



IAC-FH-AR-V1

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

Appeal Number: IA/23678/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 25 February 2016**

**Decision &  
Promulgated  
On 21 March 2016**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**KERWIN WILLIE  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms R Akther of Counsel, instructed by FLK Solicitors

For the Respondent: Ms A Everett, Home Office Presenting Officer

**DECISION AND REASONS: ERROR OF LAW**

1. This is an appeal against the decision of First-tier Tribunal Judge P-J S White, promulgated on 26 August 2016, brought with the permission of First-tier Tribunal Judge Pooler granted on 18 January 2016. (Judge Pooler also extended the time limit for appealing.)
2. The background to the Appellant's case is summarised in the first three paragraphs of the decision of Judge White. I do not propose to rehearse all of those details but identify for present purposes one matter as being particularly pertinent.

3. It was part of the Respondent's decision that was the subject of the appeal, that the Appellant had previously entered into a marriage of convenience with a Ms Helina Emmanuel. The Respondent had reached this conclusion essentially by reference to information received from Ms Emmanuel which included confirmation on the face of it that she had not signed an earlier application in August 2005, notwithstanding that a signature purportedly hers had appeared on the face of that document.
4. In considering the various issues on appeal which essentially centred around the Article 8 rights of the Appellant, his current partner, and their child, Judge White necessarily gave consideration to the allegation of forgery and the related allegation that the Appellant had previously contracted a marriage of convenience. The Judge's consideration is set out in paragraphs 15-26 of his 'Decision and Reasons'.
5. The Judge has very obviously given careful consideration to the overall context of the allegation raised by the Respondent, and has had regard to a number of different factors in reaching his conclusion. One of those factors is set out at paragraph 22, and involves a comparative consideration of the appearance of the supposedly forged signature in the stylisation of 'Helina Willie' that appears in the document from August 2005, and the signature in the stylisation 'H Emmanuel' and the handwriting from Ms Emmanuel that appears in a handwritten letter dated 25 May 2006 and also at the foot of the letter sent for authorisation and comment from the Secretary of State dated 23 May 2006 (G1-G3 of the Respondent's bundle before the First-tier Tribunal).
6. Judge White says this at his paragraph 22:

*"I do not have expert handwriting evidence, and I do not pretend to expertise in that field. I do, however, have an entire letter in Ms Emmanuel's handwriting, including 2 signatures, all of which appears to be of a piece. The individual letters in the signature on the application form all appear, a number of times in her letter as does the name 'Willie'. Even to an untrained eye there are clear differences particularly in the capital H and the lower-case l and e. I also note that Ms Emmanuel signs with her initial rather than her full first name."*
7. Objection to that aspect of the Judge's consideration is raised in the grounds of appeal on the basis essentially that the Judge should not have trespassed into territory which was properly the territory of an expert witness.

8. Ms Akhter is unable to direct my attention to any specific authority that demonstrates that handwriting is purely a matter of expert evidence rather than for judicial consideration, but I have it in mind that it is a matter of some longstanding convention in this jurisdiction that handwriting comparison does indeed require a judicial evaluation informed by expert evidence (or otherwise by the evidence of a person familiar with the supposed author's handwriting), and that this is not a matter that is left to the lay - or even judicial - eye.
9. Be that as it may, it seems to me that there is in any event a difficulty in respect of paragraph 22 and it is this. The Judge has attempted to make a comparison between the 'everyday' handwriting that appears in the letter of 25 May 2006 and the *signature* that appears on the document from August 2005. In my judgement, whilst not invariably so, it is very often the case that somebody's signature is transcribed in a way very different from their normal or day-to-day handwriting. In my judgement it is not safe or appropriate for a lay person to attempt to make a comparison between handwriting on the basis of one sample which is in 'normal' writing and one sample which is confined to a single example of a signature. In so far as both samples herein contain a signature it is to be noted that the signature is in a different stylisation of the writer's name - 'Helina Willie' and 'H. Emmanuel'.
10. For these reasons it seems to me that the Judge has indeed fallen into significant error at paragraph 22 in purporting to undertake analysis of the different handwriting samples that were before him.
11. Although the Judge has made reference to other matters that are relevant to an evaluation of the issue of forgery, at paragraph 25 the Judge says this:

*"In the light primarily of the indications from the form and letters themselves, but taking account of all the other matters identified, I am wholly satisfied the signature purporting to be from Helina Willie on the application form was not written by her and was written, no other explanation being feasible, by or at the instigation of the Appellant. I am therefore satisfied that he did submit an application on which her signature had been forged."*

12. It is very clear from this passage that the Judge is including in his overall evaluation his analysis at paragraph 22, which for the reasons I have already given is in my judgement a flawed analysis. Ms Everett accepts that it may be very difficult to untangle the different elements of the Judge's analysis leading up to his conclusion at paragraph 25. In my judgement that indeed is the case in circumstances where he has

expressly indicated that the foregoing matters - necessarily including those set out at paragraph 22 - have formed part of the reasons for his conclusion. The conclusion itself becomes unsafe by reason of the flaws in the analysis considered in respect of paragraph 22.

13. It is also very clear that the Judge's conclusion in respect of the forgery formed a significant part thereafter of his overall evaluation of the Appellant's appeal under Article 8 of the ECHR. The Judge relies upon the conclusion in respect of the forgery to find that the Appellants had indeed entered previously into a marriage of convenience: see paragraph 26. He is then overt at paragraph 27 in identifying the significance of this:

*"The significance of this is three-fold. First, I am in no doubt that this history, of a marriage of convenience and an application supported by forgery, adds significantly to the weight of the public interest in maintaining immigration control. It led the respondent to conclude that the application under the Rules failed additionally on suitability grounds but it is also in my judgement relevant in the assessment of proportionality outside the rules. Second, it means that this is not one of those cases where the respondent's objection to a grant of leave is effectively confined to concern that an applicant has not obtained the correct entry clearance, in which case requiring departure in order to apply and return may be disproportionate. Here there are genuine and significant other concerns. Third it casts very grave doubt on the appellant's credibility, arising both from the dishonesty of his conduct in 2003 and 2005 and from the dishonesty of his evidence about it in 2015. It is in the light of that doubt that I am unable to accept his self-serving and unsupported evidence of an awful upbringing and a lack of any current ties in St Lucia."*

14. As is pointed out to me by Ms Akhter, the Judge in his concluding paragraphs identified that the case was "*finely balanced*" (paragraph 30). It may be seen then that there is an apparent link between the error in respect of the approach to the handwriting analysis to the conclusion in respect of forgery and marriage of convenience, and in turn to the overall conclusion in respect of the proportionality balance under Article 8. To that extent I am satisfied that the Judge's error at paragraph 22 is a material error of law such that his overall conclusion cannot be sustained. The decision of the First-tier Tribunal Judge must be set aside.
15. The decision in the appeal requires to be remade accordingly. In circumstances where the conclusion is essentially one based on an overall credibility assessment, in my judgement there is no alternative but that the appeal be reheard afresh with all issues at large, and the most appropriate forum is back before the First-tier Tribunal.

16. I should say of course that what I have said in respect of the Judge's error with regard to the handwriting analysis is in no way a finding, or a factual assessment, of whether or not the signature was forged on the application in August 2005, and is not a finding of whether or not the Appellant had previously undergone a marriage of convenience. All I am concluding is that the First-tier Tribunal Judge has reached his conclusion erroneously. Whether that was nonetheless the correct conclusion – or not – will be a matter for fresh consideration by a different First-tier Tribunal Judge in due course.

**Notice of Decision**

17. The decision of the First-tier Tribunal contained a material error of law and is set aside.

18. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge P-J S White, with all issues at large.

19. No anonymity order is sought or made.

*The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.*

Signed:

Date: **8 March 2016**

**Deputy Upper Tribunal Judge I A Lewis**