IAC-AH-DN/DH-V1

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: IA/20624/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**
**On 18th August 2015**

**Decision & Reasons Promulgated**
**On 8th September 2015**

**Before**

**UPPER TRIBUNAL JUDGE RENTON**
**UPPER TRIBUNAL JUDGE GRAY**

**Between**

**AVON VISAGE**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Ms E King, Counsel instructed by Fletcher Dervish & Co
For the Respondent: Ms E Savage, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a male citizen of South Africa born on 3rd August 1984. The Appellant first arrived in the UK on 7th March 2003 when he was given leave to enter as a working holidaymaker until 17th January 2005. The Appellant subsequently applied unsuccessfully for leave to remain as a student and then on human rights grounds based upon his relationship with a man named Jason Bennett. They entered into a civil partnership on

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17th October 2011, but on 11th April 2014 the human rights application was refused and the Respondent decided to remove the Appellant from the UK. The Appellant appealed that decision, and his appeal was heard by Judge of the First-tier Tribunal Jacobs-Jones (the Judge) sitting at Richmond on 3rd December 2014. He decided to dismiss the appeal for the reasons given in his Decision dated 20th December 2014. The Appellant sought leave to appeal that decision, and on 23rd March 2015 such permission was granted.

## Error of Law

2. We must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.

3. At the start of the hearing before the Judge, he refused an application on behalf of the Appellant to adjourn the hearing and amend the Grounds of Appeal to include the Appellant's fear of persecution on return to South Africa as a homosexual. The Judge then found that the Appellant did not qualify for leave to remain under Appendix FM of HC 395, and in particular paragraph EX.1(b), nor under paragraph 276ADE. Finally, the Judge decided that this was not a case for granting the Appellant leave to remain outside the Immigration Rules.

4. At the hearing, Ms King argued that the Judge had erred in law in coming to those conclusions. She referred to the grounds of application, but acknowledged that the decision in **Singh v SSHD [2015] EWCA Civ 74** had been promulgated subsequently. She went on to argue that the Judge should have exercised his discretion so as to allow the proposed amendment to the grounds. The Appellant had not previously received proper advice concerning this aspect of the case, and the Judge should not have relied upon the expertise of the Tribunal to assume that the Appellant would come to no harm in South Africa as a result of his sexual orientation. Ms King then argued that as found by the Judge granting leave, Judge of the First-tier Tribunal Jacobs-Jones had become muddled and inconsistent in dealing with the issues in the appeal. The Judge should have made his own relevant findings of fact, and there had been no careful analysis of Appendix FM. Ms King acknowledged that following the decision in **Singh**, Grounds 4 and 5 of the application were no longer arguable. However the Judge had been confused concerning the application of Section 117B(4) and (5) Nationality, Immigration and Asylum Act 2002. The Judge was also confused as to the Appellant's immigration history, and had failed to take into account the Appellant's employment history. The Judge had also failed to attach any weight to the Respondent's delay of five years in resolving the Appellant's immigration status. Finally, the Judge had been at error in paragraph 28 of the Decision to make assumptions concerning the degree of the Appellant's disability without putting that matter to the Appellant at the hearing.

5. In response, Ms Savage referred to the Rule 24 response and argued that there were no errors of law in the decision of the Judge which accordingly

should not be set aside. The Judge had dealt with the application to amend the Grounds of Appeal in accordance with the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and the relevant Presidential Guidance and had exercised his discretion in a way which was open to him. The Judge had then considered the Appellant's Article 8 rights both within and without the Immigration Rules in accordance with the decisions in **Nagre v SSHD [2013] EWHC 720 (Admin)** and **Singh**. There had been no error of law in the Judge applying the decision in **MM (Lebanon) and Others v SSHD [2014] EWCA Civ 985**. The Judge had considered all the relevant factors, and had made no factual errors. There had been no misunderstanding of the provisions of Section 117B of the 2002 Act.

6. As regards the Appellant's immigration history, Ms Savage pointed out that there was no evidence of any misconduct by the Appellant's previous representatives, or that an allegation of such had been put to them. In any event, any failures by those representatives would not have made a material difference. The Judge had dealt with the employment record of the Appellant and the Sponsor at paragraph 26 of the Decision. The Judge had taken account of the Respondent's delay in dealing with the Appellant's status, referring to it at paragraphs 24 and 25 of the Decision. The Judge had considered the impact of such a delay, but had been correct to conclude that the Appellant's immigration status had always been precarious. The remaining grounds amounted to no more than a disagreement with the findings of the Judge. Considering the decision as a whole, the Judge had made a proper assessment of the Appellant's Article 8 case and had not made any errors of law in deciding it.

7. We agree with the submissions of Ms Savage. The decision of the Judge is not written in terms where his reasons are perfectly clear, but in our view it would not be correct to describe his approach as muddled and in parts inconsistent, and there is sufficient clarity for us to conclude that the Judge did not commit any error of law. He came to a decision which was open to him on the evidence, which evidence the Judge analysed in order to explain his decision. The approach which the Judge took to his factual findings in order to assess if there had been a breach of the Appellant's Article 8 rights was in accordance with recent jurisprudence and cannot be described as wrong in law. It is to be remembered that according to what was written at paragraph 19 of the Decision, at the hearing Ms Radford, for the Appellant, said that "This appeal was a straightforward Article 8 appeal to be considered outside of the Immigration Rules". Indeed, it has never been argued that the Appellant qualifies for leave to remain under the Immigration Rules either on Article 8 human rights grounds or otherwise.

8. We are satisfied that the Judge carried out the balancing exercise necessary for any assessment of proportionality. The Judge assessed the weight to be attached to the public interest taking into account the factors mentioned in Section 117B of the 2002 Act. The Judge then considered those factors in favour of the Appellant, and gave a cogent reason for his finding that the Appellant's health was not a factor which carried much

weight. The Judge was entitled to conclude that the public interest carried most weight. On the evidence before the Judge, that was a finding that was not perverse. The Appellant may not agree with that finding, but this does not amount to an error of law. In reaching his conclusion, the Judge dealt with the issue of delay and it was a matter for him what weight he attached to this factor.

9. As regards the Judge's refusal to adjourn the hearing and allow an amendment to the Grounds of Appeal, the Judge exercised his discretion and made his decision in accordance with the Tribunal Procedure Rules and the Presidential Guidance as he stated at paragraph 7 of the Decision, and as his decision was not perverse, it cannot be said to include an error of law.

## **Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

We do not set aside the decision. The appeal to the Upper Tribunal is dismissed.

## **Anonymity**

The First-tier Tribunal did not make an order for anonymity and we find no reason to do so.

Signed Date

Upper Tribunal Judge Renton