



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12637/2016

THE IMMIGRATION ACTS

Heard at Field House
On 31 May 2018

Decision & Reasons Promulgated
On 21 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JOSHUA [T]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr T Melvin, Home Office Presenting Officer

For the Respondent: Mr J Martins, Counsel instructed by MQ Hassan Solicitors

DECISION AND REASONS

1. The respondent (hereafter “the claimant”) is a citizen of Ghana born on 4 December 1976. The appellant (hereafter “the Secretary of State”) is appealing against the decision of First-tier Tribunal Judge Andonian promulgated on 15 October 2017 to allow the claimant’s appeal against the decision of the Secretary of State to refuse the claimant’s application to remain in the UK on the basis of his family and private life.
2. The claimant’s case, in summary, is that he has a partner with whom he lives who is a British citizen and there would be insurmountable obstacles to the relationship

continuing in Ghana. The Secretary of State rejected the application on the basis that the claimant did not satisfy the Immigration Rules (it was not accepted that there would be insurmountable obstacles to the relationship continuing in Ghana within the meaning of paragraph EX.1 of Appendix FM) and that there were not exceptional circumstances that would warrant allowing the appeal outside the immigration rules.

3. The decision of Judge Andonian is in two parts. Firstly, he considered whether the Immigration Rules in respect of family life (at Appendix FM) were satisfied. The judge concluded that they were by reference to paragraph EX.1 (b). The judge found that the claimant had a genuine and subsisting relationship with his British citizen partner and that there would be insurmountable obstacles to family life with her continuing in Ghana. The judge gave three reasons for finding there were insurmountable obstacles: first, he found that the claimant's partner would not have a lawful right to enter or stay in Ghana. He reached this conclusion on the basis of the Ghana immigration service website and Foreign & Commonwealth Office guidance about the visa requirements for Ghana. Second, he found that the claimant's partner had no experience of the customs, culture, and language of Ghana. Third, he found that the claimant would not be able to access suitable healthcare for his diabetes and partial blindness in Ghana.
4. Having concluded that the Immigration Rules were satisfied, the judge then considered *in the alternative* whether it would be a breach of Article 8 ECHR outside the Immigration Rules to remove the claimant. The judge's findings in respect of Article 8 outside the Rules are set out at paragraphs 34 and 35 of the decision. The analysis under Article 8 is brief and does not include any of the mandatory considerations specified in Part 5A of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").
5. The Secretary of State appealed the decision and permission to appeal was granted by First-tier Tribunal Judge Brunnen on 10 April 2018.
6. The grounds of appeal address solely the judge's alternative finding in respect of Article 8 outside the Rules as set out in paragraphs 34 and 35 of the decision. The first ground submits that the judge failed to give reasons or adequate reasons for concluding that removal of the claimant would be disproportionate. The second ground argues that the judge erred by failing to give any consideration to Part 5A of the 2002 Act.
7. On the morning of the hearing, Mr Melvin submitted a written application to add to Secretary of State's grounds of appeal. The new grounds submit that the judge's findings in respect of the insurmountable obstacles test under the Immigration Rules are unsustainable as the evidence concerning whether the claimant's partner could move to Ghana was insufficient to establish that she could not.
8. I refused Mr Melvin's application and he was limited to relying on the original grounds of appeal. I reached this decision having regard to the overriding objective to deal with cases fairly and justly because (a) the new grounds raise an entirely new

issue; (b) the claimant and his representatives had no notice of this ground until the day of the hearing; and(c) Mr Melvin was unable to give me a reason (other than only now having sight of the papers) for the delay in making the application to add to the grounds.

9. The grounds of appeal (upon which the Secretary of State is permitted to rely) only challenge the decision in respect of Article 8 ECHR outside the Rules. However, this was an alternative finding which would only be relevant if the judge were wrong in his primary decision, which was that the claimant has a family life with his partner and meets the requirements under Appendix FM of the Immigration Rules, ie there would be insurmountable obstacles to his relationship continuing outside the UK. The primary decision, concerning insurmountable obstacles and paragraph EX.1, has not been challenged. Accordingly, even if the Secretary of State were to succeed in all of the grounds, this would not affect the outcome as none of the grounds challenge the relevant (and determinative) aspect of the decision.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 16 June 2018