



**Upper Tribunal  
IA/19033/2013  
Immigration and Asylum Chamber**

**Appeal No:**

**THE IMMIGRATION ACTS**

Heard at: Field House  
On: 2 June 2014

Decision Promulgated:  
On: 18 July 2014

Before

**Upper Tribunal Judge Pitt**

Between

**Secretary of State for the Home Department**

Appellant

and

**Gregory Dwight Fletcher**

Respondent

Representation:

For the Appellant: Mr S Kandola, Senior Home Office Presenting Officer

For the Respondent: Mr P Thoree, Thoree & Co Solicitors

**DETERMINATION AND REASONS**

1. For the purposes of this determination I refer to the Secretary of State as the respondent and Mr Fletcher as the claimant, reflecting

their positions before the First-tier Tribunal.


2. The appellant is a national of Jamaica and was born on 22 November 1973.
3. This is an appeal by the Secretary of State against the determination promulgated on 11 March 2014 of First-tier Tribunal Judge Finch which allowed the claimant's Article 8 appeal.
4. The respondent's challenge is that the First-tier Tribunal judge failed to identify factors that could properly be characterised as exceptional or compelling such that the Article 8 proportionality assessment could succeed.
5. The First-tier Tribunal judge referred to the principles in MF (Nigeria) v SSHD [2013] EWCA Civ 1192 at [10]. She goes on at [12] to find that the claimant has a family life with his partner and her daughter who is a British citizen. That finding is not challenged. Nor was the finding at [13] that the claimant had a significant relationship with his grandmother and this added to the substance of his private life. The judge correctly assessed the public interest at [14].
6. The proportionality assessment begins at [15] and continues to [20]. It is not suggested that in that consideration the First-tier Tribunal omitted any material evidence or included immaterial evidence. It was clearly open to her to find at [19] that the best interests of the partner's child were in the claimant remaining in the UK and, again, there is no challenge to that best interests assessment. As set out at [15], this was not a case of someone with a poor immigration history or who had deliberately sought to avoid or manipulate immigration control.
7. The discussion of the various factors in play does not refer in terms to "compelling" or "exceptional" circumstances but, as above, the judge had in mind the ratio of MF. The First-tier Tribunal judge identified in particular that the child's "considerable emotional distress" and hardship faced by the partner if the claimant made the decision disproportionate. That appeared to me, in substance, to amount to her finding that compelling circumstances pertained. That was a decision for her and it cannot be characterised as perverse or otherwise in error.
8. It was therefore my view that the respondent's challenge was, really, only a disagreement with the conclusion of the First-tier Tribunal on the Article 8 appeal. I remind myself that it is only open to me to interfere with a FtT decision if it contains a material error of law; my

task is not to consider whether the decision was necessarily one that another judge would have come to. The judge's decision evinces a substantive consideration of relevant factors weighing for and against the claimant and for the above reasons is not vitiated by legal error.

9. Where they refer to the claimant's partner and the children relocating to Jamaica, the grounds are misconceived as the child is a British national and the partner her primary carer; C-34/09 Ruiz Zambrano and C-256/11 Murat Dereci applied.

#### DECISION

10. The decision of the First-tier Tribunal does not contain an error on a point of law and shall stand.

Signed:   
Upper Tribunal Judge Pitt

Date: 30 June 2014