



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/27798/2016

THE IMMIGRATION ACTS

Heard at Field House
On 7 August 2018

Decision & Reasons Promulgated
On 24 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

MR DAVID KOFI AHIABA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Aslam of Counsel
For the Respondent: Mr Avery, Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Respondent refused the Appellant's application for leave to remain on 12 December 2016. His appeal against this was dismissed on immigration grounds but allowed on human rights grounds by Judge Rowlands following a hearing on 9 April 2018. The key issues for determination related to the length of time he had been here and the quality of his family life.

Permission to appeal

2. The Respondent appealed on the basis that reading the judgment plainly led to only one conclusion and that it was to be dismissed on human rights grounds. Permission to appeal was granted by Judge Parkes (23 May 2018). Mr Aslam quite properly

accepted that on reading the decision it was blindingly obvious that the Judge was going to dismiss the appeal on human rights grounds.

3. Judge Andrew granted permission to appeal to the Appellant (28 June 2018) on the basis that there were arguable errors of law in the decision, although she does not refer to particular points that led to that conclusion. The grounds were that;
 - (1) the wrong standard of proof was applied in that the documentary evidence was not appropriately considered,
 - (2) the Judge did not properly engage with the family life that existed between the Appellant and his siblings, and
 - (3) the Article 8 assessment itself was inadequate.

Discussion

4. In relation to the Respondent's application, given the concession by Mr Aslam, which was entirely appropriate given a fair reading of the entire decision, the Judge plainly erred in allowing the appeal on human rights grounds as he intended to dismiss it. That was a material error of law. I set aside that part of the decision and remake it by dismissing the human rights appeal.
5. In relation to the Appellant's application and in particular ground (1), the Judge noted at [8-10] the documentary evidence and evidence of his brother Patrick. His statement said that the Appellant re-entered the United Kingdom on 17 December 1988, and that apart from a few days spent in Paris in France in 1988 has remained in the United Kingdom ever since. That is the only specific evidence he gave within the statement of him actually seeing the Appellant.
6. The Judge relates the previous encounters the Appellant had with the Respondent where the Appellant was found not to be a witness of truth in that a false claim had been made on his behalf [21], a totally false application was submitted on his behalf [22] in December 2016, and he again sought to mislead the Respondent in that he claimed it was a short trip and it was his intent to join a ship which was clearly false [23]. The Judge considered his general credibility, bearing in mind these points, to be poor.
7. The Judge then went on to consider the specific evidence in relation to this appeal and deals with this at [24] where he says:-

"I am asked on the basis of the circumstances to reach the conclusion that all the documentation that has been provided by him and the witnesses that he has called can be relied upon to give me truthful evidence as to the length of time that he has been in the United Kingdom. They do not. His brother and sister-in-law give some evidence as to when he came in, clearly have seen him quite regularly over the years but they do not amount to sufficient evidence to confirm that he has been here for 20 years or more as claimed and certainly do not show that he has been here during that time without a break. As to the documentation that was provided, clearly there were payslips showing a significant period of time here, there were some years with only very few payslips and a pattern

which, if nothing else, suggests that he might have been out of the country some significant periods of time. I am not satisfied that he has shown to the required standard that he has been here for 20 unbroken years as claimed.”

8. The Judge was not calling the family dishonest, he was simply saying the evidence was inadequate. There were gaps, and in terms of those gaps the Judge was entitled to find against the Appellant. Because of that I am not satisfied that the ground (1) is made out as the Judge applied the correct standard of proof namely the balance of probabilities, and gave sufficient details of what he was deciding and why he was deciding it.

9. In relation to ground (2), this relates to the nature of the relationship between the Appellant and his siblings. This is dealt with in particular at [26] of the decision:-

“So far as that is concerned I have considered the evidence provided and in particular my assessment of the credibility of the evidence provided by the Appellant. Clearly he has family members I don’t doubt that his brother and sister-in-law at least exist. I do not accept that a relationship with an adult sibling, more importantly the actual relationship between him and his brother is such as would engage Article 8. They were separated quite some time ago he having come to the United Kingdom without his younger brother. They do not live with each other and, on their own evidence, only see each other occasionally. The only other statement provided is from somebody called Edwina Norteye who did not actually attend the hearing. I am in fact most surprised to see that her statement, apart from the first paragraph is identical word for word as that of his sister-in-law. I have ignored her evidence totally. There is actually no other evidence at all of any contacts or friends that he has in the United Kingdom let alone anything of any significance. I am not satisfied that simply by the passage of time the Appellant has actually established ties in the United Kingdom which would mean that his private life or family life engage Article 8.”

10. I am satisfied the Judge did consider the evidence fairly. Whether seeing a sibling monthly amounts to occasional or not, it is not the type of contact the Judge could properly be criticised for as saying it was inadequate to show that family life beyond the emotional ties that normally exist between adults. The Judge was entitled to find as he did, and there is accordingly no merit in ground (2).

11. In relation to ground (3) which related to an attack on the Article 8 proportionality assessment and weighing the public interest factors, it is right to say that the Judge did not quote Section 117 of the Nationality, Immigration and Asylum Act 2002. I am satisfied however that when one looks at the totality of the decision, he considered all the factors that were in the Appellant’s favour. With him having found that those factors did not tip it in the Appellant’s balance, he did not then need to go into factors that weighed even more heavily against him. It would have been better to quote Section 117, but his failure to do so does not mean that the balancing exercise was not undertaken appropriately as, had he done so, the Appellant would have lost even more heavily. Accordingly, even if there was an error of law, it was not material to the outcome.

Decision

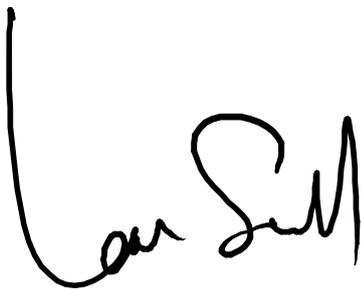
The decision of the First-tier Tribunal did not involve the making of a material error on a point of law in relation to finding that the immigration rules were not met.

The decision of the First-tier Tribunal did involve the making of a material error on a point of law in relation to the allowing of the appeal on human rights grounds.

I set the decision aside.

I remake the decision and dismiss the human rights appeal.

Signed:

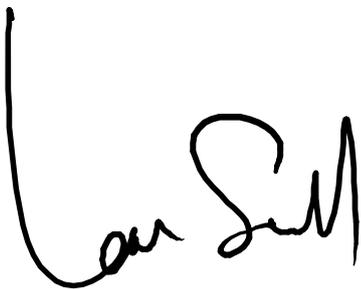
A handwritten signature in black ink, appearing to read 'Louise Saffer', written in a cursive style.

Deputy Upper Tribunal Judge Saffer
17 August 2018

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed:

A handwritten signature in black ink, appearing to read 'Louise Saffer', written in a cursive style.

Deputy Upper Tribunal Judge Saffer
17 August 2018