



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/11668/2015

THE IMMIGRATION ACTS

Heard at Liverpool Civil and Family Court
On 27th July 2018

Decision & Reasons Promulgated
On 20th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

AKEEM OLUBUKOLA ALARO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - SHEFFIELD

Respondent

Representation:

For the Appellant: No legal representation

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the decision of Judge Bell (the judge) of the First-tier Tribunal (the FTT) promulgated on 30th May 2017 following a hearing on 15th March 2017.
2. The Appellant is a Nigerian citizen born 10th October 1983. He applied for entry clearance to join his wife Mrs Juliet Alaro, a British citizen, in the UK. I will refer to Mrs Alaro as the Sponsor.

3. The application for entry clearance was refused on 28th October 2015, the Respondent not being satisfied that the relationship requirements within Appendix FM were satisfied. In particular the Respondent refused Entry Clearance with reference to E-ECP.2.6 which states that the relationship between an applicant and their partner must be genuine and subsisting, and E-ECP.2.10 which states that the applicant and partner must intend to live together permanently in the UK.
4. The appeal was heard by the FTT on 15th March 2017. The Appellant was legally represented and the Sponsor was present at the appeal hearing to give evidence. The judge accepted at paragraph 26:

“In summary, I accept that the Sponsor genuinely wants the Appellant to return to the UK and to live with her permanently and that she is supporting him financially and is generating regular contact with him. However, I have very significant doubts as to the credibility and bona fides of the Appellant and his intentions towards the Sponsor.”
5. The judge therefore decided that the relationship requirements of Appendix FM were not made out, in relation to the Appellant, and dismissed the appeal.
6. The Appellant applied for permission to appeal to the Upper Tribunal. Permission to appeal was initially refused by Judge Nightingale of the FTT who found that the grounds amounted to a re-argument of the Appellant’s case and a disagreement with the judge’s findings.
7. The application for permission to appeal had been made by the Appellant’s legal representatives. Following the refusal of permission, the legal representatives took no further part in proceedings, and the Sponsor prepared further grounds seeking permission to appeal to the Upper Tribunal. Those grounds are contained within eighteen paragraphs and will not be reiterated here. In very brief summary, it was submitted that the judge had materially erred in law and fact. It was submitted that the judge had not taken into account all the evidence that had been submitted on behalf of the Appellant.
8. Permission to appeal was granted by an Upper Tribunal Judge in the following terms;

“The judge was well satisfied of the Sponsor’s good faith in her relationship with the Appellant, her husband, but not of his. The crucial point for her was the Appellant’s failure to provide a statement or other evidence setting out his family circumstances in Nigeria. According to the judge, his former partner and their children were still living in the same town as him. However, the grounds claim that it was only the children who lived in Ilorin with their grandmother, while their mother lived in Abuja, 450 kilometres away, and say the Sponsor gave oral evidence about that. This is correct, the judge’s very careful and helpful typewritten Record of Proceedings shows this ‘They live with his ex-wife’s mum. His ex-wife works in Abuja. His children are in Ilorin.’”
9. It is not clear how much difference this mistake by the judge may have made to the result she reached, but the Appellant is entitled to an opportunity to argue the point.

10. Following the grant of permission, the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In brief summary it was accepted that the judge had made a factual error as outlined in the grant of permission, but this was not relevant and did not infect the other findings made by the judge in relation to the Appellant's intention.
11. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FTT had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

12. The Sponsor attended the hearing. She indicated that the Appellant was not legally represented and she wished to present his application to set aside the decision of the FTT.
13. I explained to the Sponsor the procedure that would be adopted throughout the hearing, and the independence of my role. I explained that I would do all that I could to make sure that she presented everything that she believed to be relevant in relation to the decision of the FTT.
14. The Sponsor confirmed that she had with her a copy of the FTT decision, and that she had drafted the grounds upon which permission to appeal had been granted. She had seen the grant of permission but had not seen the Respondent's rule 24 response and was therefore provided with a copy of this and given an opportunity to consider that document.
15. I then heard oral representations from the Sponsor who relied upon the grounds that she had drafted, comprising of eighteen paragraphs. She indicated that at this stage she did not wish to add anything to the grounds, and I explained that she would have an opportunity to respond to whatever submissions were made on behalf of the Respondent.
16. Mr McVeety relied upon the rule 24 response. In short, it was accepted that a factual error had been made by the judge, but this did not infect or affect the other findings that the judge had made for which adequate reasons were given and the decision of the FTT should stand.
17. In response, the Sponsor explained that no witness statement had been provided from the Appellant because the lawyer who was representing him before the FTT indicated that there was no need for such a statement as little weight would be attached. The Sponsor explained that the appeal had been in the reserve list at the FTT hearing centre, and was not called on until late in the afternoon, and the Sponsor believed that the judge did not have time to read the file properly.
18. The Sponsor submitted that the factual mistake as to whether the Appellant's former partner lived with their young children was relevant and had a profound effect on other credibility findings made by the judge, which were adverse to the Appellant.

19. The Sponsor pointed out that evidence had been given of the contact between herself and the Appellant, and she asked that in view of the mistakes made by the FTT, the decision should be set aside and there should be another hearing before a different judge.
20. At the conclusion of oral representations, I reserved my decision. I explained to the Sponsor that I wanted to reflect upon what had been said during the hearing, and I advised I would issue a written decision. I advised the Sponsor that the Tribunal would send the decision to the parties, and that if she wanted to receive the decision, the Appellant would have to nominate her as his representative.

My Conclusions and Reasons

21. The judge commences her decision, after the introductory paragraphs, by setting out the reasons for refusal. Thereafter, the judge at paragraphs 11 – 13 sets out in summary the relevant case law to be considered when the issue in an appeal is whether there is a genuine and subsisting relationship. The findings made by the judge commence at paragraph 14. It is now common ground that the judge made a factual error in paragraph 18 in finding that the Appellant's young children and his former partner lived in the town from where he originates. The correct evidence was that the children live with their grandmother, and the Appellant's former partner lives in Abuja about 450 kilometres away.
22. I do not find that it can fairly be said that the judge did not consider all the evidence placed before her. In my view, the judge made findings which were open to her to make on the evidence and provided sustainable and adequate reasons for those findings.
23. I am afraid I do not accept that the factual error at paragraph 18 has in any way infected the other findings made by the judge.
24. It is apparent to me that the judge very carefully considered the evidence. The judge made it clear at paragraph 26 that she accepts that the Sponsor is entirely genuine and wants the Appellant to return to the UK.
25. The judge however did not reach a similar conclusion in relation to the Appellant. Adequate reasons for the adverse credibility finding in relation to the Appellant have been given. For example, the judge at paragraph 19 records that the Sponsor is financially supporting the Appellant by sending him £100 per month. The judge was entitled to find that there appeared to be no good reason for the Appellant not to have sought or undertaken employment in the two years that he had been back in Nigeria. The judge was entitled to find that the lack of an explanation as to his family circumstances and general circumstances in Nigeria cast doubt upon the credibility of his intention.
26. At paragraph 21 the judge noted that the Appellant entered the UK as a visitor and overstayed for a number of years, and was entitled to find that there was no reason for the Appellant not to have made an application for leave to remain before he was

apprehended, but he had chosen to remain in the UK without leave, and again the judge was entitled to find that this cast doubt his credibility.

27. The judge at paragraph 23 acknowledged that there was contact between the Appellant and Sponsor, but was entitled to reach the conclusion that the conversations seemed “one-sided” with the Sponsor appearing to want more contact than the Appellant, and the judge gives a specific reference in relation to this within the bundle of documents.
28. The judge took into account at paragraph 25 letters and statements from friends and family members, but again was entitled to note that none of the authors of the letters or statements attended the hearing, which reduced the weight that could be attached to that evidence.
29. At paragraph 26 the judge records the absence of any witness statement from the Appellant or any of his family members in Nigeria addressing his intentions and his circumstances in Nigeria. Continuing in paragraph 26 the judge summarises her findings in relation to the Appellant, noting that he overstayed his visa by a significant reason for no good reason, thereby indicating a desire to remain in the UK even in breach of immigration control. The judge recorded her significant doubts about the Appellant’s true family circumstances in Nigeria about which there was a significant lack of information. The judge also comments that the couple had spent only three and a half weeks together since April 2015.
30. I have considerable sympathy for the Sponsor. She has clearly taken great care to prepare this appeal, without the assistance of legal representation. I echo the finding of the judge, in that my view of the evidence is that the Sponsor is a genuine and credible witness, who wants the Appellant to return to the UK and to live with her.
31. However, notwithstanding my sympathy, I have to consider whether the FTT decision displays an error of law. Other than the factual error described previously, in paragraph 18, I can discern no material error of law.
32. I do not find that the factual error has infected the other findings made by the judge, and the impression that I received from reading the FTT decision, is that the judge considered this appeal with great care. The findings made which are adverse to the Appellant, are findings which were open to the judge to make on the evidence, and adequate and sustainable reasons for the findings have been given. It may be that another judge would have reached a different conclusion, but that is not the point and not the test to be applied. The grounds upon which permission to appeal have been granted disclose a disagreement with the conclusions reached by the judge but do not disclose any material error of law.

Notice of Decision

The decision of the FTT does not disclose a material error of law.

I do not set aside the decision. The appeal is dismissed.

The FTT made no anonymity direction. There has been no request for anonymity made to the Upper Tribunal and I see no need to make an anonymity order.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

2nd August 2018

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

2nd August 2018