



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

Appeal Number: IA/40556/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
on 16 June 2015**

**Decision and Reasons
Promulgated
On 24 June 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ANSUMANA DANSO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Mullan, Advocate, instructed by Bassi, Solicitors,
Birmingham

For the Respondent: Mr M Matthews, Senior Presenting Officer

DETERMINATION AND REASONS

Introduction.

1. The appellant is a citizen of Gambia, born on 18 October 1975. He says that he entered the UK as a visitor in 2010, although he has provided no evidence and the respondent has traced no record. On 18 March 2013 he

submitted an application under Article 8 of the ECHR which was refused on 2 May 2013 with no right of appeal. He married a UK citizen on 29 June 2013. On 7 August 2014 he was served with notice of liability to detention and removal. On 20 August 2014 he again sought consideration of his case under the ECHR.

2. The respondent served the appellant with a removal decision and a letter explaining the reasons for refusing his application, both dated 24 September 2014. He had claimed that there were insurmountable obstacles to family life continuing outside the UK due to his wife suffering from hypothyroidism. The respondent found that the requirements of the Immigration Rules Appendix FM and paragraph 276ADE were not met and that there were no exceptional circumstances warranting consideration of a grant of leave outside the requirements of the Rules. The diagnosis of his wife's condition specified medication which was available in Gambia and blood screening two to three times a year, which she could obtain there or alternatively return to the UK. Although unfamiliar with the culture, she would have the support of the appellant. They had both been aware from the outset of his precarious immigration status. There was information about lack of rights for women in Gambia but that referred to Gambian women. Links with extended family members did not constitute family life beyond normal emotional ties. The appellant had family residing in Gambia.
3. First-tier Tribunal Judge Hawden-Beal dismissed the appellant's appeal for reasons explained in a decision promulgated on 13 December 2014. The Judge accepted that there was a genuine and subsisting relationship between the appellant and his wife. Although it was argued that Section 117B of the 2002 Act did not apply because of the date the decision and the appeal was made, the Judge was satisfied that it was applicable and that accordingly family life established while the appellant was here unlawfully attracted little weight.
4. The appellant sought permission to appeal to the Upper Tribunal. The proposed grounds argue in summary that:

there were insurmountable obstacles to family life continuing in Gambia;

the Judge "fails to make a finding on the respondent's proposition that it is for the appellant to show that she as a British citizen would not be held in higher esteem than women citizens of Gambia. It is for the respondent to justify such an assertion which on the face of it has no factual basis";

the Judge erred at paragraph 7, stating that the relevant facts for human rights are considered at the date of hearing not the date of decision;

the respondent's decision is erroneously framed on the basis of the appellant and sponsor being partners not spouses; and

Article 8 outside the Rules has "not been properly considered".

5. On 12 March 2015, a First-tier Tribunal Judge granted permission, observing that the Judge appeared to have misunderstood what evidence she could consider in relation to human rights at the date of the hearing and thus "arguably ... has not taken into account all relevant evidence". The grant of permission does not mention the other grounds.
6. In a Rule 24 response the respondent argues that the grounds do not amount to more than disagreement with the findings on insurmountable obstacles, which the appellant failed to demonstrate, and that "in any event any errors are not material because the appellant does not advance any good reason why he could not obtain entry clearance and return if his wife did not wish to live in Gambia".
7. (The quoted observation appears to make a "*Chikwamba* point", although neither side appears to have suggested that the case might fall into that category, and the appellant did not attempt to demonstrate that his circumstances might meet the Rules apart from the formality of applying from abroad.)

Submissions for the appellant.

8. The judge erred at paragraph 7 by misunderstanding the date at which the evidence was to be considered. Although a Judge is not required to rehearse all the evidence, there was here a notably compendious and well presented bundle of evidence, focussed on the issues, such as the medical conditions of the appellant's wife and medical treatment, if any, available in Gambia. Although the Judge looked at paragraph EX1 of the Rules, the analysis of insurmountable obstacles could be described as perfunctory, for example on the medication required by the wife, her possible need for psychological treatment which might not be available, and her potential treatment within the community in Gambia. There was no detailed analysis of her rights under Article 8 of ECHR. She had not known about the appellant's lack of status at the outset of their relationship. The Judge's evaluation of the evidence had to be scrutinised through the prism of her error in drawing an incorrect line as to the point of time for its examination.

Submissions for the respondent.

9. Paragraph 7 of the determination says "the point in time at which I have to consider the relevant facts for immigration issues and for human rights issues is the date of decision". That is not quite right. For many aspects of Appendix FM, the correct time of examination is the date of the application. For human rights more generally, it is the date of the hearing.

However, the question was whether this erroneous statement made any difference. In the immediately preceding paragraph the Judge said “in non - entry clearance cases, i.e. in - country appeals, I can take account of evidence right up to the date of the hearing”. At paragraph 12 she found that the material facts were that “at the date of the hearing the appellant was a married man aged 39 who had applied to stay in the UK ... “. The decision letter went wrong by treating this as a partner case rather than a marriage case, but that error was corrected by the Judge and in either event the case arrived at the correct test of insurmountable obstacles. The grounds said that there was no consideration of the spouse’s position but that was built into the structure of Appendix FM. It is now trite that Article 8 considerations outside the Rules arise only if the Rules do not cater for the circumstances of the case. This was not an unusual set of facts but one contemplated by and catered for by the Rules. It did not require a separate proportionality analysis. Paragraph EX2 required the appellant to show very significant difficulties or very serious hardship. There was some evidence of his wife’s medical conditions and some evidence of depression, but not that she required any serious treatment. The determination in particular at paragraph 25 showed that the Judge did consider the appellant’s medical conditions in the plural, i.e. not just her hypothyroidism. As to the situation of women in Gambia, the refusal letter might not be elegantly phrased but it was correct to say that evidence of disadvantages related to Gambian national women not to expatriate wives. Problems arose from the general attitudes of society about violence towards women. There was no reason to think that would affect the appellant’s wife, or that he would treat her badly in Gambia but not in the UK. There was no reason to think that she fell into the category of women in Gambia who were particularly prone to abuse. The case raised little if anything to require consideration outside the Rules. In any event, the Judge had rightly taken account of Section 117B which was a major obstacle to the appellant’s case, he having plainly been in the UK unlawfully.

Response for appellant.

10. Although it might often be assumed that a Judge considered all the evidence even if a decision was not fully detailed, that assumption should not be made when there was an evident error about the date as at which the evidence was to be viewed and the determination should be read through that prism. What followed after that error must have been tainted by it and gave rise to considerable doubt over whether the evidence had been fully considered.

Discussion and conclusions.

11. The appellant has made as much as could reasonably be argued on the basis of the slip at paragraph 7 about the date for considering the relevant facts. The appellant’s bundle of evidence was full and well organised. However, broadly I have come to prefer the submissions for the respondent for the reasons given, as summarised above. The judge’s slip

has to be read in context (a) of the preceding paragraph, where she says that evidence has to be taken into account up to the date of the hearing, (b) of paragraph 12, which finds material facts as at the date of the hearing, and (c) the determination as a whole which draws no line between evidence arising before or after the respondent's decision. The slip is unfortunate but not such as to leave the reasonable reader in any doubt about the full evidence having been taken into account.

12. The Judge's conclusions on insurmountable obstacles were open to her. The reasons given have not been shown to be less than adequate. Such error of law as there was had no bearing on the outcome. While it is not necessary to go further than that for further purposes, it might have been difficult for any Judge to find that the circumstances of this case reached the level required by paragraph EX.
13. Outside the Rules, given the appellant's lack of immigration status in the UK and the provisions of section 117B, there was no realistic prospect of an outcome in his favour.
14. The determination of the First-tier Tribunal shall stand.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

19 June 2015
Upper Tribunal Judge Macleman