Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/06888/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 27 November 2013	**On 06 January 2014**

Before

PRESIDENT OF THE UPPER TRIBUNAL MR JUSTICE MCCLOSKEY
VICE PRESIDENT ARFON-JONES
UPPER TRIBUNAL JUDGE COKER

Between

MADGELYN BECKFORD

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: Ms R. Chapman, counsel, instructed by South West London Law Centres
Respondent: Ms A. Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who is a citizen of Jamaica born on 10th March 1950, appeals against a decision of First-tier Tribunal Judge Callow who, by a determination promulgated on 2nd September 2013, dismissed her appeal on human rights grounds against a decision of the respondent that she should be removed from the UK pursuant to s10 Immigration and Asylum Act 1999.

2. The challenges to that determination raised in the grounds for seeking permission to appeal are neatly summarised by First-tier Tribunal Judge Grant-Hutchinson who said this in granting permission to appeal:

> "It is arguable that the judge failed to give adequate reasons in the proportionality exercise in relation to (a) why it would be in the economic interests of the UK to remove the appellant when she is looking after her sister when it was suggested in submissions that the appellant's presence would save £24,000 per annum for additional formal care from the State; (b) making any findings in relation to the Independent social worker's report (Peter Horrocks) on the impact that the appellant's removal would have on her sister and uncle who are looked after by the appellant and rely on her; (c) by making any findings in relation to the views of both the sister and the uncle on the impact of the appellant's removal would have on their lives [sic]; (d) by making any findings in relation to the impact of the appellant's removal on her daughter Romalyn who has mental health issues and (e) the particular impact on her granddaughter for whom the appellant provides her with consistency and stability which her own mother has difficulties doing because of her mental health condition. No findings have been made in relation to Mr Horrock's opinion that the appellant's removal would not be in the child's best interests and it is arguable that inadequate reason [sic] have been given as to why the child's best interests would be met by support agencies."

3. By some measure, as we indicated to the parties at the commencement of the hearing, the most important arguable shortcoming in the reasoning of the First tier Tribunal identified in the grounds of permission to appeal concerns the predicted impact of the Appellant's removal on her granddaughter, who is aged 12 years. The First-tier Tribunal judge found ([21] of the First-tier Tribunal determination):

> ".....it has been established that the appellant plays a significant role in the life [the granddaughter] and her mother Romalyn. She provides a certain sense of stability that would otherwise be lacking. If the appellant is to be returned to Jamaica it appears that Romalyn, accompanied by [the granddaughter] may decide to follow the appellant. In this event the stability that [the granddaughter] requires will be maintained. Such a decision is however likely to be challenged by [the granddaughter's] father, the outcome of which is, needless to say is unknown. Since her birth she has lived all her life in the UK and should she need further support and care that can be provided by all of the agencies responsible for children in the UK. In all of the circumstances the appellant's case finally founded [sic] on leave to remain to care for [the granddaughter] fails as there are adequate support agencies, along with her mother and other family members, in the UK to provide for her wellbeing. As to the appellant personally it was not suggested, save for the family life claim, it was unreasonable for her to return to Jamaica."

4. Although the judge quoted extensively from the report by Mr Horrocks ([5.1 to 5.4] of the report) in the determination, the content and conclusions of which were not, it seems, challenged by the respondent before the First-tier Tribunal (or indeed before us), he does not, in reaching his conclusions as to the best interests of the grandchild or the proportionality of the decision factor these elements into his conclusions. There was no acknowledgement in reaching his conclusion, despite reference in the quote from the report, of the child's elder sister becoming a looked after child for four years

because of the family history; that the appellant appears to be the primary carer for the child; that the child's mother is emotionally unstable; that the removal of the appellant to Jamaica would potentially expose the child to a similar situation as her older sister with implications for her future care needs. Although the judge refers to the likely challenge by her father to the child going to Jamaica and that support can be provided by various care agencies, he makes no assessment of the actual impact upon the child.

5. Although permission to appeal was granted on other matters, we took the view having heard submissions from both parties that those matters were in fact peripheral to the significant and substantial shortcomings in the reasoning and conclusion of the First-tier Tribunal judge as regards the best interest of the child being a primary consideration and the 'Article 8 assessment'. We are satisfied that there is a quite inadequate exposition of this child's best interests in the critical passages in the judgment, in paragraph [21].

6. We have concluded that, within the parameters of the grant of permission to appeal, an error of law is clearly demonstrated. The materiality of this error is unmistakable, as it is germane to the decision made. Accordingly, we set aside the determination of the First-tier Tribunal and proceed to remake it. There was no challenge to the evidence, as recorded in the First-tier Tribunal determination and it was agreed by the parties that there was no necessity for oral evidence. The documents before us were the same as before the First-tier Tribunal with the addition of a letter ….

7. In reaching our decision we have considered the two legal grounds in play, which are Article 8 of the Human Rights Convention and Section 55 of the 2009 Act. There was some discussion before us as to whether the decision to remove the appellant was or was not in the economic interest of society. Although Ms Chapman placed reliance on the public monies she asserted were saved by the appellant's presence in caring for her other relatives we are not satisfied, on the basis of the evidence before us, that the care currently provided by the appellant to her sister and her uncle is care that would otherwise be provided through public funds. We do however, of course, accept that the assistance given by the appellant to the emotional well being of her family members is a factor to be taken into account, particularly in relation to the issue of proportionality.

8. We consider that, as regards Article 8, the key test to be applied is that of proportionality. This is uncontentious as between the parties. There is no clear blue water between the Article 8 issue in this case and the Section 55 issue. However, what Section 55 does in the present case is to focus attention very substantially on the one affected child and all of the various factors bearing on that child's best interests.

9. Having noted above that there was no challenge to Mr Horrock's report, we turn to consider it in a little detail. Mr Horrocks has been a social worker, team manager and senior manager in both statutory and non statutory settings. There was no challenge by the respondent to his expertise or experience. The report was prepared following

interviews with the appellant, the appellant's older sister, the appellant's daughter, the appellant's two granddaughters ((daughters of her daughter; R and A), the appellant's uncle, the appellant's cousin and the appellant's son and daughter in law. Having rehearsed extensively the family structure, tensions and problems, Mr Horrocks concludes:

> 5.1 Ms Beckford plays a matriarchal role in this family and is a central figure in terms of both the practical and emotional support she provides for her extended family. A significant aspect of this family's functioning is the implication of a history of poor mental health which continues from generation to generation….She has now been in the UK for thirteen years and over that time [her sister] has become dependant on her, more for her emotional needs as opposed to her practical care needs… [if the appellant returned to Jamaica] she would struggle to cope with the increased isolation, leading to a significant downward spiral both in terms of her physical and mental health.
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> 5.2 ….[appellant's daughter] is emotionally unstable, whether this is directly linked to her mental health is unclear, although she has been previously treated for depression. [oldest daughter of appellant's daughter] became a looked after child at the age of thirteen and spent four years placed in residential care…at enormous expense …….Ms Beckford does appear to be in many ways the primary carer for [appellant's daughter's youngest daughter] and provides her with consistency and stability, an area where the child's mother appears to have difficulties.
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> 5.3 The removal of Ms Beckford to Jamaica would potentially expose the child to a similar situation to that of her older sister, with implications for her future care needs and the possibility of a breakdown in the relationship between the child and her mother as appears to have happened with [older child]. The alternative situation whereby [appellant's daughter] would choose to return with her mother to Jamaica would lead to the child being separated from her father, who plays a significant role in her life. It could also lead to the child becoming involved in court proceedings because of a custody dispute and the child would be exposed to serious discord between her parents unnecessarily. Additionally [she] would be separated from her older sister."

10. Ms Everett accepted in her submissions that the *relationship* between the appellant and the younger granddaughter would be significantly compromised if the appellant were removed to Jamaica but cast doubt on whether the evidence was sufficient to show that her *welfare* would also be compromised. She submitted that the child could expect to receive considerable emotional support from other relatives in the UK.

11. The best interests of a child are not a mere formulaic expression of the practical situation of the child. Rather, they require a panoramic assessment of a broad spectrum of considerations and relationships. In this case, the family as a whole has functional problems; the appellant plays a significant role in the adequate functioning of the family and is in many ways the primary carer of the child. We consider that to remove the appellant would be to remove the child's main carer. To disrupt the emotional and physical well being of a 12 year old child requires more justification than a mere assertion that other family members, many of whom are dysfunctional and suffer from mental and physical health problems, would be able to provide the necessary support to enable this child not to be significantly affected. We find that the older child and the child's mother would be unable to provide the level of physical and emotional support that the appellant is providing to this child. Ms Everett submitted that although it was clear that the appellant provides practical support and

a caring role, some level of contact could be maintained if she were removed. While this is correct, its intrinsic limitations must be appreciated. The physical and emotional support provided by the appellant to the child is on a daily basis and amounts to more than could be substituted with a conversation via Skype, Viber, facebook or email.

12. Although there would be elements of disruption to other members of the appellant's family we are satisfied that were it not for the significant and serious effect of removal on the child, it would be unlikely that this would be sufficient to amount to a disproportionate exercise of immigration control. We heard little in the way of submissions as regards this element of the grounds, given our unchallenged indication as to the importance of the relationship between the child and the appellant.

13. Accordingly we have come to the clear conclusion that the impugned decision of the Secretary of State is disproportionate within the meaning of Article 8(2) ECHR and, secondly, fails to give proper effect to the best interests principle enshrined in Section 55. The evidence impelling to this conclusion is compelling. Accordingly, we differ with deference from the First-tier Tribunal and we allow the appeal.

DECISION

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

15. We re-make the decision in the appeal by allowing it on human rights grounds (Article 8).

Signed: Lemond McClosky.

President,
Upper Tribunal,
Immigration and Asylum Chamber

Dated: 20 December 2013