



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

Appeal Number: IA/28870/2013

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke

On 13 May 2015

Determination

Promulgated

On 19 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE PLIMMER

Between

TM

ANONYMITY DIRECTION MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mutebuka (Mutebuka & Co)

For the Respondent: Mr McVeety (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant is a citizen of Zimbabwe born in 1990. He claims to have a different identity and date of birth but this has been comprehensively disbelieved for reasons I deal with below.
2. As this decision refers to confidential matters relevant to an asylum claim I have anonymised my decision.

Procedural history

3. The appellant's asylum appeal was considered by First-tier Tribunal Judge Battersby, having heard from the appellant at a hearing on 18 August 2011. In that decision the Judge comprehensively disbelieved the appellant's asylum claim and claimed alternative identity, and dismissed his appeal.
4. The matter came before Judge Manuel more recently on 25 July 2014. Judge Manuel was not dealing with asylum but the appellant's appeal against a removal decision dated 18 July 2013, the SSHD having refused his application to remain on the basis of his marriage and Article 8 of the ECHR. Judge Manuel did not regard the appellant's marriage to be genuine and subsisting and refused his appeal under the Immigration Rules and Article 8 of the ECHR.
5. Permission to appeal against this decision was granted by Judge J M Lewis on 5 November 2014. The reason for granting permission is unclear but appears to be Judge Lewis's view that Judge Manuel's findings were 'not reasonably open to her' and are 'legally erroneous'.
6. The matter now comes before me to determine whether or not the decision of the First-tier Tribunal contains a material error of law.

Hearing

7. When granting permission Judge Lewis observed the following in relation to the grounds of appeal:

"It is difficult to disentangle the strands of the verbose application for permission to appeal and tempting to refuse permission on the basis that it does not specify clearly and coherently with appropriate particulars the errors of law said to contaminate the decision: **Nixon (Permission to appeal: grounds)** [2014] UKUT 00368 (IAC)."
8. I agree with those observations. Mr Mutebuka prepared an additional single page document narrowing the grounds of appeal. This clarified the grounds to a certain extent but further clarification was necessary to understand in what specific way it was alleged the Judge erred in law. I therefore invited Mr Mutebuka to address each of his grounds of appeal in turn, by dealing with each one separately and by reference to the determination. Mr Mutebuka clarified that he relied upon four discrete grounds of appeal, which I set out below. Having heard from Mr Mutebuka I indicated that I only needed to hear from Mr McVeety in relation to the third ground of appeal. I then heard briefly from Mr Mutebuka in reply before reserving my decision, which I now provide with reasons.

Ground 1

9. Mr Mutebuka submitted that Judge Manuel was wrong to consider private life outside the Immigration Rules when she should have considered whether the appellant could meet 276ADE. I can deal with

this ground swiftly. Judge Manuel clearly addressed 276ADE within her decision at [38] to [43]. Explicit reference was made to the meaning of 'ties' [42] and the Judge was entitled to find that notwithstanding his lengthy stay in the UK the appellant could not meet 276ADE(vi).

Ground 2

10. Mr Mutebuka made the sweeping submission that the Judge erred in relation to her approach to Judge Battersby's determination. I am satisfied that Judge Manuel directed herself to the proper approach to be adopted to findings of fact made in a previous determination [8]. Judge Manuel adequately considered the submissions made on behalf of the appellant as to why she should adopt a different approach from that of Judge Battersby in relation to the appellant's identity, and reached findings open to her on the available evidence [54-63].
11. Mr Mutebuka submitted that the Judge ignored relevant evidence that post-dated Judge Battersby's determination. When I pointed out that Judge Manuel clearly took into account the statement from the person the appellant claimed is his mother [54] together with birth certificates and death certificate [60-61] he submitted that the Judge failed to take into account other evidence relevant to confirming the claimed mother's identity. As I said at the hearing, it is difficult to see how the claimed mother's identity goes very far in establishing that she is the mother of this appellant. Judge Manuel clearly regarded the oral and documentary evidence said to support the claimed relationship to be unreliable and for the reasons she gave, she was entitled to reach this finding. One of the documents relied upon by Mr Mutebuka as having been omitted from the Judge's consideration is an application by the claimed mother for entry clearance. It is difficult to see how this can be said to be supportive of the appellant's claimed identity when the application makes no mention of him (as her son).

Ground 3

12. Mr Mutebuka submitted that both Judge Battersby and Judge Manuel's decisions were erroneous because they both drew adverse inferences from the appellant's immigration history, when he arrives as a minor.
13. I accept the submission in response to this from Mr McVeety. When the appellant appeared before Judge Battersby he was (even on his own account) a young adult and not a minor. He has admitted to lying to Judge Battersby about significant and material events in his life, including the entirety of an asylum claim. Judge Manuel did not accept the reasons offered by the appellant for taking this course. She noted that the explanation itself was incredible and inconsistent [48-50]. Judge Manuel disbelieved the appellant and regarded the evidence he provided to be unreliable not because of what happened

when he was a minor, but because of what he said when he appeared before Judge Battersby and her. Any failure to direct herself to what may have happened to the appellant when he was a minor is not a material error on the part of the Judge in these circumstances. Two judges disbelieved the appellant not because of what was said to have happened as a minor but what he told them when he was a young adult.

Ground 4

14. Mr Mutebuka submitted that the Judge Manuel provided inadequate reasons for concluding that the appellant's marriage is not genuine and subsisting. The reasoning provided by the Judge [26-35] is entirely adequate and the submissions to the contrary amounted to no more than a disagreement with this. Mr Mutebuka also asked me to find that that the Judge was inconsistent in providing reasons why the marriage was not subsisting [26] and then giving reasons why she accepted some aspects of the available evidence on the marriage [32]. These findings are in no way inconsistent. Indeed they demonstrate an even-handed and thorough approach on the part of the Judge. Although she accepted certain evidence [32] she considered all the '*totality*' of the evidence 'in detail' and found the relationship not to be genuine and subsisting [35].

Decision

15. I do not find that the decision of the First-tier Tribunal contains an error of law.
16. I do not set aside the decision of the First-tier Tribunal.

Signed:

Ms M. Plimmer
Deputy Judge of the Upper Tribunal

Date: 15 May 2015