



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/12198/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 9 January 2018**

**Decision & Reasons
Promulgated
On 25 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

**JAMOY ANTHONY YOUNG
(ANONYMITY ORDER NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER, SHEFFIELD

Respondent

Representation:

For the Appellant: Mr Adophy
For the Respondent: Ms Aboni

DECISION AND REASONS

1. The appellant appeals with permission against the decision and reasons statement of FtT Judge Ferguson that was issued on 8 August 2017.
2. Judge Ferguson decided that the public interest in protecting the economic wellbeing of the UK meant the decision to refuse entry clearance was proportionate in all the circumstances, and that the decision was not unlawful under s.6 of the Human Rights Act 1998.
3. The grounds of appeal focus on two issues. First, whether Judge Ferguson's findings are contradictory in that it is unclear whether he found the appellant met the financial requirements of appendix FM to the immigration rules. Second, whether Judge Ferguson took proper account

of the best interests of the appellant's British citizen child when assessing proportionality.

4. After hearing from Mr Adophy and Ms Aboni, I have reached the following conclusions.
5. There is no contradiction in Judge Ferguson's findings about whether the appellant met the financial requirements. It was accepted by the appellant that the minimum income requirement had not been met at the date of decision. In terms of meeting the immigration rules, that was the relevant date. Judge Ferguson did not disturb that factual concession.
6. I add that both representatives accepted that there is a typographical error in paragraph 11 of Judge Ferguson's decision. The concession related only to the appellant not meeting the minimum income requirement at the date of decision and not at the date of hearing. The typographical error is not material to the outcome.
7. Judge Ferguson proceeded to consider whether the appellant met the minimum income requirement at the date of hearing that being the relevant date in relation to article 8 ECHR. Judge Ferguson began by considering the reliability of the third-party support that had been proposed. He decided the evidence was insufficient to establish that the proposed support was not reliable and gave reasons at paragraph 14. The appellant is not content with those reasons but the arguments against them are mere disagreement and do not identify a legal error.
8. Judge Ferguson then considered the evidence as to whether the minimum income requirement was met at the date of hearing. He accepted that the sponsor's income had increased since the date of decision and was now in excess of the financial requirement. Therefore, at the date of hearing, Judge Ferguson was satisfied that the appellant would meet the relevant threshold.
9. At this juncture, Judge Ferguson moved to assess the proportionality of the refusal decision. He concluded that the failure of the appellant to meet the immigration rules and the fact a fresh application could be made outweighed the interference in the family life that would ensue from having to go through the application process afresh. In reaching this conclusion, Judge Ferguson had due regard to s.117B of the Nationality, Immigration and Asylum Act 2002.
10. I find it cannot be said that this assessment is legally flawed because Judge Ferguson clearly had in mind he was dealing with a situation where the appellant and sponsor were living apart and the question was whether maintaining that separation did not respect the right to family life. That is a different situation to when an appeal is against a decision that will cause family life to be disrupted by separation, even temporary separation. The guidance in *Chikwamba* are not engaged in the same way as when an appellant is in the UK because the issue is that of prolonging separation and not causing separation.
11. The second issue is whether Judge Ferguson failed to take proper account of the best interests of the appellant's British citizen child when assessing proportionality. Mr Adophy focused his submissions on whether Judge

Ferguson had proper regard to the best interests of the appellant's child. Mr Adophy pointed out Judge Ferguson had not referred to the son wanting the appellant to join him in the UK or the medical condition of the son. Nor was there consideration of the prolonged separation that would ensure from the appellant having to make a fresh entry clearance application.

12. Having considered all the arguments, I find there was no need for Judge Ferguson to spell out the issues in any greater detail than he did. There was no evidence the wellbeing of the appellant's son was compromised in any way by the absence of the appellant. Judge Ferguson assessed that it was open to the appellant to make a fresh application in which he was likely to meet the immigration rules and thereby be granted entry within a relatively short period. It had been open to him to make such an application rather than pursue and appeal. There was no need for Judge Ferguson to make other findings.
13. Having reflected on all the submissions made and on the leading cases of *Hesham Ali, MM (Lebanon)* and *Agyarko*, I am satisfied the relevant legal provisions were properly applied and the decision is not infected with an error of law.

Decision

There is no legal error in the decision and reasons of Judge Ferguson and I uphold his decision.

The appellant's appeal to the Upper Tribunal is dismissed.

Signed

Date

Judge McCarthy
Deputy Judge of the Upper Tribunal