



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000714
First-tier Tribunal No:
HU/03307/2018

THE IMMIGRATION ACTS

Heard at Field House
On the 29 July 2022
Extempore

Decision & Reasons Promulgated
On the 01 February 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR GLENROY WILLIAMS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Pipi, Counsel instructed by Fairview Solicitors Limited
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Brannan promulgated on 28 June 2021 dismissing his appeal against a decision of the Secretary of State to refuse him leave to remain in the United Kingdom.

2. The appellant's history is not in dispute and is set out in the decision but broadly, the appellant was most recently granted leave to remain until 24 November 2016. An application was made for further leave to remain which, it appears, was submitted one day late. The Secretary of State's case was that the application was late and that was a finding which the judge also made, noting particularly at paragraph 10 that the application had been made by the appellant's solicitors, that they knew the application was being submitted after the expiry of the appellant's leave.
3. The judge found that the appellant did not meet the requirements of the Immigration Rules, finding in particular that the appellant had not been in a relationship with his now wife, Ms Angus-Graham, for two years, they do not live together and thus she was not the appellant's partner within the definition of GEN.1.2 of Appendix FM, see paragraph 37.
4. I note in passing that on that basis, even had the appellant had leave to remain it is difficult to see how he could have succeeded under the Immigration Rules.
5. The judge also considered that the appellant did not meet the requirements of paragraph 276ADE of the Immigration Rules. In considering then whether the applicant's removal from the United Kingdom was nonetheless disproportionate in terms of his Article 8 rights the judge directed himself that he ought to follow Section 117B of the Nationality and Immigration Act and found that he could not be satisfied that the appellant would qualify for a fiancé visa and set out balance sheet form pros and cons as to why the appellant should be granted leave to remain in the United Kingdom.
6. The judge found that the relationship with his now wife had been formed when he was in the United Kingdom unlawfully and directed himself at 67 as follows:

"The question for me is if there are particularly strong features which make this an exceptional case. The features are actually relatively weak because the appellant and Ms Angus-Graham are not yet married, they do not have children together though I accept Ms Angus-Graham's evidence that they have been trying for a child, they do not live together and their relationship, while not brand new, is not very long-established."

The judge then goes on to say this:

"The one factor which could have made me view this differently would have been if the appellant had wrongly believed that he was in the UK lawfully when the relationship was formed. This has never been claimed and it was always clear from the covering letter to the application and the decision of the respondent that he applied as an overstayer."

The judge then went on to dismiss the appeal.

7. Permission to appeal in this case was granted on only one narrow ground, which is that:

“It is unreasonable or irrational because at paragraph 8 the Immigration Rules recorded the appellant’s evidence which says the application was made on about 24th November 2016. At paragraph 13 of his statement dated 1st January 2019 ‘just before my visa expired I instructed Fairview Solicitors Ltd to apply for an extension of my leave to remain ... they duly submitted the application on my behalf on about 24th November 2016’. So, it is quite clear that the appellant believed that his application was made before his leave expired and that he had been here lawfully when he met his partner.”

8. I find no merit in this ground. It is clear from the wording of the judge’s findings at paragraph 68 that this is a matter that he was considering in the alternative. It was open to him to note that the appellant believed he was in the United Kingdom lawfully. It is clear from the findings to which I referred in the course of argument that the judge was fully aware that the application had been made by the appellant’s solicitors out of time. There was thus no basis on which it could be said that the appellant could have believed that his application was lawful and indeed for him to have believed that, that would have been entirely different from the position put forward by those acting for him at the time.
9. Accordingly, I find that the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it. That concludes my decision.

Notice of Decision

I dismiss the appeal. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it

No anonymity direction is made.

Signed

Date 23 December 2022

Jeremy K H Rintoul

Upper Tribunal Judge Rintoul