



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

Appeal Number: IA/27243/2015

THE IMMIGRATION ACTS

Heard at Field House

On 22 November 2017

**Decision & Reasons
Promulgated**

On 12 January 2018

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

**RICARDO ALPHANSO MARTIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Jamaica. He was born on 11 November 1977. He arrived in the United Kingdom as a visitor on 11 May 2001. However he was given further leave to remain as a student until 30 September 2004. From September 2004 he has remained as an overstayer. On 17

January 2014 (that was nearly ten years after his last leave expired) he applied for leave to remain as the husband of a British citizen, [FM], whom he had married on 8 November 2013. The application was refused on 24 February 2014 and it was certified as being 'clearly unfounded'. That was challenged by a series of proceedings and this resulted in an unsuccessful challenge on 17 July 2015.

2. The application was made the subject of an earlier decision by First-tier Tribunal Judge J R A Hanratty, whose determination was promulgated on 28 October 2013. The principal feature is that the appellant formed a relationship with [TS]. She had two children already and the appellant is the father of her third child who was born on [] 2008 and she is now 9 years old. The appellant started a relationship with [FM] in about September of 2012 and [FM] has a child with whom it was accepted that the appellant had a relationship of ordinary affection and genuine involvement. The stepson has some medical difficulties, principally he has a considerable stammer.
3. The appeal was dismissed in October 2013 and eleven days later he married [FM]. He applied in January 2014 to remain on the basis of being married to a British citizen. The appeal eventually was heard by First-tier Tribunal Judge Oliver. At that stage the appellant was in a relationship with [FM] and he considered that relationship. He also considered the fact that at that time the appellant was not seeing anything of [TS], or at least not in the sense of his enjoying a genuine and subsisting relationship, but they obviously saw each other in the context of contact. He told the judge that he and his daughter had contact but he did not see eye-to-eye with his daughter's mother. In those circumstances, the Judge reached the conclusion, having considered s.55 of the Borders, Citizenship and Immigration Act 2009, that this fell short of a protected relationship. The relationship that the appellant had with his stepson, [FM]'s son, was not such as to prevent his removal.
4. Bearing in mind the fact that the appellant had no leave to remain and that the relationships which he had with both [TS] and [FM], who remains his wife, were all created and developed at a time when he had no leave, it is unsurprising that he did not meet the requirements for leave to remain under the Immigration Rules. The decision of the Secretary of State where these considerations were set out is one which is plainly a lawful one, and the judge cannot be criticised for reaching the conclusions he did. In those circumstances, I dismiss the appeal.
5. I will add, however, that the appellant told me that he had been separated from [FM] some time in 2015 and that he is currently living at an address, [] in Surrey where he moved last Friday. He is living with [TS] and that is known to the immigration authorities because both the address and the identity of his surety has changed from [FM] to [TS]. That was a change which was recognised by the UK authorities when he made that application at Lunar House. Accordingly, there are very different circumstances which exist at the moment. This does not alter the fact

that the judge when he dealt with this case at the end of December of 2016 was entitled to reach the decision he did and did not commit any error of law.

6. I will also add one thing about the evidence of the appellant's criminal convictions. I have not taken those into account at all, even though they obviously featured in the decision before the First-tier Tribunal Judge. The reason why I have not done so is that, although they are matters which would normally come into play in the proportionality balance, in the context of this case, I am looking to see whether the appellant has established any right to remain under the Immigration Rules, regardless of whether he has criminal convictions or cautions or any other matters found against him. The decision I have made is on the basis that the appellant presently has an immigration status which gives him no right to remain. The fact that he has a child in the United Kingdom and was in a relationship with [FM] and is now in a relationship with [TS], does not alter the fact that the judge made no error of law.

DECISION

The First-tier Tribunal Judge made no error on a point of law and his determination of the appeal shall stand.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL