Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/02729/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19th April 2017	**On 9th May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR SAHADEO JADEGEO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr K Norton (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Thorne, promulgated on 8th August 2016 following a hearing at Bennett House, Stoke-on-Trent on 25th July 2016. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Trinidad and Tobago, and was born on 22nd April 1972. He applied on 3rd September 2014 for leave to remain as the partner of Germalyn Dunga, who is a British citizen.

The Judge's Findings

3. The judge at the outset noted how the Appellant had entered the UK on 24th March 2006 as a visitor and had then applied to remain here on the basis of his relationship with Germalyn Dunga. However, neither the Appellant nor Germalyn Dunga were in attendance at the hearing before the judge. Nor, was any explanation given for such non-attendance. The judge concluded that the Appellant could not succeed under the partner Rule of Appendix FM because EX.1 did not apply. He also could not succeed under paragraph 276ADE because he had not been resident in the UK for twenty years. In addition, no explanation had been given as to why the Appellant's partner could not relocate with the Appellant in Trinidad, were it to come to that, such as could be regarded as not being reasonable. The judge went on to conclude that the human rights of the Appellant, and his partner, are outweighed by the public interest. There was a strong public interest in maintaining effective and fair immigration control (see paragraph 47).

Grounds of Application

4. The grounds of application state that the judge applied the test of "insurmountable obstacles" rather than the correct test of "exceptional circumstances" as to whether Article 8 was engaged outside of the Immigration Rules.

5. On 10th February 2017, permission to appeal was granted.

The Hearing

6. At the hearing before me on 19th April 2017, the Appellant was again unrepresented. Nor, was any explanation given for his non-attendance. Neither was his partner in attendance. There cannot be a more important matter, I am bound to say, than the immigration status of a person on an appeal, who is facing the prospect of being required to return back to his own country, and a failure to attend, together with a failure to provide any explanation for such non-attendance, cannot be of assistance to a person in such a situation.

7. For his part, Mr Norton, appearing on behalf of the Respondent, raised two matters. First, there had been an earlier judicial review application before the Upper Tribunal which was determined on 30th September 2015, where the Tribunal had stated that, "despite providing voluminous documentation with this application the Appellant did not raise any issue

relating to any difficulties his partner would have, as a result of her ethnic origins, in relocating to Trinidad and Tobago" (paragraph 2). There were no insurmountable obstacles in this case. Second, as far as the determination of Judge Thorne was concerned, he would rely now upon his Rule 24 response. The grounds are outdated (referring curiously to **Izuazu** and the Rules have been changed) so it was very hard to discern from the grounds how this judge had applied the wrong test. Since then, the Supreme Court in **Agyarko [2017] UKSC 11** had emphasised how "insurmountable obstacles" was to be interpreted. The evidence before Judge Colyer was lacking and it left many questions unanswered, which had the Appellant attended, may have been probed. The Appellant could not fulfil the requirements of paragraph 276ADE(1)(iii), (iv), (v) or (vi). No case had been made out that there would be very significant obstacles to the Appellant's integration into Trinidad and Tobago. Third, the Appellant had lived in Trinidad and Tobago up to the age of 33 and there were no conceivable circumstances which would have led the judge to a different decision. Fourth, the judge did consider the appeal under Article 8 and found that the Appellant had failed to make out his case. There was simply insufficient evidence to show that the Appellant's circumstances outweigh the public interest in immigration control.

No Error of Law

8. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.

9. First, this is a case where the Appellant arrived in 2006 as a visitor. He has overstayed since then. He has had no leave at all since then. He maintains that since 2008 he has been with a British citizen, namely, Germalyn Dunga, but his own status has throughout been precarious.

10. Second, against the background of these facts, the judge undertook a detailed and careful proportionality balancing exercise (see paragraph 46), pointing out that, "although it may be difficult for A and W to move to Trinidad and Tobago, there is inadequate evidence to establish that they would be caused real and lasting hardship or that it would be disproportionate to expect A to return with W" (see sub-paragraph (vii)). Nothing that the Appellant put forward by way of evidence shows that this conclusion was wrong. In point of fact, neither the Appellant nor his partner attended the hearing.

11. Third, it is indeed true that the Grounds of Appeal are outdated and do not address the relevant applicable law at the moment. The Supreme Court judgment in **Agyarko [2017] UKSC 11** makes it clear that any reference to "exceptional circumstances" means that in cases involving precarious family life "something very compelling … is required to outweigh the public interest" (see paragraph 56). That has not been the case here.

12. As far as "insurmountable obstacles" are concerned, it is made clear that the decision maker has to consider the seriousness of the difficulties and

"whether they entail something that could not (or could not reasonably be expected to) be overcome, even with a degree of hardship for one or more of the individuals concerned" (see paragraph 18).

13. Nothing put forward by the Appellant suggests that the decision by the judge was not open to him. All in all, therefore, the appeal is without merit.

Notice of Decision

14. There is no material error of law in the original judge's decision. The determination shall stand.

15. No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 8th May 2017