



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

Appeal Number: IA/04902/2015
IA/04906/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 22 February 2016**

**Decision & Reasons Promulgated
On 26 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**[CM]
[AU]**

Respondents

Representation:

For the Appellant: Mr Avery a Home Office Presenting Officer

For the Respondent: Ms Hulse of Counsel

DECISION AND REASONS

Background

1. [CM] is a Jamaican national born on 4 April 1969. [AU] is her daughter, is also a Jamaican national, and was born on 5 October 2007 in the United Kingdom. The Secretary of State refused the applications for Indefinite Leave to Remain on 19 January 2015. The appeals against that decision were allowed by First-tier Tribunal Judge Majid ("the

Judge”) following a hearing on 27 August 2015. For the sake of consistency with the decision in the First-tier Tribunal I will hereafter refer to [CM] and [AU] either by their names (where appropriate) or as the Appellants and to the Secretary of State as the Respondent.

2. In the letter of 19 January 2015 the Respondent noted that [CM] entered the United Kingdom on 20 February 2002 as a visitor. Her leave was extended to 20 August 2002. Her application for leave to remain was refused on 3 December 2002. She has been an overstayer since then. Subsequent applications on 18 February 2004, 31 March 2010, and 28 September 2012 for leave to remain were refused.
3. The basis of this refusal was that;
 - (1) [CM] had been in breach of immigration laws by overstaying by more than 28 days,
 - (2) [CM] had not been here for 20 years,
 - (3) Despite [AU] having lived here for 7 years and all her life, it would not be unreasonable to expect her to return to Jamaica with [CM] (who had sole responsibility for her) as they would go as a family unit,
 - (4) It is accepted that there may be some initial difficulty on returning to Jamaica, and, whilst the material quality of life in Jamaica may not be the same as here, this does not give a right to remain,
 - (5) Temporary hardship can be overcome given the common language and [CM]’s familiarity with Jamaican customs and culture,
 - (6) Family life was established in the knowledge she could be removed at any time,
 - (7) Removal is proportionate with the need to maintain immigration control,
 - (8) [CM] has not lost ties to Jamaica having lived there for 32 years,
 - (9) As [CM] does not have leave to remain here, [AU] does not have a parent who provides sole care for her who has any form of leave to remain here,
 - (10) [AU] is able to adapt to life in Jamaica given her tender age and as she will have the support of [CM] who can maintain and accommodate her,
 - (11) [CM] has 2 sons in Jamaica with whom they can reside and support each other,
 - (12) [CM] can be treated for epilepsy and depression in Jamaica where there is a functioning health service,
 - (13) [AU]’s ADHD, obstructive sleep apnoea, asthma, eczema, and Sickle Cell trait are not life threatening and are all treatable in Jamaica,

(14)[AU] can be educated in Jamaica where there is a functioning education system, and

(15) Taking all the above into account removal would be lawful, in accordance with the immigration rules, and bearing in mind s55 of the Borders, Citizenship, and Immigration Act 2009, proportionate to the need to maintain the integrity of immigration control.

The Judgement

4. In the determination the Judge said;

“[2] I have read this refusal carefully and have taken into account its text in assessing this case, paying specific attention to the justifications advanced for the negative decision appealed against.

[3] I put on record that in considering this appeal I shall bear in mind the legal provisions of the relevant paragraphs of the Immigration Rules, HC 395 (as amended). They are detailed but I have borne every provision of these paragraphs in mind meticulously during the assessment of the Appellants’ case. I am also taking into account the new changes in the Rules brought into force on 9 July 2012 which materially changed the application of Article 8 of the ECHR. The provisions of the Immigration Act 2014 are also taken into account.

...

[6] ex parte Gondolia [1991] Imm A.R..591 ... advises junior judges not to give reasons for every finding of fact and waste paper in detailing obvious reasons ...

...

[8] I have outlined the evidential elements of the evidence adduced on behalf of the Appellants which are relevant to the fair disposal of this appeal. I have taken into account all of the documentary and oral evidence in making up my mind on factual issues. To avoid repetition, I shall refer to some evidence in my deliberation below.

[9] It is not incumbent upon me to isolate every single piece of evidence and indicate whether I have found it relevant to the issue. I am only obliged by the superior precedents to give “sufficient and adequate” reasons and I am not under a duty to refer to each and every piece of evidence and it therefore does not follow that because I have not referred to certain specific facts, they have not been taken into account.

[10] In this Determination I am confining my reasons to the dispositive aspects of the case. I have carefully perused the statements of the Principal Appellant as well as other documents to reach the following conclusions:-

- (a) I do have sympathy for the Principal Appellant that the Consent Order of 31 March 2015 did not bring any relief to her. Indeed the “best interests” of the child ought to have been considered and the Appellant should have been given the benefit of discretion in light of this fact.
- (b) The Appellant’s child has lived here over 7 years in the UK and she should be helped, bearing in mind that persons from Jamaica were given especially lenient treatment by UK immigration law. The fact that the child’s father is not very cooperative with the

Principal Appellant should not undermine the generous treatment of the child by immigration law and her best interests are expressly stated not to be undermined by the fact that the conduct of other people has the aim of facilitating immigration to the UK – children should not be penalised for the misconduct of others over which they do not have any control.

- (c) This case has to be dealt with by focusing on the best interests of the child and the lenient support given to children by the law of the UK as clear from the subsequent elaboration of the relevant law on this issue. Of course the Children's Convention 1989 should not be ignored by this law."

5. The findings made by the Judge are;

"[13]the Second Appellant has lived in the UK for more than 7 years and (sic) that her best interests should be taken into account and on that basis alone, any judge could allow this appeal.

...

[25] the child should not be uprooted ...

6. The Judge summarised aspects of the law regarding Article 8 of the ECHR, and s55 of the Borders, Citizenship, and Immigration Act 2009 [15 to 24].

7. The Judge stated;

"[26]Accordingly, in view of my deliberations in the preceding paragraphs and having taken into account all of the oral and documentary evidence as well as the submissions at my disposal ... I am persuaded that the Appellants come within the relevant immigration law, as amended."

The grant of permission

8. First-tier Tribunal Judge Hollingworth granted permission to appeal (7 January 2016) on the ground that;

"... an arguable error of law has arisen in relation to the extent of the reasoning set out by the Judge in making his findings and in relation to the application of the law to the facts".

The Respondent's position

9. There is an absence of reasoned findings. The only explanation is that the Judge was persuaded by the evidence. There is no indication of balancing the evidence, or considering the relative merits of different strands of evidence. No regard was given to s117B (6) of the Immigration Act 2014 or EV (Philippines) and Others v SSHD [2014] EWCA Civ 874, and the guidance in Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 00197 (IAC) has not been applied.

The Appellant's position

10. It states in the rule 24 notice [6] that [CM] is not arguing that her medical condition requires her to have leave to remain. It is based on both of the Appellants medical conditions and the private and family

lives they have established. [CM] has given birth to [DU] on 6 January 2016. [AU] has lived here all her life which is over 8 years and attends primary school, and [CM] has lived here for almost 14 years. There have to be clear reasons for departing from the duty under s55 of the Borders, Citizenship, and Immigration Act 2009. There are compelling and exceptional circumstances that warrant discretion being applied. Article 3 of the ECHR has not been applied. The Judge made findings open to him. The grounds are nothing more than a disagreement with those conclusions.

11. Ms Hulse added that the Judge was not required to give full reasons. The Respondent had made no findings under s55 of the Borders, Citizenship, and Immigration Act 2009. There is judicial knowledge that Jamaicans are treated more leniently than others as there are no visa restrictions. The Judge simply used legal shorthand to show what facts he had considered. Reliance was placed on her skeleton argument and JO and Others (section 55 duty) Nigeria [2014] UKUT 00517 (IAC) and ZH (Tanzania) v SSHD [2011] UKSC 4.

Discussion

Ground 1 - "adequacy of reasons"

12. Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC) was followed by Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC). They guide me to the view that it is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for Judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.
13. The Judge's determination is wholly inadequate. The Judge entirely failed to engage with the Respondent's case and the concerns I have identified at [3] above. The exposition of some legal principles in the Judgement [15 to 24] is not a substitute for analysing the evidence and making findings on contested core issues in the case. There was no attempt, for example, to make findings on the extent of the Appellants' health issues, what support they would have in Jamaica from family or professionals, and there is no evidence to back up the bald assertion [10 (2)] "that persons from Jamaica were given especially lenient treatment by UK immigration law". As pointed out by Ms Hulse the Judge entirely ignored the Article 3 claim however unmeritorious it may seem.

Ground 2 - Section 117B of the Immigration Act 2014

14. The Judge made no reference to s117 of the Immigration Act 2014. The only oblique reference to it is in the reference to the Immigration Act 2014 [3 of the Judge's determination]. There is no analysis of the

public interest provisions of s117 or how it applies or weighs in the balancing exercise in this case. In my judgement there was therefore a material error of law in the manner in which the Judge dealt with S117 as he simply ignored it.

Ground 3 – s55 Best interest of child

15. The Judge referred [10 (c)] to the “Children’s Convention 1989”. I am unaware of any such Convention and he gives no indication of what he is talking about or what relevance it has. In taking into account a Convention that does not appear to exist he has materially erred. Perhaps he meant the Children Act 1989. If he did he gives no indication of which provisions he was referring to. He refers to Azimi-Moyad but does not explain why the starting point of remaining with her mother who was to be removed and who gives her stability is over shadowed in the balancing exercise by the benefits of staying here. Indeed there is no balancing exercise at all.

Decision

16. For all these reasons, in my judgement there were therefore multiple material errors of law in the manner in which the Judge dealt with the Respondent’s concerns as he simply ignored them, and the Respondent had no idea why she had lost. Gondolia, Budhakothi, and Shizad do not provide an exemption for a Judge to ignore the core disputes in the case or make findings upon them.

Remaking the decision

17. The making of the decision by the Judge did involve the making of an error on a point of law for the reasons I have already given on both grounds contended.
18. I set aside the decision.
19. Mr Avery submitted that it was appropriate to remit the matter back to the First-tier Tribunal as there had been no findings. Ms Hulse agreed. I agreed given the wholly inadequate determination that there was no alternative but to remit the matter back to the First-tier Tribunal.
20. I therefore direct that the matter be set down for a *de novo* hearing at Taylor House on the first available date with a time estimate of 3 hours given the number of potential witnesses. No interpreter is required.

Signed:
Deputy Upper Tribunal Judge Saffer
23 February 2016