**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: IA/49450/2014**

**THE IMMIGRATION ACTS**

**Heard at Manchester Piccadilly** **Decision and Reasons Promulgated**
**On 30 September 2015** **On 9 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**NEVILLE ANTHONY WILLIAMS**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr Lang of Dar & Co Solicitors
For the Respondent: Mr A Mc Vitie Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This

is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Brunnen, promulgated on 6 May 2015 which allowed the Appellant's appeal under the Rules against a refusal of leave to remain on the basis of his family and private life.

Background

3. The Appellant was born on 6 August 1957 and is a national of Jamaica. The Appellant came to the United Kingdom as a visitor in 2001 and after his leave expired he remained and did not regularise his status. He married a British Citizen on 31 October 2013 and applied for leave to remain on 20 November 2013 and his application was refused on 24 December 2013.On 17 July 2014 he applied for a residence card and this was refused. The application made on 21 November 2013 was reconsidered and rejected on 21 November 2014 and a decision was made to remove the Appellant.

4. The refusal letter gave a number of reasons:

   (a) In relation to EX.1 while it was accepted that the Appellant had a genuine and subsisting relationship with his wife there were no insurmountable obstacles to them relocating to Jamaica.

   (b) The Appellant could not meet the private life requirements of paragraph 276DE.

   (c) There was no basis for a grant of leave outside the Rules.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Brunnen ("the Judge") allowed the appeal against the Respondent's decision on the basis that the Appellant met the requirements of EX.1. The Judge

   (a) Set out the law that was in issue identifying that he was required to consider both EX.1 and the meaning of insurmountable obstacles as set out in EX.2.

   (b) He identified that the basis of the Appellant's claim was that his wife's medical condition amounted to insurmountable obstacles.

   (c) The Judge set out those medical problems in detail (paragraph 14 ) which were based medical reports including a GP letter and oral evidence.

   (d) He accepted the Appellant's assertion that his wife would not be able to obtain the treatment she had received in the United Kingdom which is detailed in the GP letter were she to live in Jamaica. There was no evidence from the Respondent to counter this assertion.

   (e) Even if the treatment were available in Jamaica the judge found that the difficulties of living in Jamaica in her current circumstances were simply too great. He accepted that this amounted to very significant difficulties that would entail very serious hardship.

6. Grounds of appeal were lodged arguing that the Judge failed to give adequate reasons as to why there were insurmountable obstacles to the Appellant and his wife continuing their family life in Jamaica.

7. The Judge failed to consider section 117B of the Nationality Immigration and Asylum Act 2002.

8. On 16 July 2015 First-tier Tribunal Judge Holmes gave permission to appeal.

9. At the hearing I heard submissions from Mr Mc Vitie on behalf of the Respondent that :

   (a) He accepted that ground 2 was misconceived and as the Judge allowed the appeal under the Rules, under EX.1, he was not obliged to consider s117B.

   (b) He questioned whether the circumstances described by the Judge could amount to 'very serious hardship.'

   (c) He relied on the case of Agyarko [2015] EWCA Civ 440 to argue that the circumstances found by the Judge was not enough to meet the requirements of the law.

10. On behalf of the Appellant Mr Lang

   (a) Relied on the rule 24 response.

   (b) He pointed out that Aygarko post-dated the decision in this case.

   (c) The Judge had clear medical evidence and the witness statements of the Appellant and his wife on which his conclusions were based.

   (d) The Judge also considered in the alternative the situation in which the treatment that the Appellant's wife was entitled to receive in the UK was available in Jamaica.

11. In reply Mr Mc Vitie on behalf of the Appellant submitted:

   (a) A bare statement by the Appellant that the treatment in issue was not available in Jamaica was insufficient as the Appellant bore the burden of proof.

   (b) The only objective evidence available was from the COIS that there was such treatment available.

**The Law**

12. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality

is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue.

**Finding on Material Error**

14. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

15. The only issue in this case was whether the Judge who allowed the appeal under EX.1 had given sufficient reasons for his finding that the Appellant met the requirements of the Rule.

16. At paragraphs 10 and 11 of the decision the Judge set out the applicable law referring to both paragraph EX.1 and 2 . Thus it is clear that he self directed himself appropriately both as to the applicable law and at paragraph 13 as to the burden and standard of proof. There is no reference to Aygarko as it post dated the decision.

17. The Judge had before him witness statements from the Appellant and his wife and medical evidence at pages 57-82 from a number of sources including the consultants who are currently treating the Appellant's wife. The Judge had the benefit of hearing of hearing evidence from both the Appellant and his wife and made it plain that he found both of them to be credible witnesses.

18. The Judge correctly identified that the Appellant's wife's health problems underpinned their claim that there were insurmountable obstacles to them enjoying family life together in Jamaica and analysed that evidence at paragraphs 17-25 of the decision.

19. I am satisfied that in the face of the generic information contained in the refusal letter that in essence Jamaica has a functioning health service the Judge was entitled to take into account the medical evidence as to the nature and extent of Mrs Williams problems together with the evidence of the Appellant and was entitled to prefer the Appellant's evidence that the specific treatment required by his wife was unavailable in Jamaica.

20. However I am satisfied that the Judge nevertheless considered the alternative scenario that such treatment was available in paragraph 25. He gave a number of reasons why he found that the circumstances would amount to 'very significant difficulties that would entail very serious hardship' which is clearly the correct test to apply. He noted against a background of specialist evidence that the risks of surgery included death, nerve damage with subsequent paralysis, incontinence and sexual dysfunction that Mrs Williams had lived all her life in the United Kingdom and is now 51 years old; she has an established relationship with her doctor and consultant and requires surgery; she would have no support in Jamaica apart from her husband. The weight he gave to those factors was a matter for him and I am satisfied that it was open to him to conclude that these facts reached the threshold set out in EX.2.

21. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be

given in a decision in headnote (1) : "*Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge."*

22. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning. I find that the reasons given were adequate and the Respondent cannot be in any doubt about why the appeal was allowed.

**CONCLUSION**

23. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

**DECISION**

24. **The appeal is dismissed.**

Signed Date 7.10.2015
Deputy Upper Tribunal Judge Birrell