IAC-AH-DN-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/21383/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 20th January 2015	**On 4th February 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

DAVID GEORGE LEE SHUE
(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 McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, David George Lee Shue, was born on 31 December 1972 and is a citizen of Jamaica. By a decision dated 25 April 2014, the appellant was refused leave to remain on the basis of his relationship with Delsena Walrond (hereafter Ms Walrond). He was served with a form IS151A on 2 December 2013 informing him of his liability to detention and removal. He appealed against that decision of the First-tier Tribunal (Judge Grimshaw) which, in a determination promulgated on 12 August

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2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are several grounds of appeal but it is clear that Judge Omotosho, who granted permission on 1 September 2014, was concerned that the appellant had not received an earlier First-tier Tribunal determination (Judge Dickson) arising from a previous refusal by the respondent of leave to remain. That ground of appeal has no merit. As was pointed out at the initial hearing, the determination of Judge Dickson, which the appellant claimed not to have seen, was, in fact, included in his own bundle of documents before Judge Grimshaw.

3. Ground 2 takes issue with the judge's assessment of the appellant's relationship with Ms Walrond. Judge Grimshaw accepted that the appellant and Ms Walrond are in a genuine and subsisting relationship [16]. However, the judge found that they had not been in such a relationship for at least two years prior to the application which was the subject of the appeal. As a consequence, the appellant could not satisfy Appendix FM of HC 395. The judge considered that there was a discrepancy in the evidence of Ms Walrond and the appellant as to when the relationship had begun; Ms Walrond stated that it had begun in March/April 2012 whilst the appellant claimed that it had started in May 2012. I do not consider that discrepancy to be other than very minor, a view which it appears that Judge Grimshaw shared as she went on to consider further evidence on the basis that the discrepancy should be overlooked. However, the judge was not satisfied there was a "sensible explanation" as to why there had been no reference to the relationship by Ms Walrond in a letter which she had sent ("To Whom it May Concern") regarding the "appellant's occupancy of her household as a tenant in May 2012." Likewise, there was no reference to the relationship in a further supporting letter from the social worker. The judge found as a fact that the relationship, although genuine and subsisting, had begun less than 2 years prior to the date of the application.

4. I have considered both those items of evidence. I consider that Judge Grimshaw may have overlooked the purpose for which the letters were written and which was not to establish Ms Walrond and the appellant were in a relationship but, rather, that the appellant was available to provide personal care to Ms Walrond and also her disabled child. There was no need in the letters for the intimate nature of the relationship to be described in any detail at all whilst there is other evidence (for example, from third parties who know the couple) indicating that the relationship had begun in the spring of 2012.

5. The Upper Tribunal should hesitate before interfering with the findings of fact of the First-tier Tribunal but, in this instance, I consider that Judge Grimshaw has taken an unduly harsh view of evidence which, whilst it may do little to reinforce the appellant's claim to have been in a relationship for more than two years with Ms Walrond, can scarcely be described as undermining that claim. I have decided to set aside Judge Grimshaw's

determination and to remake the decision. I refer to the observations which I have made above and find that the evidence proves, to the standard of a balance of probabilities, that the appellant and Ms Walrond had been in a relationship akin to marriage for at least two years prior to 25 April 2014. Mr McVeety accepted that, in the light of this finding, the appellant's appeal under the Immigration Rules should be allowed.

Notice of Decision

The determination of the First-tier Tribunal which was promulgated on 12 August 2014 is set aside. I have remade the decision. The appellant's appeal is allowed under the Immigration Rules.

No anonymity direction is made.

Signed Date 2 February 2015

Upper Tribunal Judge Clive Lane