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**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/27150/2014**

THE IMMIGRATION ACTS

**At Field House
On 7th April 2015**

**Decision and Reasons
Promulgated
18th May 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

**MR MUGOVE TOBIAS MATONHODZE
(NO ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

**For the Appellant: Mr Duncan, Counsel, instructed by N.C.Brothers
and Co, Solicitors.**

For the Respondent: Mr Duffy, Home Office Presenting Officer.

DECISION AND REASONS

Background

1. The appellant is a national of Zimbabwe, born on 1 December 1963.
2. He came to the United Kingdom on a six months visit visa, valid from 24 September 2001. He has remained since. In the interval he made various in country applications for leave as a student. Typically the applications

were in time but not successful and he would exercise his right of appeal. Some applications were successful.

3. Time passed and on 3 October 2011 he married Ms Susan Margaret Jocelyn, a British national. He then made further unsuccessful applications to remain as her spouse.

The decision under appeal

4. The respondent treated representations made in correspondence dated 30 January 2013 and 11th June 2014 as fresh applications. By letter dated 19 June 2014 the respondent refused to grant leave to remain. The appellant was served with removal directions on 21 June 2014 which he appealed.
5. In the letter of 19 June 2014 various reasons were given. Regarding leave to remain as a partner under Appendix FM, it was accepted the appellant was married to a British citizen. Reference was made to a lack of evidence to show it was a genuine and subsisting relationship for two years prior to the application. They have no children so the provisions relating to family life as a parent did not apply.
6. His application was also refused under the suitability provisions. This concerns whether the appellant's presence would be conducive to the public good. The rules refer to the commission of offences which cause serious harm or persistent offending showing disregard for the law. On 15th November 2005 the appellant was convicted of driving with excess alcohol and disqualified from driving. On 15 June 2006 he was convicted of failing to provide a specimen, driving whilst disqualified and having no insurance. On 9 October 2006 he was again convicted of driving whilst disqualified and uninsured. Because of this he was considered to be a persistent offender who disregarded the law.
7. Regarding private life paragraph 276 ADE (vi) was not satisfied as he had not been in the United Kingdom 20 years.
8. The respondent had regard to EX1 and concluded there were no insurmountable obstacles for family life continuing outside the United Kingdom.
9. The representations state the appellant is HIV-positive. The respondent referred to an absence of corroborative evidence of the diagnoses and in any event treatment was available in Zimbabwe.

The First tier Tribunal

10. The appeal was heard by Judge Majid on 5 November 2014. His decision, allowing the appeal was promulgated on 13 November 2014.
11. The respondent sought permission to appeal on the basis that adequate reasons for the decision were not given. The judge appeared to allow the appeal not only under the immigration rules but also on the basis of Article

8 outside the rules. However, he failed to explain why and did not indicate he had considered current jurisprudence in relation to Article 8. Permission to appeal was granted on the basis there was an arguable error of law in relation to the reasoning provided.

The Upper Tribunal

12. Mr Duffy accepted that the appellant's marital relationship was not disputed. Paragraph 20 of the refusal letter appears to be mistaken in referring to a requirement for evidence of the relationship existing for two years. The appellant is married not cohabiting.
13. The refusal letter does not raise finance or the English language requirements. Rather, the central issue relates to the suitability requirements.
14. Assessment of the appellant's criminal convictions was central to consideration of whether his application failed on the preliminary ground of suitability within Appendix FM. In considering his appeal the judge is required to consider whether his past offending has caused serious harm or indicates he is a persistent offender who are shown disregard for the law.
15. Mr Duffy submitted that Judge Majid did not clearly set out what the appeal was about and did not provide a proper Article 8 analysis. He submitted that paragraphs 1 to 12 of the Determination contain no findings and paragraph 16 has nothing to do with the appellant's situation.

Consideration

16. The determination of Judge Majid lacks clarity and largely consists of generic paragraphs. Having considered the Determination I would agree with most of the points raised in the respondent's application for leave. However, given that finance and so forth have not been raised and there is no longer any issue about his marital relationship the substantive issue relates to the suitability provisions in appendix FM.
17. Paragraph 10 of the Determination is crucial to the question of suitability. There is a lack of clarity as to when findings are made and whether the judge is simply reciting submissions made on the appellant's behalf. Paragraph 10 is preceded by the heading 'Dispositive Reasons and Deliberations'. This suggests this section of the Determination is dealing with findings and conclusions. In paragraph 10 Judge Majid refers to 'the dispositive aspects of the case' and then states:

"After perusing the statement of the Appellant dated 13th of October 2014 carefully the following salient points come to my mind:-

- (a). This appellant, as Mr Duncan submitted, has only committed traffic offences and they were all in the past - it is important to

note that since his marriage on 3rd October 2011 he has not committed any crime at all.”

At paragraph 12 of the Determination the judge refers to the submission of the appellant’s representative that the offences were old.

18. It is my conclusion that from the above it can, at least by implication, be taken that the judge is accepting the submissions of the appellant’s representative with regard to the offences. There are two particular points. Regarding the offences the judge repeats ‘he has only committed traffic offences’. Whilst traffic offences, including driving with excess alcohol are not trivial or to be dismissed lightly by implication the judge is not viewing them as the most serious offences. Furthermore the age of the offences is highlighted as relevant. The type of offences; when they were committed and evidence of rehabilitation are all relevant when considering whether the appellant has committed serious harm or shown disregard for the law.
19. On the basis of the nature of the convictions, their age and the appellant’s subsequent marriage and behaviour, it was open to the judge to conclude that the suitability requirements were met and that the appeal could be allowed under the immigration rules. If the application succeeds under the rules then the judge’s treatment of Article 8 outside the rules is not crucial as to whether there is a material error of law.

Decision.

20. The decision of the First-tier Tribunal promulgated on 13 November 2014, allowing the appellant's appeal does not contain a material error of law and shall stand

FJ Farrelly
A Deputy Judge of the Upper Tribunal