



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

Appeal Number: IA/52489/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 5th November 2014**

**Determination Promulgated
On 1st December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**LEWIN MCCLUNE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Oke of Counsel instructed by Cleveland & Co Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. Before the Upper Tribunal the Secretary of State becomes the appellant. However, for the avoidance of confusion, I shall continue to refer to the parties as they were before the First-tier Tribunal.

2. On 1st October 2014 Judge of the First-tier Tribunal Lambert gave permission to the respondent to appeal against the determination of Judge of the First-tier Tribunal Majid in which he allowed the appeal against the decision of the respondent to refuse leave to remain as an unmarried partner applying the provisions of Appendix FM of the Immigration Rules.
3. In granting permission Judge Lambert stated that, even before he had considered the grounds, he found the determination of Judge Majid to be “unreasoned and less than comprehensible”. He thought it arguable that the expression “woefully inadequate” used to describe the determination in the grounds of application was fully justified.
4. The grounds of application themselves contend that the determination showed that the judge had no regard to the relevant Sections of the Immigration Rules or whether there were any exceptional circumstances in line with the case law guidance set out in *Gulshan* [2013] UKUT 00640 (IAC) to allow the judge to consider the claims outside those Rules.
5. At the hearing in the Upper Tribunal before me to establish whether or not the decision of the First-tier Judge did actually contain an error on a point of law, Mr Tufan confirmed that the respondent relied upon the grounds. Mr Oke suggested that the determination could be upheld as the judge had engaged with the issues. The judge had referred to the Immigration Rules before proceeding to deal with the Article 8 claim. Whilst Mr Oke conceded that the decision was not a “model”, the judge had heard all the evidence and was impressed by the relationship between the appellant and his claimed British citizen partner. He asked me to conclude that the errors in the determination were not material as the judge reached a decision open to him.
6. After I had considered the matter for a few moments I announced that I was satisfied that the determination showed errors on points of law such that it should be re-made afresh by remitting the appeal to the First-tier Tribunal.
7. I reached that conclusion because the determination does not show that the judge gave any consideration to the Immigration Rules even though paragraph 3 of the decision suggests to the contrary. Although the two stage process recommended in *Gulshan* now appears to be inappropriate in the light of the decision of the Court of Appeal in *MM* [2014] EWCA Civ 985, it is not at all clear what evidence the judge took into consideration to support the confusing conclusion that the appellant “merits the benefit of the Immigration Rules and the protection of the ECHR”. The judge does not specify which Immigration Rule might benefit the Appellant or the factors in the evidence he summarises which can lead to that favourable conclusion. In particular the judge did not consider the significant issue raised in the refusal about the absence of obstacles to family life between the parties continuing outside UK particularly when there were no minor children associated with the relationship. The determination is inadequate in content and reasoning. Thus, it contains errors on points of law such that it should be re-made.
8. As the appeal will have to be heard again on all issues the provisions of paragraph 7.2(b) of the Practice Statements of the Senior President of 25th September 2012 enable me to remit the case to the First-tier Tribunal.

Anonymity

Anonymity was not requested at the hearing before the Upper Tribunal nor do I consider it to be appropriate.

DIRECTIONS

1. The appeal is remitted to the First-tier Tribunal sitting at Taylor House where it will be heard on 10th April 2015.
2. There is no requirement for an interpreter.
3. The time estimate for the hearing is two hours.
4. The appeal should not be heard by Judge of the First-tier Tribunal Majid.

Signed

Date

Deputy Upper Tribunal Judge Garratt