



IAC-FH-CK-V1

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

Appeal Number: IA/47460/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 November 2015**

**Decision & Reasons Promulgated  
On 18 December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**LM**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Staunton, Home Office Presenting Officer

For the Respondent: Ms E Harris, Counsel instructed by Cleveland Law Ltd.

**DECISION AND REASONS**

1. The Claimant, who is a national of Jamaica, was born on 3 April 1969. He applied for leave to remain on the basis of his relationship with his partner, MS, and her daughter A, who was born on 24 November 2007. The Respondent refused his application on 7 November 2014 and he appealed against this decision. His appeal came before Judge of the First-tier Tribunal Majid on 20 May 2015 and in a decision promulgated on 22 May 2015 the appeal was allowed.

2. The Secretary of State for the Home Department sought permission to appeal to the Upper Tribunal and the grounds of appeal dated 1 June 2015 raised essentially three grounds, the first of which is that the Judge completely failed to engage with the Reasons for Refusal Letter issued by the Respondent and yet at paragraph 21 of his decision purported to allow the appeal on the basis that the Appellant comes within the law and can benefit from the relevant Immigration Rules. The Respondent submitted: *"It is impossible to understand how the Appellant can succeed under the Immigration Rules when no findings were made at all to the provisions of Appendix FM and the judge appears to only consider the matter outside of those Rules."*
3. The second ground of appeal was that the Judge had failed to make findings on material matters and in particular the Judge had failed to engage at all with the fact that the Appellant's relationship did not meet the definition required in GEN.1.2 or the specific criteria of E-LTRPT.2.2 to 2.4 with the consequence that the Appellant could not benefit from EX.1 by virtue of R-LTRPT(d).
4. A number of further points were raised as factors that should have been held against the Appellant, i.e. his former use of a counterfeit Home Office stamp and the fact that there were extensive periods of overstaying in the UK were also relied upon, and the fact that the judge did not appear to have had any regard to Section 19 of the 2014 Act, i.e. the criteria set out in Section 117B and C of the NIAA 2002 as amended.
5. The third ground makes the assertion that the judge was guilty of judicial bias. This was based on comments that the judge made at paragraph 17 of his decision and it was asserted that these comments show a political dislike for the Rules as implemented since HC 194, partly predicated on a misunderstanding that these Rule changes are non-compliant with Article 8 of the Human Rights Convention.
6. Permission to appeal was granted in respect of all grounds in a decision dated 31 July 2015 where Upper Tribunal Judge Martin stated: *"It is arguable that the judge made errors of law in the decision. He appears to have failed completely to engage with the reasons for refusal and allowed the appeal on the basis of his own private life views rather than the evidence and applicable law."*
7. At the hearing before me the Appellant was represented by Ms Harris of Counsel and the Respondent by Mr Staunton. In his submissions Mr Staunton relied on the grounds of appeal and essentially reiterated the points made therein.
8. In response Ms Harris drew attention to her skeleton argument before Judge Majid dated 19 May 2015 to make clear that it had never been suggested that the case falls within the Immigration Rules and it was completely proper for the judge to have sought to allow it outside the Rules.

9. In respect of paragraph 21 she submitted that the judge here was taking a broad brush approach and it was clear from paragraphs 2 and 11 that the judge has carefully considered the Respondent's refusal letter. She drew my attention to paragraph 10 where the judge had given clear reasons as to why he had allowed the appeal and those included at (a) a letter from a social worker pointing out that the Appellant is the main carer of his partner and her daughter and at (b) the issue of the best interests of Aaliyah. She submitted that this was an unusual family set-up and that this constituted exceptional circumstances as the Immigration Rules do not cover the type of circumstances of this particular Appellant.
10. In respect of paragraph 17 and the assertion of judicial bias she submitted that in fact it is quite a factual paragraph and all the judge does is refer to the European Convention on Human Rights and then go on to find that the Respondent's decision was disproportionate under Article 8.
11. Having considered the submissions and the Respondent's grounds of appeal I find that Judge of the First-tier Tribunal Majid did make material errors of law in his decision, essentially for the reasons set out in grounds 1 and 2 of the Respondent's grounds of appeal. It is not clear from the Judge's decision that he did engage properly or at all with the relevant paragraphs of Appendix FM or even to the extent of stating that the appeal was not argued under the Rules and that this was a case where consideration needed to be given outside the Rules for exceptional circumstances.
12. Ground 2 is also made out in that there is a paucity of clear findings of fact as to why in fact the Appellant's appeal should succeed. I have taken into account the findings at paragraph 10 but the Respondent has reasonably pointed out that there is essentially no balancing exercise as to the points in favour of the public interest and it is clearly necessary to conduct that exercise in order to reach a sustainable finding in respect of the proportionality of the Respondent's decision.
13. In respect of the issue of judicial bias I do not find that this assertion is made out and I accept Ms Harris' submission that paragraph 17 is essentially factual. However, it is unwise for judges to include such statements in their decisions and reasons as they are clearly open to misinterpretation and are essentially irrelevant in terms of the individual facts of the appeal that needed to be decided.
14. For those reasons I allow the Respondent's appeal and remit the Claimant's appeal back to the First-tier Tribunal in order for proper consideration to be given to his application for leave to remain outside the Rules and for a clear and full proportionality assessment to be made taking into account his evidence and that of his partner.
15. Ms Harris made an application for costs given that the Claimant is privately funded and the fact that the Secretary of State's appeal had been allowed meant that a further hearing was necessitated. I have

considered rule 9 of the Tribunal Procedure (Upper Tribunal) Rules 2008 however, given my decision it does not appear to me appropriate to make an award of costs in respect of the proceedings in the Upper Tribunal. However, it may be appropriate for the Claimant's representatives to write to the Resident Judge at Taylor House attaching a copy of this decision, along with the decision of the First Tier Tribunal Judge, the grounds of appeal and the grant of permission and drawing his attention to the discretion of the First Tier Tribunal to make a costs award with regard to rule 9 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and section 29(1)(a) of the TCEA 2007.

### **Notice of Decision**

The appeal of the Secretary of State is allowed and the appeal is remitted for a hearing *de novo* before the First Tier Tribunal.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Chapman