



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/07181/2015

THE IMMIGRATION ACTS

Heard at Stoke  
On 13<sup>th</sup> September 2017

Decision & Reasons Promulgated  
On 02 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR NOUREDDINE ZABOUR  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Hussain, Counsel  
For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Algeria born on 16<sup>th</sup> May 1984. The Appellant had applied for entry clearance as a partner under Appendix FM. His application was refused by the Entry Clearance Manager, Paris on 27<sup>th</sup> August 2015. The Appellant

appealed. The appeal came before Judge of the First-tier Tribunal Astle sitting at Birmingham on 7<sup>th</sup> December 2016. In a decision and reasons promulgated on 14<sup>th</sup> December 2016 the Appellant's appeal was dismissed on human rights grounds.

2. On 11<sup>th</sup> January 2016 Grounds of Appeal were lodged to the Upper Tribunal. On 28<sup>th</sup> June 2016 First-tier Tribunal Judge Gillespie granted permission to appeal. Judge Gillespie found all the findings of the First-tier Tribunal Judge challenged in the proposed grounds, save one, were properly available to her on the evidence and that adequate reasons were given for these findings and that no error of law was arguably identifiable on these findings.
3. The one finding, however, upon which Judge Gillespie considered to be an exception is that the First-tier Tribunal Judge held that the Appellant had not proven that he is a partner of the British national Sponsor for the purposes of leave to remain as a parent: in particular, that he had not proven that he had contracted a lawful marriage in the United Kingdom with the Sponsor. Judge Gillespie noted that the ground advanced in paragraph 6 of the grounds averred that the parties had been lawfully married to each other in the United Kingdom in 2014 and that no issue had been taken by the Respondent as to the existence of such a valid marriage and genuine relationship. He considered that that raised an arguable point that the findings of the learned judge, first, as to whether any past deception by the Appellant rendered his presence, in all the circumstances, not conducive to the public good; and second, as regards proportionality of exclusion – might have been materially infected by a mistake and finding of fact.
4. On 13<sup>th</sup> July 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24, submitting that the issue in regard to whether the Appellant is in a genuine marriage with a British citizen has not infected the overall outcome of the judge's findings and that it was submitted that the First-tier Tribunal Judge had made significant findings in relation to the Appellant's credibility and previous deception, and that a finding that he is now married to a British citizen would not have changed the findings in relation to the Appellant's suitability.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Mr Hussain. Mr Hussain is familiar with this matter, having appeared before the First-tier Tribunal and by being the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer Mr Bates.

### **Submissions/Discussion**

6. Mr Hussain submits the finding by the judge that the Appellant was not married is critical and goes to the position of fairness and it is necessary for the judge to deal with the evidence. He submits that there had never been any intention or suggestion that the parties were not married and that that constitutes a material error of law.

7. In response Mr Bates points out that he accepts that there is an error but submits that it is not material. He submits that such submissions would only be relevant under the Immigration Rules and that deception having been found, it followed that the criteria for the Appellant's suitability for admission to the UK had not been satisfied and consequently, albeit there was an error as to whether the Appellant was married, it was immaterial. He further submits that for a claim outside the Rules it is also immaterial as the judge had accepted that the Appellant was in a genuine relationship and had regard to the deception findings. He points out that the Appellant had been guilty of considerable deception and was an overstayer, and that his wife had been aware of that deception. He submits that the judge had given due consideration to the proportionality aspect within Article 8 and that consequently the Appellant could not meet the Rules and that his status was at best precarious. He takes me to paragraph 26 of the decision, pointing out that the First-tier Tribunal Judge has applied Section 117B and that the evidence against the Appellant was compelling on the facts of the case, and reminds me that the judge was, it is clearly shown, aware of the religious ceremony. He asked me to find there is no material error of law.
8. In brief response, Mr Hussain points out the judge does not submit what form of relationship she is assessing and that she has failed to address the issue properly, thus causing a procedural unfairness. He asked me to find that there is a material error of law and to remit the matter for rehearing.

### **The Law**

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## Findings

11. It is clear that the judge has made an error. That error is the failure to recognise the civil marriage of the Appellant to a British citizen. However, the judge was aware of the religious ceremony and has set out her reasons for rejecting the Appellant's appeal on human rights grounds in a consistent and well reasoned manner. She has noted that the Appellant has overstayed and that the Appellant's Sponsor knew that he was here illegally very shortly after she met him. She has then given clear reasons as to why the decision of the Entry Clearance Officer is in accordance with the Rules and she has done so in a detailed and thorough manner.
12. Thereafter, the judge has addressed issues pursuant to Article 8. The judge has quite properly at paragraph 26 recited the relevant sub-Sections of Section 117B with regard to the maintenance of effective immigration control being within the public interest. Therein, the judge has noted the couple met and married in 2013 and that they rely on that marriage. The fact that there is no reliance on the civil ceremony is, I conclude, not an issue; it is not material to the judge's findings. The judge has looked at all the issues and made findings and interpreted Section 117B in a proper, appropriate and reasoned manner.
13. However, that is not the end of the issue. The judge has quite properly at paragraph 27 gone on to consider other factors including the fact that the Sponsor is British born and educated and employed here, that she has family in the UK, and her mother is in poor health. The judge has gone on effectively to consider all the relevant circumstances including issues of language, and as to the ability for the Appellant and Sponsor to move to Algeria. She has noted there are no qualifying children, and having considered all the submissions has made a finding that she was perfectly entitled to that the arguments put forward on the Appellant's behalf do not outweigh the public interest.
14. Consequently whilst there is an error with regard to the finding on the civil marriage, there is no material error of law. This is a very thorough decision in which the judge has given full reasons as to why the Appellant cannot succeed on human rights grounds. Ultimately the submissions of the Appellant's representatives add little to the issues before the judge and her decision is one that contains no material error of law and the Appellant's appeal is dismissed.

## Notice of Decision

The decision of the First-tier Tribunal Judge contains no material error of law. The appeal of the Appellant is dismissed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris