



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/10161/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 15th November 2018

Decision & Reasons Promulgated
On 6th December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

RAYON [J]
(NO ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Brown, Counsel, instructed by Arshed and Co, Solicitors
For the respondent: Mr A Tan, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant has been given permission to appeal the decision of First-tier Tribunal Judge Brookefield who in a decision promulgated on 25th August 2017 dismissed his appeal against the respondent's refusal of his application for leave to remain. That application was based upon his family and private life.

2. He is a national of Jamaica, born on 27 December 1979. He married Ms [MG] in Jamaica in 2014. She is a British citizen. He came here on 20 June 2015 on a visit Visa to see her. She has a daughter, [IG], born on 28 December 2008 from a previous relationship.
3. On 27th November 2015 he made his application for further leave to remain. He said that his wife health's health had deteriorated and so he decided to remain behind. She had suffered a stroke in 2010 and subsequently develop anxiety and depression. She had been threatened in August 2016 by her older daughter's ex-partner who produced a handgun. The appellant's wife give evidence at his trial and he was imprisoned for 5 ½ years. The appellant's wife was pregnant at the time and miscarried in November 2016.
4. First-tier Tribunal Judge Brookefield referred to the appellant not meeting the relevant immigration rules in appendix FM. As he entered as a visitor the provisions of paragraph EX 1 did not apply. Regarding his private life, he had only been here a short time and he has close family in Jamaica. The judge accepted that article 8 was engaged in relation to his wife and referred to the public interest factors in section 117 B. The appellant had a limited command of English and was reliant upon his wife for financial support and accommodation. She in turn was in receipt of State benefits and was unemployed.
5. The judge pointed out that the appellant had never sought to gain entry clearance under appendix FM to be with his wife. The medical evidence indicated that fortunately there were no residual effects from her stroke and there was no apparent reason why she could not accompany her husband to Jamaica. She has visited Jamaica in 2013, 2014 and 2015 as had her daughter.
6. The judge referred to a lack of contact between her daughter and her biological father. Ms [G] has 3 adult children and a grandchild in the United Kingdom who are leading independent lives. Consequently, the judge concluded she could either go to Jamaica with the appellant or support an application from here for his entry. Regarding private life, the view was this could be replicated in Jamaica.

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7. Permission to appeal was granted on the basis it was arguable the judge failed to consider the proportionality of the decision in light of his wife's health and whether it would be reasonable to expect her youngest daughter to leave the United Kingdom, she being British. The grounds contend that her child is a qualifying child within the immigration rules and section 117 B6 applies. This is in addition to the obligation to consider her best interests further to section 55.
8. At hearing, Mr Brown said there had been no engagement by the judge with section 117B (6) in relation to his wife's daughter. He made the point that there was no challenge to the genuineness of the appellant's relationship with her. He

also pointed out there had been no reference to section 55. He submitted that because of this the decision was defective and would have to be remade. He said that the appellant's wife's medical condition had deteriorated and would be necessary to arrange for the medical evidence about this. Mr Tan acknowledged there was force in the points made.

Consideration

9. First-tier Tribunal Judge Brookefield considered the appellant's position in relation to his wife initially through the prism of the rules. The judge accepted the existence of family life. The judge recorded the history of the relationship and his wife's medical conditions. The judge also had regard to section 117 B factors in relation to the appellant. However, the bulk of the decision is focused upon the appellant and there is very little reference to his stepdaughter. She appears to be very much an add-on to a consideration of his wife's position and the reasonableness of her going to live in Jamaica or supporting an application made by him for settlement.
10. A similar approach is taken in relation to private life. The judge at para 9 (xvii) briefly refers to his stepdaughter, suggesting she could resume her education in Jamaica and make new friends.
11. It is clear that the decision fails to adequately consider his stepdaughter's position as a unique entity. There is no reference to her relationship with the appellant. In fairness to the judge this appears to be precipitated by initial application and the tone of the refusal letter which also focuses upon his wife rather than his stepdaughter. The grounds of appeal do not raise his stepdaughter as a specific separate consideration and it is not clear from the decision if this was argued before the judge. Whatever the background may be however there is an obligation upon the judge to take into account the section 55 considerations and her special position as a child.
12. Because she is not referred to in the earlier material it is not clear if the respondent is accepting a genuine and subsisting relationship with her. However, Mr Brown has indicated he was proceeding on the basis that this was not disputed and Mr Tan did not say to the contrary.

Decision

The decision materially errs in law by not adequately considering the position of the appellant's stepdaughter. Consequently, I set the decision aside and remitted for a de novo hearing in the First-tier Tribunal.

Francis J Farrelly
Deputy Upper Tribunal Judge

Date 3 December 2018