Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13465/2019

THE IMMIGRATION ACTS

Remote Hearing by Skype for Business	**Decision & Reasons Promulgated**
On 8th September 2020	**On 27th October 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

CHRISTOPHER [S]
(Anonymity Direction Not Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Ell, Counsel instructed by Maya & Co Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Remote Hearing

1. The hearing before me was a Skype for Business video conference hearing held during the Covid-19 pandemic. Neither party objected to a remote hearing. I sat at the Birmingham Civil Justice Centre and the hearing room and building were open to the public. The hearing was publicly listed, and I was addressed by the

representatives in exactly the same way as I would have been, if the parties had attended the hearing together. The appellant did not join the hearing remotely, and Mr Ell was not aware of whether the appellant had intended to do so, but was content to proceed in the appellant's absence. I was satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

Introduction

2. The appellant's appeal against the respondent's decision of 18th July 2019 refusing the appellant leave to remain in the UK on Article 8 grounds, was dismissed by First-tier Tribunal Judge Evans for reasons set out in a decision promulgated on 4th March 2020.

3. The appellant's grounds for permission to appeal to the Upper Tribunal run to some twenty paragraphs over five pages. They fail to separate several paragraphs of argument into numbered grounds of appeal so that one can identify the precise grounds of appeal relied upon in a recognisable and comprehensible fashion. Broadly stated, it appears the appellant advances two grounds of appeal. First he claims that in reaching his decision, Judge Evans has not given sufficient or proper consideration to the question whether it would be unduly harsh for the appellant's partner to live in Jamaica and whether there are insurmountable obstacles to the appellant's family life with his partner continuing outside the UK. Second, the appellant claims that in considering the Article 3 claim, Judge Evans failed to

address the Rule 35 report relied upon by the appellant as capable of supporting his claim that the appellant's circumstances are exceptional and that he suffers mentally because of the violence that he suffered as a child. It is said the judge fails to accord sufficient weight to the mental health of the appellant and the difficulties he would encounter on return, or the impact that any deterioration in the mental health of the appellant would have upon the appellant and his partner in Jamaica.

4. Permission to appeal was granted by First-tier Tribunal Judge Keane on 11th June 2020.

5. Before me, Mr Ell submits the first ground of appeal is a rationality challenge. Mr Ell submits Judge Evans referred to the background material in paragraph [50] of his decision, and noted that Jamaica is listed by Forbes Magazine as the third most dangerous place for women travellers in 2017. It is ranked 10th among 20 of the most dangerous places in the world. Mr Ell submits that Judge Evans found, at paragraph [64], that the appellant's mental health may deteriorate; [64.3], that the appellant's family may have left Jamaica; [64.4] and Jamaica is clearly a far more violent society than the UK; [64.5]. He submits there is no evidential basis for the finding, at [64.4], that even if the appellant's family have all left Jamaica, they will retain friends and contacts there, and it is likely therefore, that they will be able to put the appellant in touch with people in Jamaica who will provide him with some assistance on return. At paragraph [65], Judge Evans concluded that overall, the appellant and Mrs [S] would encounter significant difficulties in Jamaica. He noted the appellant has been absent for many years and Mrs [S] is unfamiliar with Jamaica.

6. Mr Ell submits that in considering whether there are insurmountable obstacles to the appellant and his partner continuing their family life in Jamaica, as set out in paragraphs [8] and [9] of the grounds of appeal, Judge Evans ought to have considered factors such as the family the appellant's partner would be leaving behind in the UK (*six siblings and her parents)*, her lack of education, her dyslexia and depression, the fact that she would be a 'white woman in Jamaica', and the fact

that she would be leaving behind her work and dog breeding business. Furthermore, it is said that Judge Evans did not analyse how harsh it would realistically be for the appellant's partner to integrate in Jamaica. Mr Ell submits that at paragraph [77.3] Judge Evans refers to the appellant's partner's "difficult personal history", but that is a factor that is not referred to at paragraph [64], when Judge Evans was considering whether there are insurmountable obstacles to family life continuing in Jamaica. I invited Mr Ell to direct my attention to the evidence concerning the "difficult personal history". He referred me to the witness statement of Mrs Tori [S] dated 19th February 2020, in which she states that she has a close relationship with her six sisters and wishes to remain in close contact with her parents. Her evidence was that they would be destitute and without support in Jamaica. She also confirmed in her statement that she suffered a miscarriage because of all the stress when the appellant was detained in 2017. Mr Ell submits Judge Evans should have considered how easy it would be for the appellant's partner to adapt and live in Jamaica. He submits that if her personal history was a relevant factor to be considered in the balance when looking at proportionality, it was equally relevant when the judge was considering whether the appellant and his wife could live together in Jamaica.

7. As to the second ground of appeal Mr Ell submits the deterioration in the mental health of the appellant is also a factor that should have featured as part of the assessment of whether there are insurmountable obstacles to family life continuing in Jamaica. The deterioration in the appellant's mental health will, he submits, undoubtedly impact upon the appellant's well-being and the appellant was not required to establish that his mental health will deteriorate to such an extent that he will be unable to function in Jamaica, as Judge Evans appears to suggest at paragraph [58] of his decision.

8. Mr Ell referred to paragraphs [17] to [19] of the grounds of appeal and submits that at paragraph [57] of his decision, Judge Evans accepted that the appellant was subjected to significant violence in Jamaica before travelling to the UK in 2001. He submits Judge Evans failed to accord sufficient weight to the mental health of the

appellant and the deterioration in his mental health that he is likely to suffer on return to Jamaica. He submits Judge Evans accepted that the appellant's mental health may deteriorate, but failed to consider the impact of any such deterioration in Jamaica upon the appellant and his partner. He submits the appellant and his wife would be dependent upon NGO support, in a country that is violent and in circumstances where the mental health of the appellant would deteriorate. It was, taking all relevant factors into account, irrational to say that there are no insurmountable obstacles to family life continuing in Jamaica.

9. On behalf of the respondent Mrs Aboni submits Judge Evans considered all the relevant factors and reached conclusions that were open to him. At paragraph [65], Judge Evans accepted that the appellant and his partner would on return to Jamaica, encounter significant difficulties, but that was not sufficient to meet the test. She submits Judge Evans gave adequate reasons at paragraph [64] for the conclusion that he reached. The Judge was entitled to note that the family are likely to retain friends and contacts in Jamaica. In any event, Judge Evans noted, at [64.6], that there are a variety of NGO's that would be able to provide some assistance on return. Mrs Aboni properly accepts there is no reference in the decision to the miscarriage that is referred to by the appellant's partner in her statement, but, she submits, there was no evidence that that would cause very significant difficulties for the appellant and his partner in continuing their family life together in Jamaica and which could not be overcome or would entail very serious hardship for the appellant and his wife as required by EX.2

10. Mrs Aboni submits it was open to Judge Evans to find that the difficulties this couple would face, are the difficulties that others face in such circumstances. The judge considered all relevant factors and reached a decision that was open to him on the evidence. The Judge considered the background material, but there was no evidence that the appellant and his partner would be targeted, or to establish that a white woman of the profile of the appellant's partner, would be at specific risk. Mrs Aboni acknowledges there is a level of violence in Jamaica, but she submits, that does not create very serious hardship. Finally, she submits there was no

evidence before the FtT that there would be any significant deterioration in the mental health of the appellant as set out in paragraph [58] of the decision, and it was therefore open to the Tribunal to conclude that there are no insurmountable obstacles to family life between the appellant and his partner continuing in Jamaica.

Discussion

11. In my judgment, there is no error of law in the decision of Judge Evans and I reject the claim that Judge Evans failed to properly address the claim made by the appellant. I reject both grounds of appeal relied upon and I deal with both together, given the over-lap. The claims made by the appellant that Judge Evans failed to have proper regard to the evidence is simply not borne out by a careful reading of the Judge's decision. It is now well established that the obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision.

12. The appellant applied for leave to remain in the UK on the basis of his family life with his partner. Section R-LTRP of Appendix FM of the immigration rules sets out the requirements for limited leave to remain as a partner. The respondent considered that in light of the appellant's criminal convictions, the appellant's continued presence in the UK is not conducive to the public good. The respondent concluded that the application for leave to remain therefore falls for refusal under suitability grounds, in particular, S-LTR.1.6. The appellant could not therefore meet the requirements set out in Section R-LTRP.1.1(c) or (d) of Appendix FM. Nevertheless, the respondent went on to consider whether there are insurmountable obstacles to family life between the appellant and his partner continuing outside the UK.

13. Judge Evans noted at paragraph [6.1.3] of his decision that the appellant did not accept that his criminal convictions are such that the application fell for refusal on suitability grounds. To that end, at paragraph [13] of his decision, he set out the

offences for which the appellant has been convicted. At paragraph [26] he noted that the appellant confirmed that his criminal record, appeared to be correct. Judge Evans concluded, at paragraph [62], that the application fell for refusal under Section S-LTR: suitability leave to remain. That conclusion is not challenged by the appellant and it was undoubtedly, properly open to the Judge. It follows that the appellant could not, on any view, meet the requirements set out in Section R-LTRP.1.1(c) or (d) of Appendix FM.

14. Nevertheless, just as the respondent had, Judge Evans went on to consider whether there are insurmountable obstacles to the family life between the appellant and his partner continuing outside the UK.

15. I pause to note that EX. 2 of Appendix FM states:

> "For the purposes of paragraph EX.1.(b) 'insurmountable obstacles' means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome all would entail very serious hardship the applicant or their partner."

16. In R (Agyarko) v SSHD [2017] UKSC 11, Lord Reed confirmed the words 'insurmountable obstacles' mean not only obstacles which make it literally impossible for a family to live together in the non-national's country of origin, but were to be understood in a practical and realistic sense, as a stringent test.

17. Contrary to what is said in the grounds of appeal and the submissions of Mr Ell before me, it is clear that Judge Evans had in mind the relevant factors such as the appellant's partner's connections to the United Kingdom, including her family ties to the UK, her education, her work, and her health He also considered her characteristics as a 'white woman in Jamaica'.

18. Judge Evans had the opportunity of hearing from the appellant and his partner. The evidence of the appellant and his partner is set out at paragraphs [26] to [29], and [46] to [47] of the decision. The oral evidence of the appellant's partner is set out in paragraph [29] of the decision. The judge noted her evidence that she is dyslexic, has trouble reading and writing and has no qualifications. He noted that she had not made any enquiries about the possibility of employment in Jamaica. He

noted that she is in good health "*... except she was a bit depressed about having to attend the Tribunal and about the stress which her husband was suffering as a result of the Tribunal process. She was not taking any medication for her feelings of depression.*".

19. Judge Evans accepted by a fine margin that the appellant was subjected to significant violence in Jamaica before travelling to the UK in 2001. However, he went on to find that the appellant has not established that his account of how that violence came about, is true, or that he will be at risk upon return from those who previously did him harm.

20. At paragraph [64] of his decision, Judge Evans refers to the relevant test. At paragraph [64.1] Judge Evans noted that if the appellant and his partner go to live in Jamaica, it is inevitable that Mrs. [S] will have to leave her job behind and will be separated on a day-to-day basis from her family. He noted that "*... Whilst Mrs [S] will not be able to continue with her dog breeding in the UK, she has not provided any explanation for why she could not pursue that activity in Jamaica.*". At paragraph [64.2], the Judge found that the appellant has not established on the balance of probabilities, that the fact that Mrs. [S] would be a white woman living in a predominantly black community, would give rise to very significant difficulties. He noted that no country background evidence to that effect was adduced. Mr Ell accepted before me that there was no evidence before the Tribunal that established that a woman with the profile of the appellant's partner would be at risk, permanently living in Jamaica. Judge Evans found at [64.3], that the appellant's mental health may deteriorate, but that was qualified. He went on to say "*... not to such an extent that he will be unable to function in Jamaica to the extent necessary for him to deal with the day-to-day realities of life there*".

21. Judge Evans noted at paragraph [64.4] that the appellant's family comes from Jamaica. He found that even if it is the case that in recent years they have all left, they will retain friends and contacts there and it is likely therefore that they will be able to put the appellant in touch with people in Jamaica who will provide him with some assistance on return. The appellant's family had undoubtedly spent many years in Jamaica, and it stands to reason that they are likely to retain friends and contacts there. The judge found it likely that the friends and contacts in Jamaica would be able to provide the appellant with some assistance on return. On the evidence before the Tribunal, that was neither unreasonable nor irrational. In

any event, I accept as Mrs. Aboni submits, at paragraph [64.6], Judge Evans found there are a variety of NGOs that are likely to be able to provide the appellant and Mrs. [S] with some assistance on return.

22. I reject the claim made in the grounds of appeal that at paragraph [65], Judge Evans "*overstretched the burden of proof by extending the test to require proof from the appellant that he could not overcome the difficulties.*". It is for an appellant to place before the respondent and the Tribunal, all material upon which the appellant relied to suggest that the consequences of removal would interfere with the Article 8 rights of the family; R. (Kotecha) v SSHD [2011] EWHC 2070 (Admin)

23. I reject the claim that Judge Evans failed to give sufficient weight to the mental health of the appellant and the possibility of deterioration on return. At paragraphs [51] to [56] of his decision, Judge Evans outlines the medical evidence that was before the Tribunal in the form of a psychiatric report from Dr Chandiramani, a rule 35 report and a report signed by the appellant's GP, Dr Sarah Fletcher. The evidence relating to the mental health of the appellant is addressed at paragraph [58] of the decision and it was in my judgement open to the Judge to find that the appellant is not currently suffering from any significant mental ill-health, and to find that the likely effect of being returned to Jamaica, is that it will be "stressful" for the appellant. It was equally open to the Judge to conclude on the evidence that "*... The medical evidence does not show on the balance of probabilities that his mental health would deteriorate to such an extent that he will be unable to function in Jamaica to the extent necessary for him to deal with the realities of day-to-day life there.*". It is plain in my judgement that in addressing the medical evidence, Judge Evans had in mind whether there are insurmountable obstacles to the family life of the appellant and his partner continuing in Jamaica.

24. The decision must be read as a whole. The assessment of an Article 8 claim and the consideration of whether removal is proportionate, is always a highly fact sensitive task. The appellant's claim that the judge's approach to the analysis of the evidence and the claim that the judge may have failed to have sufficient regard to various factors is in my judgment, mere disagreement with the reasoning of the judge. The implication in the grounds of appeal and the submissions of Mr Ell before me, is that the evidence was considered by the judge, but not to the extent or in the way desired by the appellant. In my judgment, the appellant simply disagrees with

findings and conclusions that were open to the Judge. The findings and conclusions reached by Judge Evans were in my judgment, neither irrational nor unreasonable in the *Wednesbury* sense, or findings and conclusions that were wholly unsupported by the evidence.

25. However disguised, as the Court of Appeal said at para [18] of Herrera v SSHD [2018] EWCA Civ 412, it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence.

26. It follows that in my judgment, there is no material error of law in the decision of Judge Evans and I dismiss the appeal.

Decision

27. The appeal is dismissed. The decision of First-tier Tribunal Judge Evans promulgated on 4th March 2020 shall stand.

Signed *V. Mandalia* Date: 18th October 2020

Upper Tribunal Judge Mandalia