



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

Appeal Number: IA/28670/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision &
Promulgated**

Reasons

On 26 March 2015 and 20 May 2015

On 28 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SHANNA ANN-MARIE WILLIAMS
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: (On 26 March 2015) Mr S Whitwell and (on 20 May 2015) Ms L Kenny, both of the Specialist Appeals Team

For the Respondent: (On 26 March 2015) Mr A Alhadi of Stevjeme & Co and (On 20 May 2015) Dr V Onipede of Counsel instructed by Stevjeme & Co

DECISION AND REASONS

The Respondent

1. The Respondent to whom I shall refer as “the Applicant” is a citizen of Jamaica born on 5 February 1974. On 21 September 1999 she arrived in the United Kingdom. Her leave to enter was extended on a number of

occasions, finally expiring on 3 May 2014.

2. On 28 April 2014 she lodged an application for further leave to remain outside the Immigration Rules. On 23 June 2014 the Appellant (the SSHD) refused to vary her leave and decided to remove the Applicant to Jamaica by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. On 11 June 2014 the Applicant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The Grounds are that the Applicant has been working, paying taxes and National Insurance contributions and has no criminal record nor any pending prosecution. She asserted the decision did not respect her right to a private life protected by Article 8 of the European Convention and that she had no family in or social ties with Jamaica.

The First-tier Tribunal's Decision

3. By a decision promulgated on 27 November 2014 Judge of the First-tier Tribunal Sweet found the Applicant met the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules and additionally that the decision to remove her to Jamaica would place the United Kingdom in breach of its obligations under Article 8 of the European Convention.
4. The SSHD sought permission to appeal on the basis that the Judge had failed adequately to consider whether the Applicant had no ties (including social, cultural or family) with Jamaica and had failed to carry out a sufficient balancing exercise to assess whether the decision was proportionate to the legitimate public objective identified in Article 8(2) of the European Convention.
5. On 17 January 2015 Judge of the First-tier Tribunal McDade granted the SSHD permission to appeal, finding that the two grounds for appeal raised by the SSHD disclosed arguable errors of law.

The Error of Law Hearing

6. The Applicant attended but it was not necessary for her to take any active part in the proceedings.
7. Mr Whitwell for the SSHD relied on the grounds for appeal. The Judge's findings in paragraph 13 of her decision were inadequate. She had failed to note the Applicant had spent her formative years in Jamaica and to consider what cultural, linguistic and other ties she might have maintained during her presence in the United Kingdom. The Judge had failed to make a holistic assessment reflecting the learning at paragraphs 123 and 124 of the determination in *Ogundimu (Article 8 - new Rules) Nigeria [2013] UKUT 00060 (IAC)*. The Upper Tribunal had found the test under the Immigration Rules is an exacting one and that consideration of whether a person has "no ties" to her country of origin must involve a rounded assessment of all the relevant circumstances and is not to be limited to "social, cultural and family" circumstances. The Judge had given inadequate reasoning to support her findings.

8. Turning to the second ground for appeal, Mr Whitwell, accepting that no mention had been made in the grounds, submitted that the Judge had erred in failing to take account of the matters referred to in Sections 117A-117D of the 2002 Act as amended by Section 19 of the Immigration Act 2014 which Sections had come into effect some four weeks before the hearing before the First-tier Tribunal. Failure to refer to the matters amounted to an error of law although there was no requirement expressly to refer to the Sections: see *Dube (Sections 117A-117D) [2015] UKUT 00090 (IAC)*.
9. The grounds for appeal had expressly raised the Judge's insufficient reasoning to support her finding that the decision under appeal was disproportionate. She had failed to take into account that the Applicant had a brother in the United Kingdom and whether he would be able to care for their mother in the event the Applicant returned to Jamaica.
10. He concluded the Judge's decision should be set aside, re-made and the appeal dismissed.
11. He informed me the SSHD's records disclosed the Applicant's son had not appealed the deportation order made against him but had now claimed asylum on the basis of his sexual orientation upon which the SSHD had yet to make a decision.
12. For the Applicant, Mr Alhadi referred to paragraph 13 of the Judge's decision in which she had found the Applicant met the requirements of paragraph 276ADE(1)(vi). She had given adequate reasons by way of her findings in paragraph 12 of the decision. The Applicant had lived with her mother since she came to the United Kingdom and the fact that her mother was dependent on the Applicant had been accepted by the Judge and this made it disproportionate to require the Applicant to return to Jamaica. He accepted the Judge had failed to conduct any assessment of the proportionality of the SSHD's decision but there was no material error of law in her treatment of the Applicant's claim under paragraph 276ADE of the Immigration Rules.
13. I pointed out there was no mention of the Applicant's situation in relation to Jamaica contained in paragraph 12 of the Judge's decision upon which Mr Alhadi had relied and he then sought to rely additionally on the contents of paragraph 11. Again in paragraph 11 of the decision there is no consideration of the relationship or ties of the Applicant to Jamaica. In response Mr Alhadi then pointed to the Applicant's witness statement which was before the Judge submitting that the Applicant had in her statement given reasons why she had no ties to Jamaica. I considered the statement and noted that the matter of the Applicant's relationship to Jamaica was addressed at paragraph 4 in which she stated she could not return to Jamaica because she was accustomed to life in the United Kingdom where she had lived since 1999. She also referred to Jamaica in paragraph 5 of her statement in which she simply asserted she had no family living in Jamaica.
14. In response Mr Whitwell submitted the Applicant had accepted there was a material error of law in the Judge's consideration of the claim under Article

8 and that the Judge had not fully set out the reasons in her decision for allowing the appeal by way of reference to paragraph 276ADE. She had not made any finding of a dependency of necessity of the Applicant's mother upon the Applicant. The Applicant's evidence had been limited to her comparatively short statement. Even if the Judge's reasoning was adequate her finding had related only to the absence of "residual ties" and this was not the same as having "no ties" as mentioned in paragraph 276ADE(1)(vi).

Error of Law Finding

15. The Judge in her consideration of paragraph 276ADE(1)(vi) had taken account only of the evidence of the Applicant's lack of family in Jamaica but had not considered the extent and nature, if any, of her cultural or social or any other ties with Jamaica. It was an error of law to base a finding that the Applicant had no ties to Jamaica only on the length of her absence from Jamaica and the lack of any family in Jamaica.
16. The Judge had failed to make any assessment of the proportionality of the SSHD's decision under appeal with reference to any legitimate public objective. This was perhaps unsurprising because she had failed to adopt the recommended five step procedure described in *R (Razgar) v SSHD [2004] UKHL 27*. Additionally, she had failed to take account of primary legislation, namely the introduction of Sections 117A-117D into the 2002 Act.
17. For these reasons, I found the First-tier Tribunal's decision contained material errors of law and must be set aside. I enquired whether the parties were in a position to proceed in compliance with the second of the Upper Tribunal's directions of 11 February 2015. Mr Whitwell confirmed the SSHD was ready to proceed. Mr Alhadi explained he had been away from work recently due to illness and had returned to his office only the day before when he had come across a letter from the Applicant confirming that she wished to proceed and instruct his firm in connection with the Upper Tribunal hearing. She had put off contacting his office until late for reasons of cost.
18. I noticed throughout the hearing that Mr Alhadi appeared not to be in the best of health because he was coughing. I was persuaded that the substantive re-hearing should be adjourned to a later date but only because of Mr Alhadi's ill-health.

Preliminaries at substantive re-hearing

20. The Applicant attended the hearing with her mother and brother. Dr Onipede for the Applicant confirmed the sole issue for the re-hearing was the Applicant's claim under Article 8 of the European Convention outside the Immigration Rules. Ms Kenny confirmed that a deportation order had been made against the Applicant's son but that the proceedings had been stayed pending the Secretary of State's decision on his asylum claim.

Standard and Burden of Proof

22. The standard of proof is the civil standard; that is on the balance of probabilities. The burden of proof is on the Applicant. Evidence of matters subsequent to the date of the decision under appeal may be taken into account.

Documentary Evidence

23. In addition to the documents before the First-tier Tribunal Judge, the Applicant filed:
 - (1) a supplementary statement signed by her on 18 April 2015;
 - (2) an undated statement signed by her mother, Cordelia Christian;
 - (3) a letter of 24 April 2015 from the Applicant's mother's GP together with a copy of the record of her medication;
 - (4) documents evidencing the residence of members of the Applicant's family in the United States and Canada.

The re-hearing in the Upper Tribunal

24. The Applicant gave oral testimony. Her brother was present and would give evidence in her support. He worked in the building industry and much of his work was out of London. He rarely saw the Applicant or their mother. Her son who is the subject of deportation proceedings is 21 years old this year. She had been in the United Kingdom for some sixteen years and had no contact with any friends from before she left Jamaica. There were no family members in Jamaica to whom she any longer had any ties. She now spoke English rather than Patois which she could not write and could not now speak. Her diet was British rather than Jamaican. Her mother was diabetic and the Applicant had to check her blood/sugar levels four times a day. If they were too low she had to make sure her mother had food or drink and then she had to check they had returned to an appropriate level. Additionally, her mother had a hip problem and stage 3 chronic kidney disease. She was very unstable on her feet and needed help.
25. The Applicant worked as a care assistant at Homerton Hospital. The position was not a permanent one and there were no guaranteed hours. This suited her because if her mother needed additional care she was able to stay at home and not go to work. Her mother's health would be badly affected if the Applicant were removed. Her mother was dependent on her.
26. The Applicant had visited Jamaica once since she had come to the United Kingdom, in 2003 to attend the wedding of the sister of her then partner. They were no longer together and she had no contact with her erstwhile partner's family.
27. The Applicant was certain she would not be able to find work in Jamaica because she did not have a qualification although Ms Kenny noted there were a number of certificates evidencing the Applicant's qualification in the healthcare field. Additionally, Ms Kenny pointed out the Applicant had had some twelve years' experience as a carer in the United Kingdom. The

Applicant accepted she had certificates and went on to suggest there was a different culture in Jamaica and either she did not have the relevant qualifications to seek employment in Jamaica or she did not know what qualifications were required: see hearing replies 30-36.

28. The Applicant lived with her mother in accommodation rented from the local authority. She had extended family in the United Kingdom but did not see them because they had been born in the United Kingdom and she did not know them. Her brother lived in Tottenham and worked long hours. Her son lived with her and her mother.
29. The Applicant was adamant that the care which she gave her mother could not be replicated by social services because her mother would not trust anyone else coming into her home to supply personal services. The Applicant washed and dressed her mother as well as cooking for her. She did leave her mother alone when she went to work. Her mother was mobile if not in pain and went out to see friends, or attend the gym or attend church. She went to the gym about twice a week: see hearing replies 47-52. She travelled by mini-cab.
30. The Applicant stated she suffered from high blood pressure and sickle cell anaemia but explained that she had not brought any documentary evidence because she did not know any was required. Both complaints had been diagnosed while she had been in the United Kingdom and she attended hospital every two or three months. She had been on medication for some five years but had no details of it: see hearing replies 56-60. The Applicant's medication comprised four tablets each one taken once a day: see hearing reply 69.
31. She was in touch every week by telephone with various members of her family in the United States and Canada but did not think she would be able to maintain contact with her mother in the United Kingdom if she were removed to Jamaica because of the expense both of telephone calls and of internet access: see hearing replies 61-64.
32. The Applicant's mother gave evidence. She relied on her statement. Her daughter did everything for her, that is washing, shopping and cooking. She would be scared if any stranger came into the house and feared they might abuse her: see hearing reply 84. Her son visited only on special occasions such as birthdays and Christmas. He worked seven days a week, leaving home early and coming back late at night. He himself had difficulty looking after himself because he was overweight and suffered from back pain: see hearing reply 86.
33. She had been in the United Kingdom since 1992. In the past she had tried to visit Jamaica every other year on holiday. Her last visit had been two years before the hearing. Part of the time she had stayed in a hotel and part with a friend. She was in occasional contact with friends in Jamaica with whom she spoke in Patois. The Applicant's son, her grandson, did not make any real contribution to the running of the household save that sometimes he took out the rubbish and vacuum cleared the floor. He took no part in any aspect of her care. She explained the Applicant worked some thirteen hours a day and made a cup of tea and gave her a biscuit in

the morning. She made lunch for herself, usually a slice of toast, and in the evening the Applicant cooked for her. Often it was steamed fish and chips or chicken.

34. She occasionally went out to go to the doctor or to church in the evening on Sunday. She made no mention of any visits to a gym. She used a minicab for which she had a "taxi card" to go to these places. She did not think her daughter had any social life other than possibly going out for dinner or celebrate a birthday. The Applicant's mother was in touch with family in the United States and Canada. Usually she called her sister every two or three months.
35. The Applicant's brother gave oral testimony. There was no evidence of his immigration status in the United Kingdom and there was no evidence of his claimed self-employment and only a brief statement from him. There was no explanation for the absence of any of this documentary evidence.
36. He worked as a self-employed bricklayer and plasterer: see hearing reply 168. Initially he stated he was married but subsequently admitted that he and his wife were separated and in the process of divorcing: see hearing replies 141 and 149. They had two children. The eldest, a daughter was a single mother with one son: see hearing replies 143, 169 and 150. She lived in the same part of London as he did. He had a 17 year old son who was said to be "abroad": see hearing reply 142. No further explanation was offered.
37. The Applicant's brother said he visited Jamaica for one month each year and usually rented accommodation in the family's home area. He had been in the United Kingdom thirteen years and spoke fluent Patois and spoke a mixture of Patois and English with his mother and the Applicant: see hearing replies 153-163. He remained in contact with friends and family in Jamaica and in the US and Canada by text and similar modes of communication: see hearing replies 165-167.

Submissions

38. For the SSHD Ms Kenny noted that it was first necessary to consider the Applicant's claimed lack of ties to Jamaica of the nature referred to in paragraph 276ADE(1)(vi) of the Immigration Rules, taking into account the jurisprudence on the nature of ties contained in *Ogundimu (Article 8 - new Rules) (Nigeria) v SSHD [2013] UKUT 00050 (IAC)* and in *YM (Uganda) v SSHD [2014] EWCA Civ 1292*.
39. She submitted that much of the evidence of the Applicant, her mother and brother was vague and there had been a number of inconsistent replies. She argued that the evidence had been tailored to suit what the Applicant and her family thought would be best in the circumstances. For example, the Applicant had said she had worked for a considerable time in the United Kingdom but when pressed said she did not know the likely requirements and qualifications she would need to obtain employment in Jamaica. The first bundle of documents she had submitted contained a number of certificates evidencing attendances at courses and qualifications mostly in the care and health fields. Additionally, she had

substantial work experience. The Applicant had said her work was casual but on the other hand her mother had said that she worked thirteen hours a day.

40. At the First-tier Tribunal hearing the Applicant had said the reason for her wish to stay in the United Kingdom was to further her studies. These could be continued in Jamaica.
41. The Applicant's mother and brother had each stated they used some Patois at home and the Applicant's claim to have entirely lost it was not plausible. Further, English is a majority language in Jamaica and even if no English was spoken in the Applicant's home area of St. Thomas, she could re-locate. She had not claimed ties to any particular area in Jamaica. Her adoption of a British style diet in place of a Jamaican style diet was no reason for her to remain in the United Kingdom.
42. The Applicant had returned to Jamaica; her mother and brother had made a number of visits to Jamaica for holidays and it was likely that some support would be available to the Applicant on return.
43. The main plank of the Applicant's claim before the Upper Tribunal was her relationship with her mother and her mother's state of health. It was accepted her mother had some health issues and placed some reliance on the Applicant for washing and dressing. Nevertheless the Applicant's mother manages for herself during the day and manages to get out of home and make visits while the Applicant is at work. There was a material inconsistency in the evidence given by the Applicant and her mother with reference to visits by her mother to the gym. It was a weak excuse to keep the Applicant in the United Kingdom for her mother to claim she feared abuse from those who might care for her in the absence of her daughter.
44. The regular pattern of visits to Jamaica by the Applicant's mother and brother together with her own visits suggested the Applicant had stronger ties to Jamaica than suggested in her evidence.
45. There was no reason for the Tribunal to allow the appeal under the Immigration Rules or on Article 8 grounds outside the Rules. There was a lack of substantial evidence about the Applicant's private life in the United Kingdom beyond her relationship with her mother and her work. She had little contact with her brother and even with her son. She was fit enough to return to Jamaica and re-establish herself.
46. The Applicant stated she was in regular contact with relatives in the United States and Canada and yet suggested it would be too expensive for her to maintain such contact from Jamaica. Her brother maintained contact by methods which were certainly not costly, texts and programs like What's App.
47. The Applicant's circumstances did not warrant a consideration of her claim under Article 8 outside the Immigration Rules. She had a poor immigration history and the little evidence of her private life was insufficient to outweigh the public interest in maintaining proper immigration control. Her relationship with her mother, even taking into account her caring

responsibilities to her mother, did not go beyond the threshold of normal adult relationships between family members established in *Kugathas*. The Applicant's son was an adult and on her own evidence she had little contact with him. Her relationship with her brother was on the evidence of each of them limited and certainly did not cross the *Kugathas* threshold. The appeal against refusal of further leave and removal should be dismissed.

48. For the Applicant Dr Onipede submitted the circumstances of the appeal were unique and there were exceptional circumstances, such as to warrant consideration of the Applicant's claim under Article 8 outside the Immigration Rules. The evidence given in oral testimony of the three witnesses had not been vague. The witnesses were credible and truthful. The Applicant's situation on return to Jamaica would be very different from her circumstances in the United Kingdom. All her qualifications were obtained in the United Kingdom and her employment prospects on return would be very bleak.
49. No regard should be had to the finding that the Applicant had wished to stay in the United Kingdom in order to further her studies contained in the First-tier Tribunal's determination of 27 November 2014 because it had been set aside in its entirety. I reminded Dr Onipede that while the decision may have been set aside the Record of Proceedings still stood.
50. He continued that the Applicant had been in the United Kingdom for sufficiently long to forget Patois – her mother language. The evidence of the Applicant and her mother about their change of diet from Jamaican style to British style had been consistent and the inconsistencies identified by the SSHD were all of a trivial nature. The evidence of the Applicant's mother why she preferred the Applicant to look after her rather than social services should be accepted. Further, it would be cheaper for the State for the Applicant who was in employment to care for her mother rather than pay social services to assume those responsibilities.
51. He submitted the Applicant met the requirements of paragraph 276ADE(vi) because she had no social, cultural or family ties to Jamaica.
52. Turning to the factors listed in Sections 117A-117D of the 2002 Act to be considered he submitted that the Applicant spoke English, was self-sufficient because she worked as a care assistant and was fully integrated into British society.
53. There were exceptional circumstances warranting a consideration of the claim under Article 8 outside the Immigration Rules. The decision to refuse leave and remove was not proportionate because of the impact on the Applicant's mother who suffered from serious medical conditions. It would be proportionate to allow the appeal.

Findings and Consideration

54. The evidence of the three witnesses was that the contact between the Applicant and her mother on the one hand and on the other the Applicant's brother was extremely limited, visits at Christmas, other

holidays and birthdays. There was no evidence of contact between the Applicant or her mother with the Applicant's son who is an adult. The Applicant has not shown these relationships between adult family members involve any degree of dependence which crosses the threshold explained in *Kugathas...* and which if severed by removal of the Applicant would be a sufficient interference to engage the State's obligations under Article 8. I note the Applicant has a niece, the daughter of her brother, who is a single mother living in Tottenham,.

55. With reference to the relevant factors to be considered by reason of Sections 117A-117D of the 2002 Act, the Applicant speaks English and is self-sufficient by reason of her work as a care assistant. There was no evidence of the Applicant's private life beyond her work and the evidence of family life was restricted to her relationship with her mother. Since expiry of the Applicant's leave as a student, she has been granted discretionary leave outside the Immigration Rules on a number of occasions.
56. The evidence of the Applicant's brother and mother was that conversation at home included Patois: see hearing replies 128 and 160-162. I find the claim that the Applicant has forgotten what was claimed to be her mother tongue of Patois to be both implausible and not credible.
57. The evidence of the Applicant's British style diet rather than Jamaica style was limited and was not fully explored. I find I can give little weight to the submissions on this particular aspect of the Applicant's lifestyle.
58. The Applicant admits to visiting Jamaica on at least one occasion, in 2003, since her arrival in the United Kingdom. She left her son's father in Jamaica when she came to the United Kingdom: see hearing replies 26 and 27. The Applicant's mother said that in the past she had tried to visit Jamaica every two or three years and her brother said that he spent one month on holiday in Jamaica every year. Both her mother and her brother stated that they had friends in Jamaica. There was no evidence of the Applicant's private life in the United Kingdom and so she has not shown that she has integrated into the Caribbean community in London or into the community at large at all.
59. The main plank of the Applicant's claim why she should be permitted to remain in the United Kingdom is her relationship with her mother and her mother's dependence upon her. There is a letter of 24 April 2015 from her mother's GP and a print-out of a medical record giving details of her medication. There was no explanation of the nature and purpose of the various medications listed in the annex to the GP's letter. The print-out also lists her medical complaints. These show the Applicant's mother has suffered from hypertension since 1993, Type 2 diabetes mellitus since 1998, osteo-arthritis of the hip, plantar fasciitis and for the past thirteen months chronic kidney disease, stage 3.
60. The GP refers to her blood pressure problem but gives no likely cause other than to record that the Applicant's mother attributes this to the Applicant's situation in the United Kingdom. There is no explanation whether or not this is linked to her blood pressure problem, even if the

hypertension dates back to 1993 and whether or not it is reasonable to attribute it to the Applicant's immigration problem which dates from about 2014.

61. Similarly, the GP's letter merely records the claim of the Applicant's mother of frequent hypoglycaemia attacks. She has suffered diabetes since 1998 and the Applicant's mother is due to see a diabetes nurse specialist about these attacks in the week commencing 27 April. There was no other evidence at the hearing and in the documentation there was no other reference to this appointment or anything arising from it.
62. The Applicant's mother has suffered from diabetes since 1998 and it would appear that she has had a considerable period of time in which to learn to live with diabetes. Other than the hypoglycaemic episodes which appeared from the GP's letter to be a new issue requiring the Applicant's mother to see a specialist nurse, there was no evidence the diabetes had become more difficult to control.
63. There was a substantial inconsistency between the evidence of the Applicant that her mother normally went to the gym twice a week and her mother's confirmation of her social and other activities outside the home as not including any attendance at a gym at hearing replies 50-52 and 113-115.
64. When it was put to the Applicant that her claim to work thirteen hours a day would appear to make it difficult for her to care for her mother in the way she described, she explained that she was an agency worker and could choose when to work and could decline work if her mother had a bad day and required her to remain at home. Whether or not the Applicant is an agency worker or on a zero hours contract, or both, it is difficult to reconcile her claim to work a thirteen hour day with her claim that she takes time off to care for her mother. Indeed her mother's evidence was that the Applicant provided tea and biscuit in the morning, her mother made her own light lunch and the Applicant cooked for them at night: see hearing replies 101 and 121-123.
65. There was no evidence of any previous bad experience which the Applicant's mother or anybody close to her might have had with home provided social services or similar and in the absence of such evidence I attach only little weight to her claim or the impact of her claim that she is fearful of being abused by social services' staff if any personal care which is delivered to her at home is delivered by social services rather than her daughter. At hearing reply 84 the Applicant's mother said the Applicant, her daughter, was the right person to care for her but this does not mean that it is inappropriate for anyone else to look after her needs. There was no explanation why in the event the Applicant was not available, the Applicant's mother's granddaughter in Tottenham, not so far from Hackney where the Applicant and her mother live, would not be able to assist.
66. I find the evidence from the Applicant and her two witnesses to be sparse and in parts embellished in a manner in which the witness most likely

thought would strengthen the Applicant's case. I have detailed examples in the preceding paragraphs.

67. The relevant test under paragraph 276ADE(1)(vi) of the Immigration Rules is whether the Applicant has no ties (including social, cultural or family) with the country to which she would have to go if required to leave the United Kingdom. I find that since her departure from Jamaica in 1999, the Applicant's ties to Jamaica have significantly weakened but having regard to the evidence given at the hearing, I am not satisfied she has shown on the balance of probabilities that she has no ties. In reaching this conclusion I have had regard to what the Upper Tribunal said at paragraph 123 of *Ogundimu*:-

"The natural and ordinary meaning of the word 'ties' imports, we think, a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. It involves there being a continued connection to life in that country; something that ties a Claimant to his or her country of origin. If this were not the case then it would appear that a person's nationality of the country of proposed deportation could of itself lead to a failure to meet the requirements of the rule. This would render the application of the rule, given the context within which it operates, entirely meaningless."

I also note what the Court of Appeal said in *YM (Uganda) v SSHD [2014] EWCA Civ 1292* at paragraph 51:-

"... The test was an exacting one. However, the exercise that had to be conducted was a 'rounded assessment of all the relevant circumstances' which were not to be confined to 'social, cultural and family' issues."

In *Bossadi (paragraph 276ADE; suitability; ties) [2015 UKUT 00042 (IAC)]* it was said that:-

"...The FtT was required to consider in the form of a rounded assessment whether the Claimant's familial ties could result in support to him in the event of his return to the DRC. In our view the Strasbourg jurisprudence understands the assessment of this matter to require the decision maker to take into account both subjective and objective considerations and also to consider what lies within the choice of a Claimant to achieve."

68. I have no doubt the Applicant and her mother consider that the Applicant's mother is absolutely dependent upon her but I have found the evidence about the nature, quality and extent of that dependence to have been at the very least embellished and to contain unexplained inconsistencies to the extent that I am not satisfied that objectively the Applicant's mother is so dependent upon her daughter that if her daughter were removed she would not reasonably be able to manage her life with dignity, if personal services were necessary and supplied by others, including social services.
69. The Applicant fails under paragraph 276ADE of the Immigration Rules and I turn to the claim under Article 8 of the European Convention outside the Rules.

70. Adopting the approach to appeals on grounds of Article 8 summarised at paragraphs 7-12 of *EB (Kosovo) v SSGD [2008] UKHL 41*, the Applicant has established a private and family life in the United Kingdom. Her proposed removal would be an interference of such gravity that it would engage the operation of Article 8. There was no suggestion that any interference would be otherwise than in accordance with the law and for the legitimate public end of the maintenance of proper immigration control. The assessment of the proportionality of the removal to that legitimate public end will depend upon the circumstances of any particular case.
71. There was no evidence before the Tribunal of the basis on which the Applicant had previously been granted discretionary leave but it would appear that the last grant of discretionary leave for three years from 3 May 2011 expired after her son's 18th birthday. The First-tier Tribunal Judge's Record of Proceedings shows that at the First-tier hearing the Applicant said she wanted to remain in the United Kingdom to further her studies and because her mother was in the United Kingdom and not in the best of health but there were no details of her mother's health and medical condition.
72. I take into account the length of time the Applicant has been in the United Kingdom with leave and that her mother does not enjoy the best of health. I also bear in mind the Applicant is self-sufficient and fluent in English. I have found the Applicant and her mother have not given evidence which has been full and frank and looking at it in the round I do not find the Applicant has shown the relationship between her mother and herself shows a dependency which is of an extent and quality such as to establish emotional ties of the type which extend beyond normal ties between a parent and an adult child and so do not cross the *Kugathas* threshold. The extent of the Applicant's private and other family life in the United Kingdom is also not such as to make her removal to Jamaica disproportionate to the need to maintain proper immigration control. It follows that the Applicant's claim under Article 8 of the European Convention outside the Immigration Rules must also fail.

Anonymity

73. There was no request for an anonymity direction and having considered the appeal I find that none is warranted.

NOTICE OF DECISION

The decision of the First-tier Tribunal contained a material error of law such that it is set aside and the following decision is substituted:-

- 1. The appeal of the SSHD is allowed.**
- 2. The appeal of the Applicant is dismissed on immigration grounds.**
- 3. The appeal of the Applicant is dismissed on human rights grounds.**

4. Anonymity direction not made.

Signed/Official Crest

Date 27. v. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal

TO THE RESPONDENT: FEE AWARD

The Applicant's appeal has been dismissed so no fee award may be made.

Signed/Official Crest

Date 27. v. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal