



IAC-FH-CK-V1

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

Appeal Number: IA/45908/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20<sup>th</sup> November 2015**

**Decision & Reasons Promulgated  
On 16<sup>th</sup> December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MS ESAMINE SHARPE  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Fijiwala, Senior Home Office Presenting Officer

For the Respondent: Mr A Otchie, Counsel instructed by Calices Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Anstis promulgated on 17<sup>th</sup> June 2015, in which he allowed the appeal of Ms Sharpe on Article 8 grounds within the Immigration Rules. Ms Sharpe's appeal had been against a decision of the Secretary of State dated 28<sup>th</sup> October 2014 refusing her application for leave to remain and issuing directions for her removal pursuant to section 10 of the Immigration and Asylum Act 1999. Permission to appeal was granted by First-tier Tribunal Judge P J M Hollingworth by a decision dated 4<sup>th</sup> September 2015.

## **Decision of Judge Anstis**

2. Judge Anstis noted that the Secretary of State was not represented at the hearing before him and that the evidence provided by Ms Sharpe was unchallenged. There were no issues of credibility in the reasons for refusal letter and as a result Judge Anstis accepted the evidence of Ms Sharpe and her husband Mr Brown to be credible in all material respects.
3. The judge set out Ms Sharpe's own history and then in paragraph 9 of his decision found that Mr Brown was a British citizen born in Jamaica on 26<sup>th</sup> March 1939. The judge found that Mr Brown had lived and worked in the United Kingdom for the last fifty-four years and had acquired British citizenship in 1964. It was found that he had friends in Jamaica but no remaining close relatives, and that he visited Jamaica about every three or four years to stay for about two weeks at a time. In this country he worked full-time and he has seven children, six of whom were adults but one of whom was still a minor, born on 20<sup>th</sup> May 2000. He had regular direct contact with his minor daughter, albeit that she lived with her mother and not with Mr Brown.
4. Having made his primary findings of fact, Judge Anstis went on and directed himself to the relevant law. He considered paragraph 276ADE in respect of Ms Sharpe herself. He concluded on that issue that she could not satisfy the Rule in her own right.
5. The judge then went on to consider the case under the exception EX.1 and EX.2 within Appendix FM to the Rules. He found that Mr Brown would face "very significant difficulties" in continuing his family life with Ms Sharpe back in Jamaica. These very significant difficulties were said to flow from the length of time Mr Brown had been living and working in this country and the presence of his children and grandchildren within the United Kingdom. It was said by the judge that Mr Brown would be regarded as a foreigner if he went to live in Jamaica and that Jamaican society had developed and changed so as to be unrecognisable from that which Mr Brown would have known when he left many years ago.
6. The judge then went on to conclude that even if the very significant difficulties could be overcome if he went to Jamaica it would still impose "very serious hardship" upon Mr Brown and it was said that this would arise primarily because it would involve separation from his seven children and four grandchildren, all of whom live in the United Kingdom.
7. As a result of the foregoing Judge Anstis allowed the appeal under the Immigration Rules and did not go on to consider the Article 8 claim outside of the Rules.

## **The hearing before me**

8. Ms Fijiwala sought to rely on the Secretary of State's grounds of appeal. She referred me to the decision of the Court of Appeal in Agyarko [2015] EWCA Civ 440 at paragraph 21. Ms Fijiwala submitted that insurmountable obstacles imposed a high threshold and in this case the First-tier Judge had not applied the correct test and had not had regard to the fact that Ms Sharpe and her husband Mr Brown did not have a choice as to where they wanted to live.
9. Mr Otchie submitted that the reasons given by the judge were sufficient, there were correct self-directions as to the law, and that the judge considered relevant factors and gave due weight to them. He referred me to paragraph 23 of the Agyarko decision and to paragraph 18 of the case of AB (Jamaica) v Secretary of State for the Home Department [2007] EWCA Civ 1302.
10. In response Ms Fijiwala submitted that the judge should have been aware of the Secretary of State's guidance as to the meaning of insurmountable obstacles. Although she accepted that that guidance was not before Judge Anstis she noted that it was a document that was in the public domain.

### **Decision on error of law**

11. I conclude that there are no material errors of law in the decision of Judge Anstis.
12. He was fully entitled to make the relevant findings of fact that he did, the credibility of Ms Sharpe and Mr Brown not having been challenged by the Secretary of State at any stage. There are clear findings of primary fact made, particularly at paragraphs 8 and 9 of the decision. In respect of the law Judge Anstis in my view directed himself impeccably, setting out the relevant provisions, in particular EX.1 and EX.2 of Appendix FM to the Rules (the suitability and eligibility requirements of Appendix FM having been accepted as satisfied by the Respondent previously).
13. The judge then proceeded to consider to the relevant questions to be asked when applying EX.1 and EX.2. The judge took into account relevant factors and attributed to them the weight he deemed fit. In my view the factors accounted for were all relevant and nothing relevant was left out of the equation. In particular, the judge was fully entitled to have regard to, and to place whatever weight he deemed fit, upon Mr Brown's very lengthy residence in the United Kingdom (some fifty-four years) and the fact that he still had a minor daughter in the United Kingdom with whom he had regular and direct contact (putting to one side the existence of the six adult children). This important factor is something to which the grounds make no reference.
14. The judge then quite properly went on to consider the second limb of EX.1, namely whether or not the very significant difficulties could be overcome, or if they would in any event cause very serious hardship. The judge at paragraph 18 gave careful consideration to the relevant questions

and concluded that although the difficulties may possibly be overcome it would nonetheless cause him very serious hardship, that being the applicable test under EX.2. The judge made particular reference to the fact that going to live in Jamaica would separate Mr Brown from his seven children and four grandchildren, and on that basis he allowed the appeal under the Rules.

15. Turning to the Secretary of State's grounds of appeal. In my view they amount to what I described at the hearing as a thinly veiled irrationality challenge, and I quote from paragraph 3 of the grounds: "It is submitted on the facts of this case that the judge was wrong in law to come to that conclusion" (i.e. the conclusion relating to EX.1 and EX.2). The contents of paragraphs 3 and indeed 4 of the grounds are in essence asserting that the conclusions reached by Judge Anstis were simply not open to him. I have in mind the recent decision of the President in Greenwood (No. 2) [2015] UKUT 629 (IAC) in which he reminded tribunals to keep a careful eye out for such irrationality challenges, and if they were in substance being raised, to then apply the elevated threshold appropriate in such cases. In my view the present case is just such an example: the Secretary of State is in effect asserting that the judge's conclusions were perverse in light of the applicable law. It is clear to me that such a challenge fails, given the correct legal direction by Judge Anstis, the primary findings of fact made and the fact that the weight attributable to the relevant facts was a matter for that judge.
16. In the alternative, if the grounds are actually to be properly classified as a reasons challenge rather than an irrationality challenge, I nonetheless conclude that there are no material errors of law in that regard. Adequate reasons were given within the context of very clear and correct legal direction. The judge has not sought to conflate a reasonableness test with that of insurmountable obstacles, as there is nothing whatsoever to suggest that he was applying an impermissible lower threshold when reaching his conclusions under the Immigration Rules. The Secretary of State's challenge has in reality been nothing more than a disagreement with a well-reasoned decision of the First-tier Tribunal.
17. I would add that the failure of the judge to expressly mention the Respondent's guidance is immaterial. Quite apart from the fact the guidance was not before the judge, and was not, as far as I can see, specifically relied on by the Respondent (bearing in mind her absence at the hearing before the judge), Ms Fijiwala has not provided me with any tenable submission as to how the document could have made any difference to the outcome. The guidance is what it says it is, and as I have made clear earlier, the judge directed himself correctly as to the law.
18. For all these reasons the Secretary of State's appeal to the Upper Tribunal is dismissed and the decision of the First-tier Tribunal stands.

### **Notice of Decision**

**The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.**

**The Secretary of State's appeal to the Upper Tribunal is therefore dismissed.**

**The decision of the First-tier Tribunal stands.**

No anonymity direction is made.

Signed

Date: 4 December 2015

Deputy Upper Tribunal Judge Norton-Taylor

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 4 December 2015

Deputy Upper Tribunal Judge Norton-Taylor