



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02626/2018

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On 28th January 2019

Decision & Reasons Promulgated
On 20th February 2019

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MR DEREK LIVINGSTON LINDSAY
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Mannan of Counsel, instructed by Calices Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Jamaica born on 5th March 1961.
2. The appellant entered the United Kingdom as a visitor in 2001. He had leave in that capacity and as a student until 30th September 2002. Thereafter he remained in the United Kingdom unlawfully. A number of applications for leave to remain were made and refused and eventually he was served with removal directions on 8th August 2017.

3. Thereafter he applied for asylum or other protection which was refused in a decision of 9th February 2018.
4. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge James for hearing on 6th November 2018.
5. It was indicated at that hearing that the claim for asylum or humanitarian protection was not to be proceeded with but rather that it was an appeal with a focus essentially upon the appellant's private and family life and Article 8 of the ECHR. The focus of that consideration was the appellant's relationship with Ms [H], it being contended that they were partners within the meaning of the Immigration Rules and there would be very significant obstacles to life together in Jamaica. Reliance was placed upon GEN.1.2 Appendix FM.
6. The Judge concluded that the appellant and Ms [H] were not in a partnership found under the Rules or indeed in any committed relationship akin to marriage and the appeal was dismissed in respect of human rights.
7. The appellant sought to challenge that decision essentially on two grounds:-
 - the first being that by reason of certain remarks made at the hearing that the Judge was predisposed not to find cohabitation or family life as between the appellant and Ms [H];
 - secondly that in the determination of the evidence, the Judge went beyond the proper scope of her enquiries raising new issues, concerns which had not been raised by the respondent.
8. Permission to appeal the decision of the Upper Tribunal was granted. Thus the matter comes before me to determine the issues.
9. The issue of bias or prejudgment arises from a witness statement of Mr Malik, who was the Counsel briefed to act on behalf of the appellant at the hearing.
10. It is noted in the statement as follows at paragraph 6:-
 - "At the outset of the hearing, in the absence of Mr Lindsay and Ms [H], the Learned Judge had a preliminary discussion with myself and Ms Chopra. During the course of that exchange, the Judge made a remark - directed at myself - to the effect that having read the appellant's bundle, it appeared to her that Mr Lindsay might be Ms [H]'s 'carer' as opposed to being in a relationship with her and thus being her 'partner' for the purposes of Appendix FM.
 - I responded to the effect simply that I had noted the Learned Judge's remark."

11. The Counsel went on to indicate that he found that remark to be slightly unusual. The hearing commenced, Mr Lindsay gave his evidence as did Ms [H]. Mr Malik in the statement states "in her questioning of Ms [H], the Learned Judge rather forcibly stated Ms [H] 'I think Mr Lindsay is your carer' followed by words to the effect of 'is there anything that you want to say about that'". Mr Malik seemed to be surprised at that matter and formed the impression that the Judge was predisposed to believe that Mr Lindsay and Ms [H]'s relationship was not genuine. His perception was that the remark itself created that impression. He said that both Mr Lindsay and Ms [H] were upset at the conclusion of the hearing considering that the Learned Judge had already made up her mind.
12. There is some reference to the preliminary discussion in the determination itself in the context of paragraphs 29 to 31 thereof.
13. The Judge comments as follows:-
 - "29. The appellant's bundle of documents appeared to be the same bundle submitted for the judicial review proceedings and contained a significant number of documents which were not relevant to this appeal. There were also numerous duplicated documents which was unhelpful.
 30. In particular I noted that the judicial review proceedings findings by UT Judge Kamara dated 22nd March 2017, which reiterated the finding that the appellant's asylum claim was certified. However the Judge noted in his decision 'the respondent now concedes that the appellant supplied evidence to support his claimed relationship'. This was discussed with the legal representatives prior to the hearing commenced and I noted that I would consider all matters if oral evidence was to be adduced regarding the relationship, as per under the Immigration Rules, as well as the written evidence including this point.
 31. It was confirmed at the beginning of the hearing that the asylum claim was not to be pursued or any medical based Article 3 claim. The focus of the appeal was to be on private and family life under the Rules and Article 8 ECHR."
14. Thereafter the Judge commences what seems to me to be a very detailed analysis of the evidence that was presented to support the claimed relationship.
15. In terms of documentation put forward to establish that relationship that was considered by the Judge at paragraphs 34 to 36. It was noted that most of the documents presented, such as utility bills or correspondence, were addressed singularly and that there were very few documents to suggest any form of intertwined financial arrangement between the couple. The Judge made the comment that such documents may confirm that they reside at the same property but not necessarily in a relationship.

16. The Judge then considered in some detail what was said as regards the length of that relationship and when it was said to have started as set out particularly in paragraph 37 of the determination. It was noted that there were significant and contradictory statements on that matter. The appellant would seem to have given various accounts of the commencement of that relationship from 2005 to 2008 whereas Ms [H] claimed to have been in a relationship since 2002. She was unable to identify which year she met him or the year in which they cohabited. When pressed on the matter she contradicted herself claiming that she met him in 2008 and that the relationship commenced in 2010.
17. Ms [H] seemingly claimed that the appellant had no income save for food paid for by herself, seeming unaware that he had been working for family and friends.
18. The appellant claimed that he had cohabited with her from up to thirteen years, no-one else had resided in the property when he lived with her. Where Ms [H] initially claimed that no-one else resided at her home, she then indicated that her son resided with her and then at some stage and then her grandson lived in the spare bedroom and had done so for a few years. He confirmed that the spare room was used by her grandchildren. They have spent weekends with her. Various letters were referred to giving different dates as to when the relationship began.
19. The Judge gives some allowance for illiteracy and a lack of cognitive ability as regards memory but did not find that the contradictions and discrepancies assist the appellant in establishing that relationship.
20. It was noted also that in the witness statement of the appellant dated 12th March 2018 he confirms that he met a Ms Smith in 2008 and they cohabited in December 2011. In the bundle was found a birth certificate for Susan Ann Smith. In oral evidence the appellant denied knowing such a person. The Judge was sensitive to the fact that, given the dates of birth, it may be that Ms [H] and Ms Smith were the same person. It was undermining of the appellant's credibility that he did not seem to accept that.
21. A number of letters from relatives in support of the appellant seemed to make no reference to the relationship with Ms [H].
22. In evidence Ms [H] accepted that she was in receipt of welfare benefits and lived in a three bedroomed house, her grandson regularly visiting and staying but the appellant however claimed it was a two bedroom property and nobody had lived at that address other than himself and Ms [H] throughout the duration of the relationship. In terms of the décor of the bedroom which the appellant claims to share with Ms [H] the appellant gave a detailed description of wallpaper whereas Ms [H] stated that it was painted.
23. Taking all those matters together the conclusion of the appellant as to the relationship is set out at paragraph 38:

“In assessing this contradictory information evidence in regards to the claimed relationship with the couple, its duration and cohabitation, taking the totality of the evidence before me into account, on balance I am not persuaded that this couple are indeed in a relationship. On the contrary I find that at best they are friends who reside in the same shared accommodation of a three bedroomed house, and that it is possible that the appellant has provided with such accommodation in order to aid Ms [H] around the house and be supplied with accommodation and food in return. I do not find this is a relationship, or that it is a genuine one or subsisting. Thus the appellant fails to meet the definition of partner under the Rules, or any other family criteria under the Rules or ECHR Article 8 in regards to Ms [H] concerning family life.”

24. I find that to be a finding properly open to the Judge given the basis of concern as so clearly set out in the determination.
25. The aspect of the appellant being the potential carer of Ms [H] arises indeed from the evidence which both have given as to her medical problems. She claims that she requires daily support from the appellant such as she is unable to wash herself or dress or stand for long periods or walk. Ms [H] sets out a number of her conditions.
26. Little medical evidence has been provided to support such a contention and indeed the Judge noted that, despite the difficulties claimed, Ms [H] had walked unaided to board a bus, train and tube to the hearing.
27. The appellant in his statement claimed that he cleans, washes, shops and cooks and takes Ms [H] to hospital and reminds her to take her medication.
28. The Judge notes that it such is perhaps difficult to reconcile with the wish of the appellant to work. The Judge came to the conclusion that the evidence of such dependency is not reliable. It was not accepted that Ms [H] is as dependent on the appellant or requires his presence to the extent that is claimed.
29. The Judge significantly noted at paragraph 48 of the determination that a Miss Gillespie, a cousin of the appellant confirms that the appellant spends weekends with her and her family and that family and friends help him out financially. He wishes to work in the United Kingdom. It is noted that she failed to refer to any relationship with Ms [H] or Ms Smith. The evidence of various other people, such as Mr Bennett and Mr Wallace, are also considered in the overall context. Thus the focus of the Judge’s consideration was whether the appellant cohabits with Ms [H] and if he does on what basis.
30. In terms of bias or perceived bias I find no basis to uphold that challenge.
31. The Judge had read the papers in advance and it is clear that the issue of whether the appellant was a carer for Ms [H] rather than a partner was something that clearly emerged as a matter of concern.

32. I find nothing improper in the Judge raising that issue with the parties or the representatives in advance, it is often helpful to highlight what might be a potential issue in order that it could be dealt with.
33. In terms of the questioning of Ms [H] it is entirely right and proper as I so find for the Judge to give Ms [H] the opportunity of responding to that concern. Indeed it would have been open to criticism had the Judge made that remark in the determination without having raised it either with the parties or with the appellant and Ms [H] giving them an opportunity of addressing it.
34. When looked at as a whole the determination is a careful one that gives no indication of bias. The evidence has been very fully and fairly considered. The matters in favour of the relationship have been stated as well as the matters that indicate to the contrary.
35. The further challenge is that in considering the matter of carer at all, or indeed in seeking to analyse the nature of the relationship, the Judge went beyond that which was required.
36. Mr Mannan contends that the nature of the relationship was never in issue but only its duration.
37. In terms of the respondent's decision itself of 9th February 2018. such matter is considered in paragraphs 86 onwards. It was considered that documents presented did not confirm that the appellant and Ms [H] had been living together at the address for two years or more. It was noted from the asylum claim, that the appellant claims to have been in a relationship for eleven, twelve or thirteen years whereas before the appellant was unable to confirm how long the relationship had been for. It was noted that the appellant was unable to confirm the date of her birth or to provide information regarding this relationship with Ms [SH].
38. It seems to me quite clear from the nature of the decision there was a lack of detail as to the duration of the relationship and indeed a lack of detail as to his knowledge of his claimed partner. The credibility of the account of that relationship was clearly under challenge. I find it was entirely open to the Judge in those circumstances to conduct the enquiry which was carried out. The task of the Judge is to consider the evidence as to when the relationship started and what its nature is. That I find was properly embarked upon by the Judge. Though the decision letter does not make reference to the potential of the appellant being a carer it is entirely open to the Judge to consider that possibility, particularly as evidence was presented by both appellant and Ms [H] as to the dependency and their need one or the other.
39. I find that the determination of the Judge is a careful, thorough and fair determination which effectively deals with the issues that are presented. I find no error of law in approach or in detail.

40. In the circumstances the appellant's appeal before the Upper Tribunal is dismissed. The decision of the First-tier Tribunal shall stand namely that the appeal stands dismissed on human rights grounds.

No anonymity direction is made.

A handwritten signature in black ink, appearing to read "P. L. King", is written over a horizontal line that serves as a signature line.

Signed

Date 18 Feb 2019

Upper Tribunal Judge King TD