



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

Appeal Number: HU/06988/2019

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice Centre
On 6 January 2020**

**Decision & Reasons
Promulgated
On 17 January 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

**PWAVI LAMU MICHELLE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Farrell instructed by Adriana Immigration Services
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Birrell promulgated on 7 August 2019 dismissing his appeal against the decision of the Secretary of State dated 1 April 2019 to refuse his application made on 10 August 2018 for leave to remain in the UK on

family and private life human rights grounds based on his relationship with a British citizen partner since June 2016.

2. First-tier Tribunal Judge Simpson granted permission to appeal on 12 November 2019.

Error of Law

3. For the reasons set out below I do not find a material error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside.
4. In granting permission to appeal Judge Simpson considered it arguable that the decision disclosed:
 - (i) a failure to engage in any real way beyond the superficial with the country information when addressing the material question arising in the appeal, where the appellant and his sponsor wife faced insurmountable obstacles to their family life continuing outside the UK in Haiti;
 - (ii) in tandem failed to furnish an overall adequacy of reasoning on material matters, more especially, with reference to the threshold of proof, “very significant difficulties” under EX.2 concerning family life continuing in Haiti”; and
 - (iii) “the judge erring when addressing the proportionality question under Article 8 and the requisite public interest question, specifically with reference to financial independence under Section 117B(3) and that this relates to absence of financial independence upon the state in the light of Rhuppiah v SSHD [2018] UKSC 58 (55, 56).”
5. The according of weight to evidence is a matter for the First-tier Tribunal Judge. It is not an arguable error of law for a judge to give too little or too much weight to a relevant factor unless the exercise is irrational nor is it an error of law for a judge to fail to deal with every factual issue of argument. Disagreement with the judge’s factual conclusions, the appraisal of the evidence, or the assessment of credibility, or the evaluation of risk does not give rise to an error of law. Unless the judge’s assessment of proportionality is arguably completely wrong there is no error of law in that assessment.
6. It is clear from paragraph 26 of the decision that the First-tier Tribunal Judge was fully conscious of the correct test under EX.1 and EX.2 of insurmountable obstacles to family life continuing outside the UK. It is also clear that the judge took into account the evidence and submissions that because of the prevailing situation in Haiti following the earthquake circumstances would be difficult for this couple and that relocating there would significantly interfere with the partner’s relationship with her daughter living in France. The judge was entitled to take into account that the appellant had not taken the advice and opportunity to claim

humanitarian protection. I recognise that there is evidence that a correspondence has been opened with the Home Office on the appellant's behalf by a charitable organisation. However, the judge noted that he has had since 2011, when he was legally represented and first claimed asylum, and could have made his claim before now. The judge was entitled to take into account that he had not taken the advice and invitation of the respondent to claim humanitarian protection to avoid return to Haiti. The judge also noted the reliance on and took into account the Foreign Office reports advising caution in all but essential travel to Haiti. In her submissions before me Miss Farrell took me to both the Amnesty International Report at page 5 of the supplementary bundle and the Foreign Office advice at page 8. The Amnesty International Report is, as the judge stated, quite limited in nature. It speaks of cases of suspected cholera in 2018 with 70 deaths but points out that this was a decrease of more 60% in comparison with the same period in 2016. However, since the 2010 outbreak more than 800,000 people had been infected of which nearly 10,000 had died according to the authorities. It was also pointed out in the Amnesty Report that the UN's approach to cholera in Haiti, presented in 2016, was severely underfunded and that according to the government almost 70% of the Haitian population did not have access to health services. In relation to the Foreign Office advice from June 2019, the advice to UK nationals was against all but essential travel to Haiti due to the current unstable and dangerous security situation. It warns that there are various risks of unrest and that the general security situation is unpredictable with high crime levels. There are particular risks for foreign nationals including missionaries and workers and children who have been kidnapped and it is pointed out that UK government officials use an armoured vehicle and close protection when travelling within Haiti at the current time. If one visits low income or slum areas one may attract unwelcome attention and foreigners are viewed as wealthy and may give rise to envy.

7. I accept that the above advice is quite detailed, but all of this was considered by the judge. It is not necessary for the judge to summarise or to set out the evidence relied upon provided it is clear that all the relevant evidence has been taken into account. At paragraph 16 of the decision the judge confirmed that she had considered all of the evidence in the round before making any of her findings.
8. Having assessed this evidence, the judge was entitled in my view to reach the conclusion that the country situation, whilst challenging, did not meet the high threshold of insurmountable obstacles in the sense intended by EX.1 of the Rules, namely, very significant difficulties which would be faced by the appellant or his partner in continuing family life together outside the UK and which could not be overcome or would entail very serious hardship for the appellant or his partner.
9. I am satisfied, as was the judge, that the evidence relied upon by the appellant was limited and even taken as a whole, was insufficient to reach this high threshold. However, it is not my assessment which is relevant.

The question is whether the judge was entitled to reach that conclusion or whether the judge's conclusion was perverse or irrational. I cannot find a way to see that the decision of the judge was irrational or perverse or otherwise unlawful. Merely because there are challenges and difficulties is insufficient to reach the necessary threshold. The implicit premise of the grounds is that no-one could or should be returned to Haiti irrespective of their personal circumstances. However, that submission is not borne out by the evidence. Whilst the appellant had expressed a fear of return to the current situation and arrest in Haiti he declined the respondent's offer to make a claim for international protection. In the circumstances the judge was entitled to conclude that the Rules and particularly EX.1 and EX.2 could not be met. The judge nevertheless accepted at paragraph 26 of the decision and again at paragraph 29 of the decision that the country situation was "challenging" but found that there was no reason why they could not continue their family life there. I can find no error in the judge's assessment of the evidence.

10. At paragraph 27 the judge also took into account the alleged difficulties of maintaining the relationship between the appellant and her adult daughter, resident in France. The judge was entitled to conclude on the evidence that the appellant's visits to her daughter were not as frequent as alleged and that even though the daughter is blind it remained open to the daughter to visit her mother in the UK but had not done so. In respect of return to Haiti by the appellant accompanied by his British citizen partner of Cameroon origin the judge was entitled to bear in mind that they had good health and that they had work experience to help them settle in Haiti.
11. I accept that at paragraph 31 of the judge may have erred in concluding that the appellant was not financially independent when stating that he was not because he was supported by his partner since they have lived together. Following the decision in Rhuppiah, independence means independence from the state. However, this factor of financial independence under Section 117B of the 2002 Act is only a relatively small part of the assessment of the public interest. As Mr Tann pointed out financial independence is not a positive factor that the appellant can rely upon. It is only relevant in the negative. Whilst I accept the judge may have erred I am not satisfied that the error in this regard is material in that I am satisfied that the outcome of the appeal, namely dismissal, was on the facts of this case inevitable. In Anoliefo (permission to appeal) [2013] UKUT 00345 (IAC), at paragraph 16, the president said that:

"Where there is no reasonable prospect that any error of law alleged in the grounds of appeal could have made a difference to the outcome, permission to appeal should not normally be granted in the absence of some point of public importance that it is otherwise in the public interest to determine."

12. In all the circumstances of this case, whilst another judge may have reached a different conclusion in relation to whether there were insurmountable obstacles to continuing family life in Haiti or outside the

Rules or whether the decision refusing leave to remain was proportionate, it was open to the First-tier Tribunal Judge to reach the conclusion that she did and it is clear from the decision that cogent reasons have been provided for that conclusion. No error of law is disclosed that is material to the outcome of the appeal.

Notice of Decision

13. The making of the decision in the First-tier Tribunal did not involve the making of an error on a point of law such as to require the decision to be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

No anonymity direction is made.

Signed

Upper Tribunal Judge Pickup

Dated

15 January 2020

**To the Respondent
Fee Award**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Upper Tribunal Judge Pickup

Dated

15 January 2020