



**Upper Tribunal  
Immigration and Asylum Chamber**

**Appeal Number: IA/28876/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 July 2015**

**Decision and Reasons  
Promulgated  
On 21 July 2015**

**Before**

**Upper Tribunal Judge Kekić  
Upper Tribunal Judge Smith**

**Between**

**S A S  
(anonymity order made)**

**Appellant**

**and**

**Secretary of State for the Home Department**

**Respondent**

**Representation**

For the Appellant: Mr A Pipe, Counsel

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**Determination and Reasons**

**Anonymity**

Although no Rule 14 anonymity order was made by the First-tier Tribunal Judge and there was no request for one before us, we have considered it appropriate to issue one to protect the identity of the applicant's young child.

## **Details of appellant and basis of claim**

1. This matter comes before us following the grant of permission by Upper Tribunal Judge Perkins on 29 April 2015 in respect of the determination of First-tier Tribunal Judge Thomas who dismissed this article 8 appeal by way of a determination promulgated on 17 November 2014.
2. The appellant is a Guyanese national born on 11 February 1987. She arrived in the UK in 2005, aged 18, as a dependant of her mother, a work permit holder, and her leave was subsequently extended until 30 April 2010. Thereafter three applications for indefinite leave to remain were refused. The third one gave rise to appeal hearings before Immigration Judge Cheales in 2010 and Upper Tribunal Judge Waumsley in March 2012. The appeal was dismissed on both occasions. On 12 July 2012 the appellant made a further application which was refused on 3 July 2012 and forms the basis of the present appeal.
3. The appellant has a son, J, born on 5 September 2011. He is dependent upon her application. The appellant's case is that she has mental health problems and that she cannot look after her son. The grounds for permission argued that the child looked to the appellant as his sister and to her mother and step father as his parents and that a social worker had identified that it would be in the child's best interests for him to stay with his grandparents. Permission to appeal was granted on the basis that the judge had arguably not had proper regard to his rights and his best interests. Additionally, it was considered that the appellant's assertion that she was only able to cope with the help of her mother was not adequately examined.

## **Appeal hearing**

4. At the hearing before us on 13 July 2015, we heard submissions from the parties. The applicant was present during the proceedings.
5. Mr Pipe took issue with the manner in which the First-tier Tribunal Judge had dealt with the J's rights (at paragraphs 34 and 35 of the determination). He submitted that there had been an inadequate recitation of the social worker's report (specifically the contents at pp 41, 42, 45, 47 and 48 of the appellant's bundle) and no assessment of how the applicant would cope with the child if removed (at paragraph 10; determination). He submitted that the fact that the applicant's mother was a British citizen had not been considered and that the evidence had not been properly analysed. A simplistic approach had been taken with the conclusion that the applicant's mother could accompany her daughter and grandson to Guyana. He submitted that any resumed hearing could proceed on the basis of submissions although there may be a need for some updated evidence on the child's schooling.
6. In response, Mr Bramble relied on the respondent's Rule 24 response. He pointed out that the judge had used the words "if possible" when

considering the relocation of the child's grandmother; she had not made an automatic assumption that the grandmother could go. The judge had properly considered the child's best interests. He conceded that if paragraph 34 was taken in isolation, he would have difficulties defending it however he urged us to consider the determination as a whole. The judge had taken the earlier decision of the Upper Tribunal as a starting point and Upper Tribunal Judge Waumsley had raised serious credibility issues in his decision. Notably, there had been a finding that the grandmother was not solely responsible for the child's care. The information provided to the medical personnel therefore had to be treated with caution. He submitted that the judge had found that the applicant and J would be returning to other family members and would not be on their own (at paragraphs 26-28). He argued that all component factors had been considered, and that the summary of the social worker's report contained the salient points. There was no error of law.

7. Mr Pipe briefly replied. He repeated his earlier submission that the social worker's report had not been adequately considered and had not been given as much weight as the psychiatric reports. Whilst there was consideration of family members in Guyana, there was no engagement with the bond between J and his grandmother. The findings were inadequate and that affected the article 8 assessment.
8. That completed the submissions. At the conclusion of the hearing we reserved our determination which we now give.

### **Findings and conclusions**

9. We make the following findings based on the submissions made by the parties and the evidence before us.
10. The judge's findings are set out at paragraphs 17-37. Plainly she was right to take account of the adverse credibility findings of Judge Waumsley in the March 2012 determination when reaching her conclusions and we note that he raised several serious credibility issues which were not resolved before Judge Thomas. Particularly, there are concerns over the change in focus of the appeal with no mention of any mental health difficulties being raised on the appellant's behalf at that hearing.
11. Nevertheless, we are in agreement with Mr Pipe's submission that there has been an inadequate engagement with the report of Sheila Hira, a social worker, which is contained at pp. 34-52 of the appellant's bundle. Despite Mr Bramble's able submissions, we do not consider that a brief summary of the report early on in the determination is indicative of the judge's consideration of same. There is, we accept, an engagement with the evidence of Dr Purdy, Dr Persaud and Dr Silvert but only a brief reference to Ms Hira's report at paragraph 34. The judge only considers that the applicant has not caused J any harm but she fails entirely to deal with the issue of whether the appellant would be able to cope with J if removed and what the effect would be on him if she was unable to. We

accept Mr Pipe's submission that no thought has been given to the close bond between J and his grandmother and that there is no engagement with what the situation would be for J if his grandmother did not accompany him and the appellant to Guyana. Her own ability to do so and whether such an expectation is reasonable are also matters that do not form part of the judge's assessment. As such we must find that her findings and conclusions are flawed and cannot stand. In accordance with Mr Pipe's submissions, we do not preserve any findings made and the determination is only relevant as a record of proceedings.

12. We have given thought to Mr Pipe's preference for a resumed hearing without oral evidence however in view of the serious credibility issues raised in respect of both the appellant and her mother, we would suggest he reconsiders his position. At the very least we require full witness statements from both the appellant and her mother addressing the credibility points raised by the Upper Tribunal in March 2012 and full directions are set out below.

### **Decision**

13. The First-tier Tribunal Judge made errors of law and her decision is set aside to be remade at a later date to be notified.

### **Directions**

14. No later than seven working days before the hearing the appellant is to file and serve on the parties all further documentary evidence relied on including a skeleton argument and witness statements from the appellant and her mother. The statements shall include an update of the position regarding J and the appellant and shall address the credibility issues raised by Upper Tribunal Judge Waumsley. All the evidence shall be served in duplicate on the Tribunal and shall be contained in an indexed and paginated bundle.

**Signed:**

**Upper Tribunal Judge Kekić**

20 July 2015