



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

Appeal Number: HU/11872/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 10 December 2018**

**Decision & Reasons Promulgated
On 17 December 2018**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**EBARRA [S]
(ANONYMITY ORDER NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Malik, of Counsel, instructed by Ashfield Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a Filipino national born on 21 September 1979. His appeal comes before me following his successful challenge to the determination of First-tier Tribunal Judge Beg, promulgated on 23 July 2018, dismissing his appeal on human rights grounds. Following a hearing on 11 October 2018, that decision was set aside. Full reasons are contained in my determination of 12 October 2018.

2. The appellant entered with entry clearance to join his spouse, the sponsor, in 2013 and obtained further leave until 10 August 2018. This was, however, curtailed to 14 August 2016 after his spouse informed the respondent that the relationship had broken down because of the appellant's gambling and drug addiction. Thereafter, they reconciled and a further application for leave was made, albeit out of time.

The Hearing

3. The appellant and the sponsor attended the hearing before me on 10 December 2018. Both gave evidence in English.
4. The appellant confirmed the contents of his witness statement and adopted it as his evidence in chief. He confirmed that since the preparation of that statement, he had had a son, born in July 2018. He stated he enjoyed a very close relationship with the baby. He cared for him whilst the appellant went to work. He bathed him, fed him and took him for his regular medical checks. He said his wife worked five days a week for 12 hours a day and had done so since the completion of three months of maternity leave in November 2018. He explained that apart from a short separation in 2016, he had lived with his wife since his arrival in the UK. He explained that they had had some problems, but she had forgiven him and accepted him back. He said he had promised her that he would do all he could to be a good husband. They had previously tried IVF, but had been unsuccessful, and then following their reconciliation, his wife fell pregnant, naturally.
5. The appellant confirmed that he was receiving support from a charity in respect of his addictions. This included mindfulness, yoga, meditation and healing techniques.
6. The appellant explained that he had approached his previous solicitors to make a further application for him in August 2016, but they had not done so and this was discovered in November 2016. He had then changed solicitors, but this is why his application had been delayed. His barrister had advised him he could make a formal complaint, but he had already felt stressed about this appeal and so had not wanted to do so.
7. The appellant stated that he would find it too emotional to make an entry clearance application. He was too close to his son and his wife. His absence would impact upon his child as he was the one who cared for him. They had no other family in the UK. That completed examination in chief.
8. In cross examination, the appellant said that he had sought help for his addiction. He said that for the last two years he had not gambled or taken drugs.

9. The appellant said that his wife worked in a care home for Care UK in Fulham, near the Chelsea and Westminster Hospital. He confirmed his home address and said that he had been living with his wife since they were reconciled in June 2016.
10. That completed cross examination. There was no re-examination.
11. I then heard evidence from the appellant's wife, [JS]. She confirmed her address and adopted her witness statement which she confirmed to be true and correct. She confirmed that she had since had a son. Her husband looked after the baby and they had a close relationship. He bathed the baby as she had a fear of doing so. He also fed him, took him for medical appointments, walked him, took him for baby massage and to the library and put him to bed. She confirmed that she worked five days a week, twelve hours a day for Care UK.
12. The witness confirmed that she and the appellant had experienced problems in May-June 2016 and he had gone to stay with friends for a few weeks. However, they reconciled in June 2016 and had lived together since. She had seen a big difference in her husband's behaviour. He was even more helpful than he had been. He got the dinner ready for her, cleaned the house and took her out on her days off. She said that it would be very stressful if he had to leave. There would be no one to look after the baby who would be parted from his father. She could not return to the Philippines. Her parents were deceased. Her siblings had their own families. She had no home. She would have difficulty finding work and starting over at her age. She had been here since 2002, having entered on a work permit and had worked ever since.
13. In reply to Mr Melvyn's questions, the witness stated that her husband had received professional help for his gambling and addiction to drugs. This was not just for the benefit of the appeal. It was to help him and to ensure that he had no vices because he was responsible for their son. She maintained that's he could see the difference in him since they had reconciled.
14. The witness confirmed that she regretted reporting the appellant to the Home Office. She explained she had done so in anger at the time. She said that he had however turned out to be a good husband and father. She confirmed that if the appellant were allowed to remain, he would find work and she would be able to reduce her hours. They would then be able to share the child care. She would love to be able to spend more time with her child.
15. There was no re-examination. That completed the oral evidence.
16. I heard brief submissions from Mr Melvyn who relied upon his written submissions and accepted the oral evidence that had been given. He also confirmed that the respondent had no issues over the paternity

of the child or the nature of the relationship between the appellant and his son. He accepted that the relationship between the appellant and his wife was subsisting and he invited the court to make a determination. In the circumstances, I saw no need to trouble Mr Malik for submissions and I indicated that I would be allowing the appeal. I now give my reasons.

Discussion and Conclusions

17. Having considered the submissions made and the evidence before me, I am satisfied that the appellant has made out his case on the balance of probabilities. I am grateful to Mr Melvyn for his very fair submissions.
18. Both the appellant and the sponsor impressed me as completely credible and honest witnesses. It is plain that they have a long-lasting marriage which has remained strong despite the difficulties they experienced on account of the appellant's conduct in 2016. I am satisfied that the appellant has made a sincere effort to win back his wife and that he is serious about keeping his promise to be a good husband. I also accept that their son has cemented the marriage further, that the appellant has done all he can to be a good father and to alleviate the pressure on his wife who works long hours in a care home and that he has received professional help and support to address his problems which appears to have been very successful.
19. I accept fully, as did Mr Melvyn, that the appellant is the primary carer for the child and that there are no other relatives in the UK to whom they can turn. I have seen the photographs, birth certificate, DNA evidence, various certificates and evidence regarding the sponsor's care and maternity leave. I am satisfied that the appellant can speak English and I note that he entered with entry clearance to join the sponsor as her spouse. Other than a brief blip in their relationship in mid-2016, they have always lived together as a married couple since his arrival. I accept the appellant would not be in this situation now had the sponsor not reported him to the Home Office in anger in 2016 and I accept the evidence that the delayed application for further leave was due to problems with the appellant's previous representatives. even though the financial requirements do not apply to the appellant under Appendix FM, I am satisfied that the sponsor's salary meets the income threshold.
20. I find that given the fact that the appellant entered the UK as a spouse, that he has lived with his wife ever since apart from a brief separation, that they have a child together and that the appellant is the primary carer of the child, there would be insurmountable obstacles to the enjoyment of family life in the Philippines. Were the appellant to return to the Philippines to make an entry clearance application, I cannot see any reason that it would be refused and applying the Chikwamba principles, there appears to be no public

interest in his removal when there is a young child's care and welfare at stake.

Decision

21. The appeal is allowed on human rights grounds.

Anonymity

22. I have not been asked to make an anonymity order and see no reason to do so.

Signed

A handwritten signature in black ink, appearing to read 'R. Keir' with a small dot at the end.

Upper Tribunal Judge

Date: 10 December 2018