



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/27272/2016

THE IMMIGRATION ACTS

Heard at Field House
On 1st August 2018

Decision & Reasons Promulgated
On 17th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

ALBERT HOXHA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms U Dirie of Counsel instructed by BMAP
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge James (the judge) of the First-tier Tribunal (the FtT) promulgated on 26th April 2018.
2. The Appellant is an Albanian citizen born 17th April 1967. He entered the UK illegally on 20th October 2012.
3. On 25th February 2015 he applied for leave to remain in the UK based on his family and private life, relying upon his relationship with his partner Yibere Hajri who originates from Kosovo but is now a naturalised British citizen.
4. The application was refused on 17th February 2016 and the appeal heard by the FtT on 23rd March 2018. The judge decided that there was insufficient time at the conclusion

of the hearing to hear submissions from the representatives and therefore directed that if further submissions were to be made, they should be made in writing and submitted no later than 3rd April 2018.

5. The judge prepared the decision on 10th April 2018 recording that no further submissions had been made. The appeal was dismissed, the judge finding that there would be no insurmountable obstacles to the Appellant and his partner continuing family life in Albania.
6. The Appellant applied for permission to appeal to the Upper Tribunal. The grounds are summarised below.
7. It was submitted that written submissions had been sent to the Tribunal on 5th April 2018 on behalf of the Appellant. Failure by the judge to consider these submissions amounted to a failure to consider material evidence and was an error of law. The submissions that had been made referred to the evidence that had been presented at the hearing, and made a specific reference to the guidance in Chikwamba [2008] UKHL 40.
8. Permission to appeal was granted by Judge Andrew of the FtT in the following terms;

“2. I am satisfied there is an arguable error of law in the decision in that the judge does not appear to have taken into account the written submissions provided following the hearing.”
9. Following the grant of permission the Respondent did not lodge a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
10. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

11. On behalf of the Appellant reliance was placed upon the grounds contained within the application for permission to appeal. It was submitted that written submissions had been made to the Tribunal, and the failure by the judge to take into account the submissions was a procedural irregularity which amounted to an error of law. Reliance was placed upon MM (Sudan) [2014] UKUT 00105 (IAC). It was submitted that it was unfair for written submissions which had been directed to be made, had not been considered.
12. On behalf of the Respondent it was not disputed that written submissions had been submitted, and failure to consider those submissions amounted to a procedural irregularity but it was contended that no material error of law was disclosed in this case.
13. Mr Kotas submitted that there was nothing contained within the Appellant’s written submissions that had not been considered by the judge. The Chikwamba point had been considered appropriately by the judge, who had found that it was not the case that if the Appellant had to leave the UK and apply for entry clearance from abroad, the application would be certain to be granted. The judge had given cogent reasons for finding this not to be the case, in that financial evidence submitted did not prove

that the Appellant's partner satisfied the financial requirement of earning at least £18,600 per annum. I was asked to uphold the decision of the FtT.

My Conclusions and Reasons

14. The judge did not in fact direct that further submissions must be made in this case. At paragraph 44 the judge directed "that should further submissions wish to be made, that these be made by way of written representations submitted by 3rd April 2018."
15. The judge recorded that the Appellant had already submitted a skeleton argument.
16. It is clear that the judge prepared the decision and reasons dated 10th April 2018 without considering the written representations, recording that no written representations had been received by that date.
17. That is incorrect, as the file demonstrates that the Hatton Cross Hearing Centre received written representations from the Respondent on 28th March 2018, and from the Appellant on 5th April 2018. It is unclear why the judge was not made aware of this.
18. I find that not considering written representations is a procedural irregularity that amounts to an error of law. The issue that I have to decide is whether the error is material. I find that it is not for the following reasons.
19. There is nothing relevant contained in the Appellant's written submissions that was not adequately and comprehensively considered by the judge.
20. The judge found that the Appellant and his partner have a genuine and subsisting relationship and therefore went on to consider whether there would be insurmountable obstacles to family life continuing outside the UK. This point is addressed in paragraphs 3-7 of the Appellant's written submissions. The points made in those paragraphs were adequately considered by the judge who made findings supported by sustainable reasons. The judge took into account that the Appellant's partner is a naturalised British citizen. The contention that she would find it difficult to obtain work as a chef in Albania was not accepted by the judge. The judge found at paragraph 34 that it would be open to the partner to obtain employment as a chef or similar in Albania, noting that she speaks fluent Albanian. She originates from an area just outside Albania. I find no evidence was submitted to indicate that the partner would not be able to find employment as a chef in Albania.
21. A further point made in relation to insurmountable obstacles is that the Appellant's partner lived in the UK for sixteen years and is a British citizen. The judge rightly found that this did not amount to insurmountable obstacles to family life continuing outside the UK.
22. A further point made is that the Appellant had never lived in Albania, although she had visited on a number of occasions. The judge was correct to find that this did not amount to insurmountable obstacles. A further point referred to in the written submissions relates to medical treatment being expensive in Albania and again this is more than adequately dealt with by the judge at paragraphs 21-22 of her decision.
23. The Appellant's written representations move on at paragraph 9 to deal with the Chikwamba guidance. As indicated at paragraph 51 of Agyarko [2017] UKSC 11, there

may no public interest in removal of an individual, if that individual “was otherwise certain to be granted leave to enter, at least if an application were made from outside the UK”. Therefore the Appellant in this case needed to demonstrate that he would be certain to be granted leave to enter if he made an entry clearance application from outside the UK. The judge found that not to be the case and did not err in law in so doing.

24. The judge found that it had not been demonstrated that the financial requirements contained within Appendix FM were satisfied. The judge found that the specified documentation required by Appendix FM-SE had not been submitted. The judge deals with finance at paragraphs 25-30. The judge also notes at paragraph 31 that an English language document submitted on behalf of the Appellant is in fact out of date and therefore not valid.
25. The judge has given adequate reasons for concluding that the evidence presented at the hearing does not demonstrate that the financial and English language requirements of Appendix FM are satisfied. The judge was therefore fully entitled to find that if an entry clearance application were made from abroad, it was not certain that it would be granted. There is therefore no error of law in relation to the Chikwamba guidance.
26. In conclusion, the judge carefully and comprehensively considered all the issues that are referred to in the Appellant’s written representations, and the content of those representations could have made no difference to the decision reached by the judge, to dismiss this appeal. Therefore the error of law is not material.

Notice of Decision

The decision of the FtT does not disclose a material error of law. The decision is not set aside. The appeal is dismissed.

Anonymity

The FtT made no anonymity direction. There has been no request for anonymity made to the Upper Tribunal and I see no need to make an anonymity order.

Signed

Date: 6th August 2018

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The appeal is dismissed. There is no fee award.

Signed

Date: 6th August 2018

Deputy Upper Tribunal Judge M A Hall