



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

Appeal Number: IA/34066/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 November 2015**

**Decision and Reasons  
Promulgated  
On 19 November 2015**

**Before**

**Mr Justice Collins  
Deputy Upper Tribunal Judge Pickup**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**Carolyn Findley  
[No anonymity direction made]**

Claimant

**Representation:**

For the claimant: Ms A Benfield, instructed by Divine Legal Practice

For the respondent: Mr A Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The claimant, Carolyn Findley, date of birth 30.10.81, is a citizen of Jamaica.
2. The Secretary of State appealed against the decision of First-tier Tribunal Judge Monaghan promulgated 17.3.15, allowing, on human rights grounds, the claimant's appeal against the decision of the Secretary of State to refuse her leave to remain in the UK on the basis of private and family life. The Judge heard the appeal on 4.3.15.

3. First-tier Tribunal Judge Reid granted permission to appeal on 14.5.15.
4. Thus the matter came before Deputy Upper Tribunal Judge Pickup on 16.9.15 as an appeal in the Upper Tribunal. Judge Monaghan made it clear that the appeal would not have been allowed on the basis of the claimant's private life, her extended ties to family in the UK, or on the basis of her private life with her partner, all established at a time when her immigration status was precarious and her presence unlawful. Those findings were not challenged and there is no cross appeal. It follows that the only live issue is the claimant's relationship with her grandmother, which prompted the First-tier Tribunal judge to consider compelling circumstances justifying allowing the appeal outside the Rules on the basis of this relationship.
5. In summary, Judge Pickup found such error of law in the making of the decision of the First-tier Tribunal as to require the decision of Judge Monaghan to be set aside and remade. In summary, Judge Pickup found that there had been inadequate consideration of the very significant public interest in the claimant's removal from the UK, that the assessment of the claimant's circumstances was unbalanced, gave inadequate weight to the fact that the claimant could not meet the Rules, and that before going on to consider article 8 outside the Rules, the judge failed to adequately identify the compelling circumstances justifying doing so. Further, the judge failed to give sufficient weight to the claimant's appalling immigration history and disregard for the law in the article 8 assessment. In error, the judge also relied on Chikwamba [2008] UKHL 40, to find it would not be proportionate to expect the claimant to leave the UK and apply for re-entry from abroad. Chikwamba is not applicable on the facts of this case, particularly as there is no route for entry from outside the UK on the basis relied on by the claimant.
6. Judge Pickup set the decision of Judge Monaghan aside and reserved the remaking of the decision in the appeal to the Upper Tribunal. As this is an in-country appeal, Judge Pickup gave directions granting leave for further evidence to be adduced as to the circumstances of the claimant and her grandmother. Judge Pickup directed the provision on behalf of the claimant of a single consolidated bundle, indexed and paginated, containing all objective and subjective material relied on, to include witness statements and skeleton argument.
7. Hence the matter came before us on 5.11.15 sitting as a panel of the Upper Tribunal. We heard oral evidence from the claimant and the submissions of the representatives of both the claimant and the Secretary of State. We announced our decision to allow the appeal outside the Rules on human rights grounds, reserving our reasons, which we now give.
8. The relevant background can be summarised briefly as follows. The claimant first came to the UK as a family visitor on 11.7.01. An application to extend her leave was refused, but she did not leave and has been an overstayer since August 2001. She has worked illegally and received

financial assistance from relatives. It follows that her status in the UK was from the outset precarious and following the expiry of her leave became unlawful. The claimant relies on her relationship with her mentally and physically ill grandmother, for whom she provides what is alleged to be essential care. The claimant also developed a relationship with a partner. They have no living children and do not live together. The claimant also has several family relatives in the UK.

9. The claimant asserts that she has a close family tie to her grandmother, who suffers from paranoid schizophrenia and several physical ill-health conditions. It is asserted that the claimant provides essential care for her grandmother, despite evidently spending considerable periods living apart from her and was in fact working during some of this time. She also spent time developing a relationship with a partner.
10. It was common ground that the claimant could not succeed under the Immigration Rules. There is no appeal or cross appeal against the implicit findings in the decision of the First-tier Tribunal dismissing the appeal on immigration grounds. The single issue in the remaking of the decision in the appeal is the family life relationship between the claimant and her grandmother. Neither the private life of the claimant in the UK nor her alleged relationship with a 'partner' in the UK would provide any compelling circumstances to justify granting leave to remain outside the Rules on the basis of article 8 ECHR, as the First-tier Tribunal held and we endorse and adopt that part of the decision.
11. In remaking the decision in the appeal, we take into account as a very significant factor relevant to any proportionality assessment that the claimant cannot meet the requirements of the Rules for leave to remain. The Rules do not in fact recognise a private or family life relationship such as that between the adult claimant and her grandmother. She could never have obtained entry clearance under the Rules to come to the UK to look after her grandmother. The nearest category would be that of an adult dependant relative, in respect of which the Rules in Appendix FM set out a very high threshold and for which Appendix FM-SE requires cogent independent evidence.
12. However, we have to consider the circumstances now prevailing and thus have carefully considered the nature and extent of the relationship that has developed between the claimant and her grandmother and continues to the present day. Whilst at the time of the First-tier Tribunal appeal hearing, the grandmother had been detained under section 2 of the Mental Health Act 1983, and thus was not being cared for at all by the claimant, she was subsequently discharged, in May 2015, and returned to her own home, cared for full-time by the claimant with the assistance of three state-funded carers, each of whom comes into the home for an hour each day. This is a material change in circumstances from those prevailing at the date of the First-tier Tribunal appeal hearing.
13. Whilst the decision of the First-tier Tribunal to allow the appeal was flawed

on the circumstances prevailing at the date of decision, amounting to an error of law, for the reasons set out herein, we find that the family life circumstances of the claimant's relationship with her grandmother are sufficiently compelling and insufficiently recognised under the Rules so as to merit consideration outside the Rules under article 8 ECHR and in fact to justify leave to remain outside the Rules, at least for a discretionary period.

14. In particular, we find that there is now such dependency between the claimant and her grandmother that when considering in particular the family life rights of the grandmother, more so than those of the claimant, these considerations outweigh the public interest in removal of the claimant, such that it would be disproportionate and unduly harsh for the grandmother to be deprived of the care, support and family relationship she now has with the claimant.
15. In favour of the public interest in removal of the claimant, we take into account that she is an illegal overstayer who has also worked illegally, flouting the law. She has an appalling immigration history; consequently the public interest in her removal is high.
16. We take into account section 117B of the 2002 Act and in particular that immigration control is in the public interest and that it is in the public interest that persons seeking to remain in the UK are financially independent, which the claimant is not. Section 117B also requires us to accord little weight to the claimant's private life, being precarious and unlawful, and that little weight should be given to any relationship she has developed whilst in the UK unlawfully. These are all significant factors weighing against the claimant in the proportionality balancing exercise.
17. We also bear in mind that the claimant is not the only person who is able to support her grandmother, a British citizen who is entitled to state care and support. There are also other family members, her children, who are also involved to greater or lesser degree in the grandmother's life. That they choose not to do so, because they have full lives with work and family responsibilities, and instead provide the claimant with financial support to live in the grandmother's home and care for her, is insufficient by itself to justify granting leave to remain. If the claimant is removed the grandmother will not be left isolated at home, without her personal needs being met, as is clear from the medical evidence.
18. We also note that the claimant has spent significant periods not living with her grandmother, and at the date of the appeal hearing in the First-tier Tribunal the grandmother was in the full-time indefinite care of mental health professionals for all her physical and mental health needs, and thus not in the claimant's care at all. However, the grandmother is now back at home and in the care of the claimant.
19. In granting permission to appeal, Judge Reid noted that the First-tier Tribunal Judge placed considerable weight on a letter of January 2015 from

a consultant psychiatrist. “However, it is arguable that his report was prepared without important information including the appellant’s immigration status, the appellant’s periods of absence from her grandmother or other members of the family periodically residing with the grandmother. The grounds disclose an arguable error of law.” In our view that was an irrelevant consideration. It is not the business of a consultant psychiatrist to address the immigration status of the claimant carer of the grandmother. However, for the reasons set out in the error of law decision of Judge Pickup, the decision to allow the appeal on human rights grounds was flawed, amounting to an error of law and was thus set aside.

20. We bear in mind that Article 8 is not a shortcut to compliance with Immigration Rules. The claimant does not gain a stronger case to remain in the UK the greater the degree to which she did not meet the Rules. It is necessary to approach article 8 through the lens of the various routes for settlement provided by the Immigration
21. We adopt the approach endorsed by the Court of Appeal in Singh v SSHD [2015] EWCA Civ 74, and again in SSHD v SS (Congo) & Ors [2015] EWCA Civ 387, where the Court of Appeal held that it is clear that whilst the assessment of Article 8 claims requires a two-stage analysis, and there is no threshold or intermediary requirement of arguability before a decision maker moves to consider the second stage, whether that second stage is required will depend on whether all the issues have been adequately addressed under the Rules. In other words, there is no need to conduct a full separate examination of article 8 outside the Rules where in the circumstances of a particular case, all issues have been addressed in the consideration under the Rules. However, it follows in this case that there could have been no proportionality assessment within the Rules, as there is no Rules route to remain on these circumstances. The Rules have only limited relevance to an article 8 consideration outside the Rules, but any such consideration should be made through the lens of the Rules and the fact that they represent the Secretary of State’s proportionate response to private and family life claims under article 8 ECHR.
22. Our attention was drawn to the various letters from Dr Mike Payne, a consultant Old Age Psychiatrist, of whom the grandmother is his patient. He confirms that the grandmother, Mrs Thelma Harvey, suffers from chronic paranoid schizophrenia and early vascular dementia. Of significant is Dr Payne’s evidence that, consistent with her mental ill-health, Mrs Harvey can be suspicious of and paranoid towards other family members. However, she has become used to and trusts the claimant, with the result that the claimant can provide care that other family members would not be able to. Dr Payne is of the view that other family members would not be able to provide sufficient care to maintain an acceptable standard of living in the home. In a development since the First-tier Tribunal Mrs Harvey is now largely bedbound and doubly incontinent. Although she has a care package from the council, she needs additional care between the domiciliary carer visits, which is provided by the claimant. “Without this additional input, it is possible that Mrs Harvey may need residential care

sooner rather than later. Carolyn is also able to provide emotional support and company, and can engage her grandmother in daytime activities. All these things reduce the risk of relapse and the likelihood of further admission to hospital." The witness statement of her daughter, Ms Yvonne Harvey, dated 27.10.15, further confirms the medical and bedbound state of the grandmother. Her attached letter explains that during the day the grandmother has carers who attend to her washing and dressing and personal hygiene needs, four times a day. The claimant assists the carers by operating the hoist to manoeuvre her from and to the bed. She is registered as a carer and administers her grandmother's medication. At nights the claimant attends to Mrs Harvey's needs alone. She also maintains the home, including the shopping, cleaning and attending to the bills. We accept the evidence that Mrs Harvey will only accept food prepared by the claimant. Clearly, with the mental disorder identified, trust in a familiar face and care by a relative rather than state carers are important elements. Similarly, compliance with anti-psychotic and other medication, which is crucial to the mental state of Mrs Harvey, is facilitated by the claimant. In his letter of 4.9.15 Dr Payne describes the claimant's care for her grandmother as follows: "Ms Findley has been supporting her grandmother very ably and helping her maintain an adequate standard of living. Without Ms Findley's input it is likely that Mrs Harvey will need a much larger care package." It is also stated that Mrs Harvey "lacks motivation and will not do things unless encouraged and supported. She tends to refuse her medication and needs encouragement to accept this."

23. In an earlier letter of 15.1.15, Dr Payne explained, "Carolyn offers her grandmother security and a better quality of life whilst in her care. Due to her illness Carolyn is the only person Thelma can live with because she is somebody she sees every day and they have been together for a long time. Thelma cannot be left alone for even a short time. Carolyn helps to calm her down. She understands her grandmother's needs."
24. It is clear from the evidence now placed before the tribunal, only part of which has been summarised above, that the role of the claimant is crucial to the continued well-being of her grandmother and that without her assistance, which goes beyond the role of merely a carer, it is likely that Mrs Harvey would not be able to remain in her home.
25. In summary, as things stand at the present day, the care team work alongside the claimant to enable the grandmother to have an acceptable quality of life in her own home. We are satisfied on the evidence that without the claimant's significant contribution, Mrs Harvey would not be able to remain in her own home with the quality of life she has. We accept that this quality of life of the grandmother is very significantly dependent on the emotional and practical care and support provided by the claimant. We are satisfied that no one else could provide such a level of emotional and practical support to Mrs Harvey. This relationship goes beyond that of a carer to qualify as family life within the ambit of article 8 ECHR. If the claimant is removed it is virtually inevitable that Mrs Harvey will have to

be placed in a residential home with all that entails for the quality of her life. These are unusual and compelling circumstances not recognised in the Rules and which, in our view, justify consideration outside the Rules under article 8 ECHR.

26. We noted in the claimant's evidence that the period of time in 2007 when she was not living in the grandmother's home, it was because of her mental ill-health that she was sent away in the belief that her children would look after her. We accept the evidence that the claimant in fact continued to visit and care for her grandmother on a regular basis, despite not being resident in the home. A similar situation prevailed between 2008 and 2009 when Mrs Harvey relapsed. Between August 2013 and December 2014 the claimant was living in Bedford, but still attended on her grandmother at least five times a week. It is important to note when considering this history that over time Mrs Harvey's condition has worsened. She has only latterly become bed-bound and it was not until December 2014 that she required carers. The situation at the present day is significantly different and in particular different to that which prevailed at the time of the First-tier Tribunal, not least because at that time Mrs Harvey was detained in hospital.
27. We also accept the evidence that the claimant's illegal working was for rather short periods of time and often whilst other carers were able to tend to her grandmother's needs.
28. In all the circumstances, we find that this is an exceptional case with significant compelling circumstances, which in our view outweighs the also significant public interest factors summarised above in favour of the claimant's removal. We conclude that it would be disproportionate and unjustifiably harsh to remove the claimant at the present time. The situation may change; Mrs Harvey may in due course with deterioration in her health have no alternative but to go to a 24 hour residential care or nursing home, at which point the role of the claimant in her grandmother's family would substantially diminish. It follows that the circumstances do not in our view justify a grant of indefinite leave to remain but rather a limited period of discretionary leave, given the claimant's unattractive immigration history and our findings which centre principally on the family life of Mrs Harvey more than those of the claimant.

## **Decision**

The appeal is dismissed on immigration grounds.

The appeal is allowed on human rights grounds.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

Mr Justice Collins  
Deputy Upper Tribunal Judge Pickup

**Anonymity**

We have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an anonymity order. Given the circumstances, we make no anonymity order.

**Fee Award**

**Note: this is not part of the determination.**

In the light of our decision, we have considered whether to make a fee award.

We have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

We make no fee award.

Reasons: The appeal has only been allowed because of the rights of the claimant's grandmother. Outside those considerations the claimant's appeal lacks all merit.



**Signed**

**Deputy Upper Tribunal Judge Pickup**



**Dated**

Mr Justice Collins  
Deputy Upper Tribunal Judge Pickup