



IAC-FH-AR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/00613/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 10 November 2015**

**Decision and Reasons
Promulgated
On 21 January 2016**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**C R E
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Sarah Pinder instructed by Divine Legal Practice

For the Respondent: Mr Paul Duffy, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal dismissing his appeal on asylum, humanitarian protection and human rights grounds against the respondent's decision to remove him to Jamaica after refusing him refugee status, humanitarian protection or leave to remain on human rights grounds.

Background

2. The appellant came to the United Kingdom on 1 June 2002 as a visitor. He was then 24 years old. He gave an untruthful account of being a newly married man coming to the United Kingdom for a honeymoon with his wife and produced a marriage certificate which he later admitted was false, and he also admitted that he had never been married. Accordingly, before the expiry of his 6-month visit visa on 4 November 2002 he was served with an IS151A as an illegal entrant who had practised verbal deception to gain leave to enter which is an offence under Section 24(1A) and a breach of Section 26(1C) of the Immigration Act 1971.
3. The appellant did not return to Jamaica. The appellant was given temporary admission on reporting conditions and reported without incident for two and a half years before absconding on 25 February 2005. He then disappeared for over five years.
4. On 18 June 2010 the appellant made an application on form FLR(O) for leave to remain on Article 8 grounds outside the Rules. In his application he now criticised the respondent for having failed to give him an asylum interview. The respondent in her refusal letter treated the application as though it were an asylum application, and gave only relatively brief consideration to family and private life.
5. There is no evidence to indicate that the appellant has ever made an asylum claim in person at a place designated by the respondent, as section 18 of the Nationality, Immigration and Asylum Act 2002 requires. The appellant's application was for leave to remain on Article 8 grounds.
6. First-tier Judge Turquet in his decision dealt with the asylum claim and the application for leave to remain outside the Rules and dismissed the appeal on all grounds. It does not appear that he directed his mind to the fact that the appellant had not made an asylum claim. That is an error of law.
7. I set aside the decision of the First-tier Tribunal and allow this appeal to the extent that the application remains before the respondent for a lawful decision on the application actually made which is an application for further leave to remain outside the Rules.
8. If the appellant wishes to have his asylum claim considered, it remains open to him to make an asylum application under section 18 of the 2002 Act.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision. I re-make the decision in the appeal by allowing it to the extent that the appellant's application remains before the respondent for a lawful decision.

Anonymity

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed: Judith AJC Gleeson
Upper Tribunal Judge Gleeson

Date: 19 January 2016