



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/33428/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at City Centre Tower,
Birmingham
On 11th December 2017**

**Decision & Reasons
Promulgated
On 29th January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**ASSAN JANGUM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Nasim, Counsel instructed by the Legal Rights Partnership

For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of the Gambia born on 24th February 1973. He first arrived in the UK in August 2005 when he was given leave to enter as a visitor until 23rd February 2006. The Appellant did not embark but eventually applied for leave to remain on the basis of his marriage to Samantha Jangum. That application was refused for the reasons given in

the Respondent's Reasons for Refusal dated 9th October 2015. The Appellant appealed, and his appeal was heard by First-tier Tribunal Judge Barber (the Judge) sitting at Birmingham on 14th December 2016. He decided to dismiss the appeal under the Immigration Rules and on human rights grounds for the reasons given in his Decision dated 29th December 2016. The Appellant sought leave to appeal that decision, and on 29th August 2017 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge dismissed the appeal under the Immigration Rules because he found that the Appellant did not meet the requirements of paragraph EX.1 of Appendix FM of HC 395 because there were no insurmountable obstacles to the Appellant and his wife continuing their family life in the Gambia. The Judge went on to consider the Article 8 ECHR rights of the Appellant and his wife outside of the Immigration Rules. He found the decision of the Respondent to be proportionate, partly because he was satisfied that it was possible for the Appellant's wife to return to the Gambia with him for the purpose of applying for entry clearance from there.
4. At the hearing, Mr Nasim referred to the grounds of application and argued that the Judge had erred in law in coming to these conclusions. The Appellant had produced, in his Bundle of Documents, all the evidence necessary to show that the Appellant met the requirements of the Immigration Rules apart from the issue of his immigration status. The Judge had considered paragraph EX.1 of Appendix FM, but had come to the wrong conclusion as to insurmountable obstacles. For example, the Judge had made a factual error at paragraph 11(iii) of the decision by assuming that the Appellant owned property in the UK. The documentary evidence was that the Appellant rented his accommodation. The Judge had not shown that he had dealt with the contents of the psychiatric report of Dr Mishriky starting at page 11 of the Appellant's bundle.
5. Mr Nasim went on to argue that the Judge had made further errors of law in considering the Appellant's Article 8 ECHR rights outside of the Immigration Rules. The Judge had found that the Appellant and his wife could return to the Gambia to seek entry clearance there. However, the Judge had not taken account of the decision in **Chikwamba v SSHD [2008] 1 WLR 1420** as explained in the decision in **R (Agyarko) v SSHD [2017] 1 WLR 823**. Instead, the Judge had written that the decision in **Chikwamba** could not apply to this case. The Judge had been wrong to describe the Appellant's immigration history as "appalling". All he had done was to overstay his leave. Further, the Judge had given no credit to the Appellant for satisfying the factors mentioned in Section 117(B)(1) to (5) of the Nationality, Immigration and Asylum Act 2002.

6. In response, Mrs Aboni referred to the Rule 24 response and argued that there had been no such material errors of law. She pointed out that the evidence was that the Appellant's wife had been prepared to go to the Gambia with the Appellant in order to marry there, thereby regularising the Appellant's stay in the UK. Notwithstanding that marriage, there had been no application for leave to remain on the basis of marriage until late 2015. The Judge had come to a decision open to him on the evidence in respect of paragraph EX.1 of Appendix FM. He had fully considered the issue of insurmountable obstacles and had given comprehensive reasons for finding that none such existed. The error concerning the Appellant's accommodation was not material. The Judge had fully considered the medical evidence and explained at paragraph 11(iv) of the decision why he found the Appellant's mental health not to amount to an insurmountable obstacle to his return to the Gambia. The Judge was satisfied that the Appellant's wife could accompany him to the Gambia in order to apply for entry clearance from there. The Judge was right not to apply the principle set out in **Chikwamba** as it was not a foregone conclusion that the Appellant would satisfy the appropriate Immigration Rule and qualify for entry clearance.
7. I find no material error of law in the decision of the Judge which I therefore do not set aside. I find the arguments of Mr Nasim not to reveal a material error of law but to amount to no more than a disagreement with the decision of the Judge. The Judge came to conclusions regarding paragraph EX.1 of Appendix FM and Article 8 ECHR outside the Immigration Rules which he was entitled to reach on the evidence before him and which he fully explained. The Judge demonstrated at paragraph 17 of the Decision that he had carried out the balancing exercise necessary for any assessment of proportionality.
8. The Judge made a clear finding in respect of any insurmountable obstacles for the purposes of paragraph EX.1 at paragraph 11 of the Decision. He fully explained his decision in that paragraph. His error of fact relating to the Appellant's accommodation is of little consequence bearing in mind the other reasons given by the Judge. The Judge considered the Appellant's mental health at paragraph 11(iv) and came to a conclusion in respect of it which was not incompatible with the evidence contained in the medical report.
9. Likewise, the Judge fully explained his decision as regards Article 8 ECHR rights at paragraph 17 of the Decision. There is nothing wrong in the Judge's decision not to apply the principles set out in **Chikwamba** bearing in mind the Judge's opinion that mainly as a result of the Appellant's immigration history the Judge could not be sure that the Appellant would qualify for entry clearance. That being the case, the explanation of **Chikwamba** contained in **Agyarko** is not relevant. Further, it is trite law that satisfying the factors set out in Section 117B(1) to (5) of the 2002 Act is in itself a neutral factor and not something to be considered favourable to the Appellant.
10. For these reasons I find no error of law in the decision of the Judge.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed find no reason to do so.

Signed

Date 26th January 2018

Deputy Upper Tribunal Judge Renton