



IAC-PE-SW-V1

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

Appeal Number: IA/19708/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 21st October 2014**

**Decision & Reasons Promulgated
On 21st November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**GARETH ERNEST GAMBLE
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khosla - Solicitor

For the Respondent: Mr T Melvin - Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Gareth Earnest Gamble, a citizen of Zimbabwe born 24th April 1979. He appeals against the decision of the Respondent made on 15th May 2013 to refuse further leave to remain in the United Kingdom and to remove him by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The Appellant appealed against that decision and his appeal was allowed under the Immigration Rules (Paragraph EX1 of Appendix FM) by First-tier Tribunal Judge Oliver who set out his reasons for that decision in a determination issued on 3rd June 2014. Permission was granted to the Respondent to appeal against that determination and on 20th August 2014, having heard submissions, I found that there was a material error of law in the determination of the First-tier Tribunal and I set that decision aside with no preserved findings of fact.
3. Briefly the facts of this case are that the Appellant entered the UK as a student with valid leave in 2002 and subsequently extended his stay. In 2006 an application to remain on the basis of his UK ancestry was refused but he was granted three years discretionary leave on appeal in 2009. On 13th November 2012 he applied for further leave to remain and it is the refusal of that application that is the subject of this appeal. There had been some delay by the Home Office in dealing with applications over the years.
4. The Appellant said in his statements that he has been in a relationship in the UK with Layla Salha since around June 2011. They undertook an Islamic marriage on 12th July 2012. They wanted to have a civil ceremony but could not arrange this as a number of requests to the Home Office to return his passport were unsuccessful. Ms Salha is now pregnant with his child. This is her third pregnancy as she previously miscarried twice in 2013. She is six and a half months pregnant now. The due date is 31st December 2014 and they are hopeful that everything will be fine this time.
5. The Appellant had been in a previous relationship with Melanie Charlene Howes, a British citizen. The position of the Respondent is that the grant of discretionary leave which was made to the Appellant on 13th November 2009 was on the basis of his family life with Ms Howes. The Appellant's solicitors had advised the Home Office on 6th May 2013 that the relationship was no longer subsisting. In her refusal letter the Secretary of State said with relation to his Islamic marriage with Layla Salha that marriages conducted under Islamic law in the UK are not considered to be admissible evidence of marriage so Miss Salha is not accepted as being his wife. It seems that the Secretary of State also took the view at that point that the Appellant and Miss Salha had not been in a relationship akin to marriage or civil partnership for at least two years
6. In his initial statement the Appellant said that in the determination of his first appeal before the First-tier Tribunal in July 2009 the Judge accepted him as a credible witness. He and Ms Salha wanted to undergo a civil marriage and still seek to get married under UK law but when he contacted a number of registrars they all said he would need his original passport. His partner is self-employed with an annual gross income of around £23,000 per annum and he earns £25,000. He has a maternal

aunt and paternal grandmother in the UK with whom he has regular contact. He has had no ties with Zimbabwe since 1998. He speaks none of the native languages used there.

7. In the Appellant's supplementary statement provided for the hearing he reiterates that he and his partner have been in a relationship since June 2011. They have been cohabiting for that period although he accepts that there is limited documentation to show this. He is still not a named tenant on the tenancy agreement for the house they live in because the housing association through which his partner rents the property will not do this unless they see his passport. The bills are all addressed to his partner though he pays them by bank transfer or standing order. Their child will automatically be a British citizen. The Respondent had made a suggestion that he should go to New Zealand to live because his parents are there but he has no basis on which he could live there. He was only ever there as a visitor. In any event he could not expect his partner to move to New Zealand or Zimbabwe or any other country for that matter as her family and life are here. She has lived here since 1990, her family having been granted refugee status. She came from Lebanon. He suggests that it is "frankly preposterous" to suggest that they should move their lives from the UK. With regard to a suggestion that he go to Zimbabwe to apply for entry clearance it would not be reasonable to expect him to go through this procedure. He did not feel welcome in Zimbabwe. He would have nowhere to go even for the short time it would take to apply for entry clearance. In any event he needs to be here with his partner pending the birth of their child.
8. In oral evidence he adopted his statements. He confirmed that before coming to the UK in 1998 he was a student. He never worked in Zimbabwe.
9. In cross-examination Mr Melvin put it to him that when his ancestry application was refused he had submitted false documents. The Appellant denied that. He said the documents he had submitted had come from his father and he had no reason to believe that these were false. He confirmed that the last time he had valid leave prior to 2009 was probably August 2003. He confirmed that when he was granted discretionary leave in 2009 it was on the basis of his relationship with Miss Howes but this relationship broke down in January or February 2010. The relationship had lasted about five years. He was asked if he had any comment to make on the fact that the relationship had ended shortly after he was granted discretionary leave and said that it was a stressful time and his immigration issues led to the relationship breaking down. He was asked whether there was any reason why he did not advise the Home Office that the reason for his leave had ceased to exist. The Appellant responded that he did not see it in that way. It did not occur to him that he had to do anything about the fact that he had split up with his partner. He had leave and believed that he had a right to be

here. There was some discussion at this point about what was actually in the letter granting discretionary leave. The general view was that such letters do not specify the grounds for the grant but no documentary evidence was produced by either side.

10. The Appellant went on to confirm that he had met his current partner Miss Salha in 2010 and they started dating in June 2011. They met at the gym at which Miss Salha works. He did not initially tell her about his immigration status in the UK. Mr Melvin asked him if it became a factor in their relationship when he realised that his leave was coming to an end in November 2012 and he responded that he had told her before that. He was asked about his Islamic marriage and said that he used to be a Christian but he converted to Islam on his wedding day. They married at the mosque in Acton. This is not his partner's local mosque because she is not a practising Muslim. His father-in-law organised the wedding as he speaks Arabic and made all the arrangements along with his mother-in-law. It was mainly his partner's family who attended. His own family live in New Zealand. There were about ten people there and his wife wore a creamy white dress. He was asked if there is any reason why Miss Salha's parents did not give a statement in support of the appeal and said that they are supportive of the relationship but they just did not do a statement. His partner is a great support to her brother and her parents appreciate that. There was a great deal of discussion about why the civil ceremony did not go ahead on the same day and the Appellant said they could not get it arranged for that day and in response to the question of why they did not get married under UK law later, said that they wanted to do it on the same day because they did not want two anniversary dates but they were unable to do it because the Home Office has his passport. He confirmed that none of the witnesses giving evidence at the hearing had attended the Islamic marriage. His partner had lived in the flat they are living in for ten years before he moved in. He has not visited his parents since 2001.
11. I then heard evidence from Miss Salha who adopted her two statements in which she confirms her pregnancy and says she cannot imagine a life anywhere other than in the UK. She will need the support of her mother and her sister when she has her baby. Her parents and three siblings all live in the UK but her parents are separated. Her brother suffers from a number of medical conditions and requires care. He sustained a gunshot wound to his head when he was 5 years old during the war in Lebanon and suffers from epilepsy and schizophrenia. She helps out with his care as much as she can. Her mother is his primary carer. She has been cohabiting with the Appellant since December 2011 and does not want to throw away everything that she has built up here to go and live in Zimbabwe.

12. In oral evidence she confirmed that she and the Appellant met at the gym and when asked when, responded that it was about seven years ago. They have been together for three or four years. When she was asked when they started dating she said April or May 2010. It was pointed out to her that the Appellant had said it was June 2011 and she said that he had moved in with her in December 2011 so the relationship must have started in April or May that year. Mr Melvin told her that the Appellant had said that they first met in 2010 which is a far cry from 2007. She said he was a member of the gym and she knew him. She is a personal trainer and she knew him as a member. She is very bad with dates. She said in response to the question of when the Appellant told her about his immigration status that it was when it was up for renewal. She knew nothing about it before that. He did not tell her prior to their wedding. He told her when it was time to apply for an extension to his visa. She was asked to confirm that when she married the Appellant in July 2012 she was not aware that his visa would expire four months later. She said that is correct. Her family did not know either. The wedding was arranged some time around March. In their culture people do not live together before marriage and her parents were not happy about it. Mr Melvin asked her why, if they started making plans in March 2012, they did not arrange a civil wedding too. She said she wanted a decent wedding and did not want to rush things. She wanted to live with the Appellant first, get to know him and see how they got on. There was some discussion about a civil ceremony but she wanted to do it her way. She did not refuse to have a civil ceremony, it was just what they agreed. They paid £100 to an Imam to conduct the service and deal with the conversion of the Appellant from Christianity to Islam. She does not know what mosque her mother attends as she does not discuss religion with her parents. The wedding was a practical one – not one that was advertised to friends, and afterwards they went to the local coffee shop. She wore a black and white dress. The family support the marriage. They were not asked to give statements. Their intention is to have a civil ceremony on 12th July in a different year. They did look into the possibility of doing both ceremonies on the same day but she had no money and was not sure that she wanted to do that.
13. I have a statement from Miss Bettina Shousha, a British citizen, who has known the Appellant and his family for over fifteen years. She was his unofficial guardian at the request of his father. His parents lived in Zimbabwe at that time. He resided with her in Bath some time in 1999 and thereafter became part of the family. He lived with her family from 2003 to 2006 when he was a student. She describes him as “a resilient honourable young man and a credit to his parents”. He moved to London and some time in early 2011 told her and her family that he had met a lovely lady, Ms Salha. She is aware that they began living together around December 2011. They were all very happy for him. When she visited him in Ms Salha’s flat around February 2012 cookbooks that she

had given him were in the kitchen. Her family was thrilled when they got married. In oral evidence she said that she had problems remembering dates. The Appellant is in touch with her son. They are good friends. She became aware of the relationship a few years ago probably around 2012. She met his partner around that time. She thought that her son discussed the wedding with the Appellant on the phone but she was not sure. She had not attended the wedding.

14. I heard evidence from Mr Loughrey who adopted his statement. He confirmed that he had met Miss Salha about ten years ago. He lives about five minutes' drive away from her house. He sees the couple about twice a week at the gym. He found out they were getting married just before the wedding but was unable to give any details of the date. He understood it to be a family affair and was not surprised that he was not invited.
15. I heard evidence from Maria Cristina Freeman who adopted her statement. She said that she met the Appellant when he came to her for counselling around 2011 but prior to that she had met him when he came to pick up the Appellant from her counselling. They moved in together in December 2011 but she had seen them together from 2010. When she was asked when the relationship started she said that she believes it to have been 2010. When it was put to her that the Appellant had said it was June 2011 she said that maybe they formalised the relationship then. She said that the wedding was being planned from 2010 to 2011.
16. Mr Melvin provided a skeleton argument. It is submitted that in the Appellant's previous appeal in 2009 the Judge did not deal with the issue of the alleged false documents. He reiterates the position of the Secretary of State that the Appellant and his partner did not begin cohabiting as a couple two years prior to the date of application on 13th November 2012, and thus the Appellant cannot succeed under Appendix FM. With regard to Article 8 he relied on **Gulshan (Article 8 - new rules - correct approach) [2013] UKUT 640** and paragraph 15 of **R (Ganesabalan) v SSHD [2014] EWHC 2712**. The Appellant formed his new relationship when his immigration status was precarious and there would be no unjustifiably harsh consequences arising from a decision to refuse to grant further leave as it would be proportionate for him to make an application for leave from Zimbabwe under the Immigration Rules.
17. In oral submissions Mr Melvin relied on the reasons for refusal letter. He said he would rely on paragraphs 117B of the 2002 Act. The Appellant can make an application from outside the UK. In any event he gave evidence at the hearing that was not credible. He had submitted false documents in his ancestry application and had failed to tell the Home Office that his relationship on the basis of which he had been

granted discretionary leave had come to an end. There were discrepancies in the evidence about the dates the couple met and started a relationship and also about the date he told his partner that he had problems with his immigration status. He had said that he told her earlier, prior to the marriage, but she said he did not. Their evidence about why they did not have a civil ceremony under UK law is inconsistent. Mr Melvin indeed submitted that the couple had not actually married under Islamic law. There is a certificate but the claim that £100 was paid to an Imam to marry a Christian to an Islamic lady is incredible. There is no certificate of conversion to Islam. No-one who attended the wedding came to give evidence. He then submitted that he does not accept that the Appellant is the father of the Appellant's child.

18. With regard to the evidence of Mr Loughrey he said it is clear that he knows nothing about the couple. Miss Shousha said she was on medication and was vague about when the relationship began. The proper course in this case is for the Appellant to go abroad and make an application from there in the proper manner.
19. Mr Khosla also provided a skeleton argument which basically sets out the applicable law and the evidence including the written evidence of support from friends. It is submitted that the Appellant would meet the requirements of Appendix FM and that in any event the removal of the Appellant would be disproportionate. Reliance is placed on **Chikwamba v SSHD [2008] UKHL 40**, the submission being that it would be unreasonable to expect the Appellant to return to Zimbabwe to make an application for entry clearance. He would lose his job and this would affect their ability to meet the requirements of the Rules. It is submitted that the Appellant no longer has any ties to Zimbabwe and as such he meets the requirements of paragraph 276ADE(vi) of the Immigration Rules. He has been absent from that country for almost sixteen years and has no family there.
20. In oral submissions he said there is nothing to suggest that the Appellant ought to have told the Home Office that his relationship with his previous partner had ended. The Islamic marriage was simply for convenience and is irrelevant. He has been in a genuine cohabiting relationship with Ms Salha since December 2011. He accepted that they do not meet the Rules. He said it would take two to four months to make an application in Zimbabwe and this would be for the administrative convenience of the Home Office which the court in **Chikwamba** said was unreasonable. He also relied on paragraph E-LTRP.2.2(b) of the Immigration Rules which apparently allows an out of time application saying that the Appellant could make a fresh application.

Findings and Decision

21. I have given very careful consideration to all the evidence before me in this case.
22. I do have some concerns about the credibility of the Appellant. It is clear that there was a significant discrepancy between his account of when he told his partner about his immigration status and when she said he told her. It seems to me clear that he withheld this information from her deliberately which does cast some doubt on the motive for their marriage. I would not go so far as Mr Melvin said and suggest that the marriage did not take place or indeed that the child is not the Appellant's. I do note that he has been attending antenatal classes with his partner. His name is on the medical documents as being involved in the pregnancy. I doubt whether he would go that far if the baby were not his.
23. The Appellant clearly does not meet the requirements of Appendix FM of the Immigration Rules. They had not been cohabiting for the requisite period at the date of application. This was accepted by Mr Khosla.
24. Mr Khosla did however rely on 276ADE, which sets out the requirements for leave to remain in the UK on the basis of private life. At the time the decision was made by the Respondent Paragraph 276ADE (vi) provided for an applicant who, at the date of application,

'is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK.'
25. Also relevant is the decision **Ogundimu (Article 8 - new rules) Nigeria [2013] UKUT 60 (IAC)**. This was a decision pertaining to paragraph 399 of the Immigration Rules but the Tribunal noted that the same wording was used in paragraph 276ADE (vi). They said,

'The natural and ordinary meaning of the word 'ties' in paragraph 399A of the Immigration Rules imports a concept involving something more than merely remote or abstract links to the country of proposed deportation or removal. It involves there being a connection to life in that country. Consideration of whether a person has 'no ties' to such a country must involve a rounded assessment of all of the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances.'
26. Paragraph 276ADE was amended with effect from 10th July 2014 and the amendment replaces the words in parenthesis in paragraph 18 above with,

‘there would be very significant obstacles to the applicant’s integration into’.

27. According to Statement of Changes HC532 this change came into effect on 28th July 2014 and applies to all *applications* to which paragraph 276ADE and Appendix FM apply and to any other ECHR Article 8 claims which are ‘decided’ on or after that date. I assume this to mean ‘decided by the Secretary of State’ since the wording of section 19 of the Immigration Act 2014 is different, being said to apply ‘where a court or tribunal is required to determine whether a decision made under the Immigration Acts’, in summary, breaches a person’s human rights. The application in this case was decided on 15th May 2014 so the original version of 276ADE applies.
28. The Appellant came to the UK in 1998 and apart from a very short visit in 1999 has never been back there. He has been here for 16 years, almost half his life. There was a period when he without leave but then there was a delay by the Home Office of over 4 years in dealing with an application. The Appellant’s parents left Zimbabwe in 2001 with his sister who now lives in Australia. His life in the UK is with his new partner. The Upper Tribunal in **Ogundimu** said that the question is whether, looking at the evidence in the round a person has a connection to that country. I am unable to find that this Appellant has any connection to Zimbabwe. He left there when he was 20. He never worked there. He came here to study after having done his A-levels. He went back a year later only to renew his passport. His family have all left Zimbabwe many years ago. He never formed an independent private life in Zimbabwe. He said he regards Zimbabwe as a foreign country. He does not fall within any of the categories excluded from the benefit of 276ADE and in all the circumstances I find that he meets the requirements of that provision.

DECISION

The determination of the First-tier Tribunal is set aside and replaced with this decision.

The appeal is allowed under the Immigration Rules.

No anonymity order is made.

Signed

Date: 17th November 2014

N A Baird
Deputy Judge of the Upper Tribunal