant might benefit from the guidance given by the House of Lords in *Chikwamba v SSHD* [2008] UKHL 40 and maintained by the Supreme Court in *R (Agyarko and another) v SSHD* [2017] UKSC 11. Judge Meah gave clear and cogent reasons why the appellant did not benefit from that guidance. This is not a case where the appellant would satisfy the requirements of the immigration rules other than the formalities of entry clearance.
10. From [43], Judge Meah examines the appellant's claim that it was disproportionate to expect the appellant's wife to move to Albania because she was the primary carer of her mother. Judge Meah considers the facts and arguments in detail and found the claim to be wanting. There were alternative care providers, namely the sponsor's siblings or social services. Judge Meah found at [51] that the evidence was not sufficient to show there was family life within the meaning of article 8(1) between the sponsor and her mother.
11. From [52] to [58], Judge Meah brings all these issues together and weighs them to find where a fair balance lies. In reaching his conclusion that the fair balance lies in expelling the appellant, Judge Meah considered it was open to the appellant to return to Albania to apply for entry clearance or for the sponsor to accompany him, making alternative arrangements for the care of the sponsor's mother.
12. The grounds of appeal make two allegations. First, Judge Meah did not give appropriate weight to the medical evidence provided regarding the care needs of the sponsor's mother or the closeness of the care relationship between the sponsor and her mother. Second, Judge Meah failed to have regard to the fact the appellant would be unable to satisfy the financial requirements of appendix FM and any application from overseas was bound to fail. The ground argues that Judge Meah should have considered this when assessing the nature of family life because the appellant would be able to find work in the UK given his ability in English and therefore the family would be able to support themselves.
13. Mr Slatter relied on these grounds. Mr Slatter submitted that at [57] Judge Meah had gone behind a concession given by the respondent regarding the care provided by the sponsor to her mother. Mr Slatter submitted that Judge Meah failed to consider the consequences that would result were the sponsor to leave the UK. Either her younger sister, who was just 18, would have to care for their mother or the mother would have to move to live with the sponsor's older sister in London or the older sister in London would have to return to Birmingham. In addition, Mr Slatter said the change in carer might cause other difficulties.

14. Mr Slatter submitted that Judge Meah's balancing exercise was flawed because these issues had not been considered. The balancing exercise was also undermined by the fact Judge Meah drew adverse inferences from the medical evidence which he was not entitled to draw. The GP's letter was written by a doctor in a large practice who did not know the sponsor or her mother personally and therefore the caveats and cautious language used by the author of the letter were attributable to his reliance on medical records and not because he was unsure of the care relationship from first-hand experience. Mr Slatter suggested more weight should have been given to the grant of carer's allowance, which meant the DWP accepted the appellant was her mother's full-time carer. Mr Slatter submitted that Judge Meah had erred by focussing on whether the sponsor provided constant care rather than identifying the care that was provided.
15. In relation to Judge Meah's findings that the appellant had not provided evidence to satisfy the "adequate maintenance" requirements of appendix FM, Mr Slatter said the appellant had given evidence that his parents sent money to him for his support. Mr Slatter acknowledged there was no documentary evidence to confirm such transfers or any letter from the appellant's parents to confirm they provided third party sponsorship or evidence of their resources.
16. Mr Tarlow submitted that the grounds and submissions were mere disagreement with Judge Meah's findings. Judge Meah was entitled to make those findings. He assessed all the evidence. Obviously, the appellant and the author of the grounds do not like the conclusions Judge Meah reached. Although that is understandable, it is not evidence of legal error.
17. I agree with Mr Tarlow's assessment. The two grounds challenge judicial findings of fact and it is trite law that to show there is legal error in judicial findings, the findings must be shown to be legally perverse. Judge Meah's findings are not legally perverse. Judge Meah has considered all the evidence provided, from the appellant, the sponsor and the GP to assess the nature of the care relationship between the sponsor and her mother. Judge Meah gave clear and cogent reasons why he rejected the sponsor's claim that she provided constant care. He does not reject that she provides some care, just that the sponsor's testimony is not supported by the other evidence.
18. It was open to Judge Meah to draw negative inferences from the GP's letter. The explanation now given about why it was written in cautious language with caveats do not mean it should have been given any different weight. If the author of the letter did not have first-hand knowledge of the care arrangements, little weight could be given to any account the GP's letter contained about such arrangements. Similarly, Judge Meah was entitled to give limited weight to the evidence of the payment of carer's allowance: Judge Meah explained why that was not evidence of constant care.

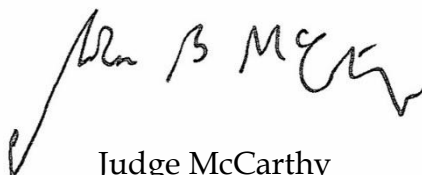
19. Judge Meah was right to focus on the nature of the care relationship between the sponsor and her mother to decide whether it was reasonable to expect her to leave the UK to accompany her husband. There reasons he gave for his conclusion are sound and therefore are immune from legal error. I mention, because from the grounds it would appear to be a point not understood by the appellant, that Judge Meah did not go behind the respondent's concession that the sponsor cared for her mother. Judge Meah found however that the appellant and sponsor had exaggerated the level of care provided. It was open to him to make that finding on the evidence provided and there is nothing legally wrong with his finding.
20. I add that it was open to Judge Meah to consider whether the sponsor was the only person who could provide care for her mother. The evidence indicated she was not the only person who could provide care and there was an element of choice and convenience among the sponsor and her sisters in this regard. Again, the conclusion is drawn from the evidence provided and Judge Meah cannot be faulted. No evidence was provided to show that the sponsor's mother might suffer if her carer changed. Her carer had changed in the past.
21. Therefore, the first ground is not made out.
22. The second ground is not merely disagreement with Judge Meah's findings but is also wrongly conceived. It is trite law that the First-tier Tribunal does not have jurisdiction to consider the likelihood or otherwise of a person being granted entry clearance. Judge Meah was required to consider whether the public interest factors outweighed the private and family life established in the UK. He did so. At [52] onwards, Judge Meah addresses the possible ways the couple can maintain family life.
23. I am satisfied Judge Meah properly assessed all the evidence and carried out the necessary balancing exercise in accordance with case law. That is why I find there is no legal error in his decision.

Notice of Decision

The appeal is dismissed.

The decision of FtT Judge S Meah does not contain legal error and is upheld.

Signed



Date

18 May 2018

Judge McCarthy
Deputy Judge of the Upper Tribunal