



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

Appeal Numbers: IA/37957/2013
IA/41164/2013

THE IMMIGRATION ACTS

Heard at Field House

Determination

On 26 June 2014

**Promulgated
On 1 July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR CARL ANTHONY POORMAN (FIRST RESPONDENT)
MISS CALEISA GWENDOLYN POORMAN (SECOND RESPONDENT)
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellants: Mr. L. Tarlow, Home Office Presenting Officer.

For the Respondents: Ms. Francesca Clarke, Counsel.

DECISION AND DIRECTIONS

1. This is a respondent appeal but I shall henceforth refer to the parties in the original terms detailed in the determination of Judge of the First-tier Tribunal Majid following a hearing on 18 March 2014.

2. The appellants are citizens of Jamaica who appealed against a decision of the respondent dated 30 August 2013 refusing them leave to remain in the United Kingdom under the Immigration Rules HC 395 (as amended).
3. Judge Majid's determination, promulgated on 21 March 2014, allowed the appellants' appeals under both the Immigration Rules and on human rights grounds.
4. The respondent was granted permission to appeal by Judge of the First-tier Tribunal Foudy on 6 May 2014. Her decision is as follows:-
 - "1. The Respondent seeks permission to appeal, in time, against a decision of the First-tier Tribunal Judge Majid who, in a determination promulgated on 22 March 2014 granted the Appellant's appeal under Article 8 ECHR and the Immigration Rules.
 2. The grounds argue that the Judge erred in his approach to the entire case. In particular they argue that the Judge failed to address the contested issue of whether the 2nd Appellant's son Raekwon Poorman was a British citizen, mistakenly believed the 1st Appellant to be British when she is not, and misdirected himself as to paragraph EX.1 in Appendix FM of the Immigration Rules.
 3. The Judge's findings are brief and confusing. He repeatedly, and incorrectly, refers to 'EX.1' and fails to identify which Immigration Rule he finds the Appellants were entitled to benefit from. Moreover he obliquely refers to the Appellants representative's 'special submission' without ever describing what the submission was.
 4. The Judge refers in the briefest possible way to the oral evidence received however it is not clear what factors weighed in mind when he decided that the Appellants met some part of the Immigration Rules and that their removal would be unjustifiable (sic) harsh. This lack of reasoning is an arguable error of law.
 5. Given the Tribunal's decision in Gulshan (Article 8 - new rules - correct approach) [2013] UKUT 00640 it is also arguable that the Judge misdirected himself as to the law on Article 8."
5. Mr. Tarlow relied on all the grounds put forward in the application seeking permission to appeal and in particular submitted that the determination does not adequately analyse the circumstances of the entire family or explain why it cannot be returned as a unit to Jamaica. There is no balancing exercise which takes into account the respondent's responsibilities to controlling immigration.
6. Ms. Clarke, who was Counsel at the original hearing, helpfully provided a skeleton argument wherein she sets out events at the original hearing. It

is unfortunate that Judge Majid has not been asked to provide a Record of Proceedings from his hearing. This would have assisted me greatly today. For example, Ms. Clarke disputes paragraph 7 of the determination which states:-

“In response to Mr Page’s, Ms Clarke’s and my questions, the appellant made some statements and the evidence was consistent with the assertions contained therein.”

Ms. Clarke disputes that there was any cross-examination whatsoever and that as a consequence the evidence of the appellant was undisputed.

7. Ms. Clarke maintains that there is no error in the judge’s overall assessment of the evidence, and further that it was “never as suggested that Caleisa Poorman was a British citizen”. Ms. Clarke concludes her submissions by acknowledging that the decision recorded in the determination may contain typing errors, but do not contain material errors of law and that it should stand.
8. The judge’s determination is in essence a series of observations on issues that need to be taken into account. Those observations are not linked to the evidence that the judge heard. Indeed, beyond what is said in paragraph 7 of the determination (see above) it is difficult to ascertain precisely what evidence the judge did take into account when deciding to allow the appeals.
9. As Mr. Tarlow asserts there is a lack of clarity as to how the appeal was allowed under the Immigration Rules. There is inadequate consideration of the material aspects of the relevant Rules themselves, coupled with a failure to explain why the appeal should also be allowed on human rights grounds.
10. In short, it is difficult to glean from the determination why the appellants succeed on both bases. The judge has failed to give adequate reasons for findings on material matters, failed to take into account and/or resolve conflicts of fact on material matters, has given weight to immaterial matters, and for all the reasons put forward in the grounds seeking permission to appeal has made a material misdirection of law.
11. The determination is therefore set aside in its entirety and the appeal will proceed to a de novo hearing.
12. In deciding whether to set aside the decision of the First-tier Tribunal under Section 12 of the Tribunal’s Court Enforcement Act 2007, I can dispose of the appeal in one or two ways, either by remitting the case to the First-tier Tribunal or by remaking the decision. The choice is regulated by paragraph 7 of Part 3 of the Practice Directions of the Immigration and Asylum Chamber of the Upper Tribunal which only contemplates remittal in very limited circumstances. This though is such a case. The effect of the cumulative errors detailed above have been to deprive a party – the

respondent (Secretary of State for the Home Department) – before the First-tier Tribunal of a fair hearing, or other opportunity for the parties' case to be put to and considered by the First-tier Tribunal. In those circumstances I remit the case to the First-tier Tribunal subject to the attached directions. I do so with the consent of both representatives before me today.

Signed

Date 30 June 2014.

Deputy Upper Tribunal Judge Appleyard

DIRECTIONS FOR REMITTAL TO THE FIRST-TIER TRIBUNAL

1. The appeal is to be listed at Taylor House on the first available date.
2. The time estimate for the hearing is three hours.
3. No interpreter is required.
4. In the event of either party wishing to file and serve additional evidence this must be done no later than five working days prior to the date of hearing.

Signed

Date 30 June 2014.

Deputy Upper Tribunal Judge Appleyard