



IAC-FH-CK-V1

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

Appeal Numbers: DA/01463/2014  
DA/01464/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 November 2015**

**Decision & Reasons Promulgated  
On 23 November 2015**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**DH  
S  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms W Bremang, Counsel instructed by Citywide Solicitors

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**

1. DH is a citizen of Jamaica and her date of birth is 4 March 1980. I shall refer to her as the appellant. S, her daughter, is a citizen of the United States of America and her date of birth is 25 January 2005. On 9 July 2014 the Secretary of State refused to revoke a deportation order against the DH which was made on 27 August 2002 subject to Section 5(1) of the Immigration Act 1971. The appellant appealed against this and her appeal was dismissed by Judge of the First-tier Tribunal Tiffen. Permission to

appeal was granted by Judge of the First-tier Tribunal Chambers on 19 May 2015 and thus the matter came before me.

2. The appellant's immigration history is complicated. She came to the UK on 21 January 2000 for one month as a visitor. On 28 September 2001 she was encountered in Nottingham with a quantity of cocaine and heroin. Following arrest she gave a false name and claimed to have been born in the UK. Enquiries revealed that a British passport in the name that the appellant asserted was hers had been reported as lost. The appellant was charged with possession with intent to supply a class A drug. She was convicted of the offence on 16 February 2002 and sentenced to two years and six months' imprisonment. The judge made a recommendation for deportation. On 11 February 2002 the appellant's daughter B was born whilst the appellant was in prison.
3. The appellant appealed against the deportation order (claiming that she feared return to Jamaica) but she withdrew her appeal, indicating that she wanted to return to Jamaica and she was deported to Jamaica along with B. The appellant next came to the attention of the authorities here when she was arrested at the US Embassy in London on 13 March 2014, trying to obtain a US passport for S. During an interview with the police the appellant claimed that she had last arrived in the UK at Gatwick on 26 July 2013, using a passport that she had obtained fraudulently and which belonged to her cousin. The appellant explained to the police that she had obtained this passport using her cousin's birth certificate.
4. The appellant stated that she had brought S to the UK as a visitor in 2011. In order to travel the appellant used her cousin's passport and S travelled on her own US passport. The appellant stated that she had left the UK in January 2012, leaving S to be looked after by the appellant's cousin here in the UK. She returned to the UK in 2013 she and S resided with DH's partner, V, a British citizen.
5. The First-tier Tribunal heard evidence from the appellant and V. The case was presented on the basis of the appellant and S's family life with V. The evidence was that the couple met in 2012 and started to live together in 2013. At the hearing before the First-tier Tribunal the appellant was pregnant with V's child.
6. The judge heard evidence from V. He came to the UK from Jamaica in 2002. He married a British citizen in 2004. He has two children with a woman (not his ex-wife) and at the date of the hearing they were aged 3 and 1. His evidence was that he sees the two children in the UK every day after work. He has three children in Jamaica with three different mothers. They are aged 19, 13 and 2. His evidence was that he is in contact with them and visits them, but has not done so for the last two years. He gave evidence that he sends money to Jamaica for his children and he gives money to his ex-partner, the mother of his children in the UK, but she will not allow the children to visit him.
7. Prior to the hearing the appellant was in immigration custody and S was residing with V. The respondent instructed a social worker assessment

and as a result of this there was an assessment of 24 March 2014 in the respondent's bundle at K3. A social worker visited S and V at home and noted that S regarded V as her father and he is kind and patient with her.

8. It is clear from the report that the social worker was satisfied V was looking after S and that there were no concerns with this arrangement. The social worker recorded that V would be devastated if S was removed from his care because he regards her as his daughter and wants to adopt her. The social worker recorded that the appellant's immigration status had caused the family significant stress, but that V hoped to finalise his divorce so that he can marry the appellant and his long-term plan is to obtain a legal order which will allow him to have a "parental right" for S.

### **The Findings of the First-tier Tribunal**

9. The judge recorded that the appellant had been here lawfully for a short period of time only (between 21 January 2000 and 3 February 2000). Since that time she has had an appalling immigration history of deceit, using forged documents and of course there is a criminal conviction.
10. The judge had serious doubts about the relationship between the appellant and V. The judge recorded in the decision that when V was asked when the appellant knew that she was pregnant, he stated that he was not sure whether the child was his. The judge found that the appellant had become pregnant as a further attempt to flout the UK immigration law. The judge noted that V was not aware of the immigration status of his children's mother in the UK. The judge found that there was no independent Social Services report to confirm that V maintained contact with his children here in the UK and there was no affidavit from the mother of the children stating that they would experience any adverse effect should he decide to accompany the appellant back to Jamaica.
11. The judge took into account that deportation would have a disturbing effect on S, noting that she had been at school in the UK since 8 May 2013. The judge went on to find that children of her age could adapt wherever they are as is evidenced by the children of parents working on overseas contracts when they move to a country completely alien to them.
12. The judge found that S would be moving to Jamaica and she made reference to the social worker report in which it is stated that she is aware of her Jamaican heritage and enjoys traditional Caribbean dishes. The judge took into account that she was not a British citizen and there is no evidence that she would be unable to return with her mother to Jamaica. The judge found that the appellant would have no difficulty whatsoever in re-establishing herself in Jamaica and that V could re-establish himself there if he chose to. In relation to the appellant and V's claim that it is safer in the UK the judge noted that neither seemed to have a problem with leaving their children there.
13. The judge found that the appellant could not meet the requirements of paragraph 399 and 399A of the Immigration Rules and she considered that

there were serious reasons for upholding the deportation order and that removal would be in the public interest. The judge directed herself at paragraph 30 that she had to consider whether there are “exceptional circumstances.” The judge found that it was clear from the appellant’s immigration history that she is not of good character and she has continued to commit immigration offences. She noted that S is not a British citizen and it is in her best interests that she is removed to Jamaica with her mother.

### **The Grounds Seeking Leave to Appeal and Submissions**

14. The grounds seeking leave to appeal argue that the judge wrongly recorded V’s evidence and that he did not state that he was unsure about whether he is the father of the appellant’s then unborn child. The child he was referring to was another child of his. Mr Jarvis conceded this point, but in his view, this was not a material error because the appeal could not succeed, in any event, because she had failed to establish compelling circumstances.
15. The second ground of appeal is that the judge had failed to take into account the report from the Social Services relating to S and her and the appellant’s relationship with V.

### **Conclusions**

16. Whilst it is the case that the judge wrongly recorded the evidence and I cannot be sure whether the judge took into account the evidence of the social worker when considering the relationships in issue, I am not persuaded that there is a material error of law in the decision. It is a fact that this appellant could not meet the requirements of paragraph 399 and 399A of the Rules and that it was incumbent on the appellant to establish compelling circumstances over and above those contained in 399 and 399A in order to establish that the decision breached her rights under Article 8. The judge referred to exceptional circumstances, but this was not raised by the appellant as amounting to an error of law and it is, in my view, immaterial. If anything exceptional circumstances is an easier test than the test of compelling circumstances, but nothing turns on this.
17. Whatever the view of the judge about the relationship between DH and V, she ultimately made findings on the basis that the relationship between the appellant and V was subsisting and these findings were grounded in the evidence and reasoned. Had she found that the report of the social worker accurately reflected the relationship between S and V, this would lead to an inevitable conclusion that S’s best interests would be to remain part of a family unit with her mother and V. However, the evidence did not establish, by any account that it would be in her best interests to remain here in the UK. S is not a qualified child. She is a US citizen with Jamaican heritage. She has family, including a sibling, in Jamaica. She has been here since 2011, but most of the time she has been here she was living with the appellant’s cousin. I accept that she has now started school in the UK, but she is still young and dependent on her mother. She has bonded with V who like DH has family and children in Jamaica. He is

originally from Jamaica and it is a matter for him should he wish to return there. I appreciate that he has children here, but there was no evidence before the First-tier Tribunal of their status or the status of their mother or indeed evidence to corroborate V's contact with his children.

18. It is significant that DH and V formed a relationship and recklessly allowed a relationship to flourish between S and V at time when DH's immigration status was unlawful and there was no certainty that they would be able to remain together in the UK. The appellant was pregnant with V's child but this does not impact on the proportionality assessment so as to outweigh the very significant public interest in deportation. It is reasonable and proportionate to expect the family to return together to Jamaica should they wish to act in accordance with S's best interests. Whatever V decides to do the position is will be separated from his children (in Jamaica or in the UK). Any error the judge made in the assessment of the child's best interests was not material to the outcome of the appeal.
19. Deportation of the appellant is in the public interest. She has committed a serious offence and she has gone on to involve herself more recently with criminal activity (albeit she has not been convicted). The appellant has an appalling immigration history. There is a total absence of very compelling circumstances. Article 8 must be considered through the lens of the Rules and Section 117B and 117C of the 2002 Act and the appeal inevitably falls to be dismissed.
20. The appellant did not submit further evidence under Rule 15 of the 2008 Procedure Rules, but documentation was submitted at the hearing before me establishing that the appellant gave birth to a child in April of this year and that V is the biological father. Thus the child is a British citizen. This was not challenged by Mr Jarvis. However, it does not give rise to an error of law. At the date of the hearing the child had not been born and the focus of the decision was rightly on the appellant, V and S.
21. In any event, if I were to find a material error of law and remake the decision on the basis that there is now a British citizen child, I find that it would not be unduly harsh to expect the child to relocate to Jamaica with the appellant, in the light of the public interest and the age of the child (see KMO (section 117 - unduly harsh) Nigeria [2015] UKUT 00543).
22. To summarise, the judge did not make a material error of law and the decision to dismiss the appellant's appeal is maintained.

### **Notice of Decision**

The appellants' appeal is refused.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the

appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Joanna McWilliam

Date 19 November 2015

Upper Tribunal Judge McWilliam