Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08378/2019

THE IMMIGRATION ACTS

Heard remotely via Skype for Business	**Decision & Reasons Promulgated**
On 2 March 2021	**On 8 March 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

LIVINGSTONE DANIELS

Appellant

(ANONYMITY DIRECTION NOT MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Rutherford
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a male citizen of Liberia who was born on 31 December 1978, appealed on human rights grounds to the First-tier Tribunal (Judge Foudy) against a decision of the Secretary of State to refuse his application to remain under Appendix FM of HC 395 (as amended). The First-tier Tribunal, in a decision promulgated on 3 September 2019, dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are two grounds of appeal. First, the appellant complains that the judge erred in law when applying the suitability provisions of S-LTR-1.6:

> S-LTR.1.6. The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR.1.3. to 1.5.), character, associations, or other reasons, make it undesirable to allow them to remain in the UK.

The appellant asserts that the judge [7] failed to make a holistic assessment of the appellant's circumstances and instead relied solely upon the appellant's criminal convictions in 2008 and 2017 in exercising the discretion to refuse leave to remain under S-LTR-1.6. The appellant was not a persistent offender and the convictions were not *per se* enough to justify the exercise of discretion against the appellant.

3. It is true that at [7] the judge cites only the appellant's convictions when referring to S-LTR-1.6. However, the decision needs to read as whole. In particular, paragraph [6] and [7] need to read together. At [6], the judge sets out some of the 'notable instances of the [appellant's] dishonesty remarking that these are 'too numerous to set out in full.' She records that the appellant has made two false asylum claims, has relied on several false documents to enter the United Kingdom and to work here, had absconded after a second Tribunal had found him to be dishonest. She notes that the appellant's partner, Ms Eze, had undermined her own credibility by assisting the appellant in the latter deceit. The judge's analysis at [6] is comprehensive; there was no need for her to repeat what she had just said when applying the specific components of the rule concerning suitability (S-LTR). Further, at [7] the judge also finds that the appellant should be refused leave to remain by reference to sub-paragraphs 4.2 (false representations) and 4.4 (failure to pay litigation costs awarded to the Home Office). As with conduct, including convictions, refusal of leave to remain under 4.2 and 4.4 are discretionary *('S-LTR.4.1. The applicant may be refused on grounds of suitability if any of paragraphs S-LTR.4.2. to S-LTR.4.5. apply.'*) However, when the decision is read as whole, the fact that the appellant may be refused leave not just under one, but under three separate provisions is, frankly, pretty damning on any analysis. In my opinion, the judge has, across her entire decision, given ample reasons for agreeing with the Secretary of State's assessment that the appellant should be refused leave to remain on the grounds of suitability. She has not fallen into error for the reason advanced in the grounds.

4. The second ground concerns the judge's application of EX1. The appellant asserts that the judge erred by failing to apply EX1 in terms, failing in particular to determine whether there are insurmountable obstacles to the appellant and Ms Eze living together in Liberia.

5. I do not find that the judge has erred in law. I note that insurmountable obstacles is defined in EX1 as *'the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.'* Although the judge has not referred in terms to EX1, she has (i) at [11] clearly found, by reference to paragraph 276ADE (Private Life), that there exist no very significant obstacles to the appellant's integrating into Liberia or Nigeria and (ii) has discussed in detail the circumstances of the appellant's relationship with Ms Eze at [12-13]. It is abundantly clear from the judge's findings that she considered that neither the circumstances she would encounter with the appellant in Liberia or Nigeria nor her own ties to the United Kingdom would prevent Ms Eze leaving with the appellant should she choose to do so. The judge did not find that the appellant and his partner would face circumstances which would come close to meeting the definition of insurmountable obstacles in EX1 which I have quoted above. In is not conceivable, in the light of her findings, that, had she expressly considered whether there are insurmountable obstacles preventing the couple enjoying family life outside the United Kingdom, the judge would have concluded there such obstacles exist. It would have been helpful if the judge had applied the test in terms but any error which she may have perpetrated is insufficient to justify setting aside her decision. If I were to remake the decision, applying the EX1 test to the facts found by the judge, the outcome of the appeal would be the same.

6. For the reasons I have given, the appeal is dismissed.

Notice of Decision

The appeal is dismissed.

Signed Date 7 March 2021

Upper Tribunal Judge Lane