



IAC-FH-CK-V1

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

Appeal Number: IA/30292/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 2nd December 2015**

**Decision & Reasons Promulgated
On 7th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MR MICHAEL ANTHONY ANDERSON
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Padyna, Counsel instructed by Trott and Gentry LLP
Solicitors

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Jamaica, appealed to the First-tier Tribunal against a decision of the Respondent dated 9th July 2014 refusing him leave to remain in the United Kingdom on the basis of private and family life under Appendix FM of the Immigration Rules and paragraph 276ADE of the Immigration Rules. Judge of the First-tier Tribunal Dean dismissed the appeal and the Appellant now appeals with permission to this Tribunal.

Background

2. The background to this appeal is that the Appellant claims that he lived in Jamaica for the first twelve years of his life. He claims that he does not remember his mother and he lived with his father but because his father was abusive he moved to live with a neighbour called Momma, who was not a relative but a respected person in the neighbourhood with whom he stayed until things calmed down and then returned to his father. He said that before he left Jamaica he was staying with Momma more or less all of the time. He says that it was Momma who arranged his visits to the United Kingdom where he stayed with her daughter, Linda.
3. The Appellant first came to the UK in 2001 and says that he returned to Jamaica after his 12th birthday. He says that he then returned to the UK on 3rd August 2002 with a visitor's visa valid until 3rd February 2003. However, he did not leave the UK when his visa expired and has remained here since. In 2008 he was arrested in a routine police check when it was established that he had no leave to remain in the UK and was served with a notice informing him that he was an overstayer. He was required to report regularly and when he reported on 25th July 2012 the Appellant was detained and informed that he would be removed to Jamaica on 1st August 2012.
4. Following an application for judicial review the Respondent cancelled the removal directions. On 9th March 2014 the Appellant was arrested for possession of a class B drug and subsequently cautioned. On 20th May 2014 an application was made on the Appellant's behalf for his case to be considered on human rights grounds. This application was refused on 9th July 2014 and fresh removal directions were issued. The Appellant claims that some time after his arrival in the UK he became friends with a woman called Tina Glenville and her sons and that he went to stay with her.
5. The judge considered the relevant provisions of 276ADE(vi) which, at the date of the decision provided that the requirements to be met by an applicant for limited leave to remain on grounds of private life in the UK are that, at the date of application, the applicant: (vi) is aged 18 years or above, has lived continuously in the UK for less than twenty years but has "no ties (including social, cultural or family) with country to which he would have to go if required to leave the UK".
6. The judge considered the evidence and concluded that the Appellant has ties in Jamaica and therefore did not meet the requirements of paragraph 276ADE(vi). The judge went on to consider Article 8 of the European Convention on Human Rights outside of the Immigration Rules. In that context the judge considered the evidence of the relationship between the Appellant and Ms Glenville. He stated at paragraph 25 that it was submitted that the close bond the Appellant has formed with Ms Glenville should be given significant weight. However, the judge found that the claimed close bond was in fact tenuous and that Ms Glenville was an unimpressive witness and that her evidence lacked credibility and the judge gave it very little weight.
7. The judge heard evidence from one of Ms Glenville's sons but noted that the other son with whom the Appellant claimed to have a close friendship (the Appellant

claimed that he was like a brother to him [27]), did not attend the hearing. The judge found also that Mr Fisher, Ms Glenville's son who did attend to give evidence, was an unimpressive witness and gave very little weight to his evidence. The judge concluded that the Appellant has established a very limited private life in the UK and weighed that private life against the public interest and found that the Respondent's decision to remove the Appellant is proportionate in the circumstances.

Error of Law

8. The Grounds of Appeal and Ms Padya's skeleton argument make three contentions. The first ground is that it is contended that the First-tier Tribunal Judge's decision is flawed in that the judge found that the Appellant still had ties to Jamaica and that this finding was contrary to the evidence before her. It is contended that the judge's finding that the Appellant had ties to his father and "Momma" has no evidential basis whatsoever.
9. Ms Padya submitted that there was nothing in the decision to say that the background facts were disputed and the judge made no contrary finding in relation to background. She submitted that the Appellant's evidence was that he arrived in the UK in 2002 and was in the care of Linda and was later taken into the care of Tina Glenville where he lived since then. She submitted that the evidence was that the Appellant had no contact with anyone in Jamaica. She relied on the Appellant's witness statement, which at paragraph 2 imported an earlier witness statement, at paragraph 13 of which the Appellant said "I do not know anyone in Jamaica so I would be all by myself".
10. She also relied on the witness statement of Tina Glenville where, at paragraph 2 an earlier witness statement she made was imported into that witness statement, and at paragraph 15 of which she said: "Michael's whole life is in the UK. He has no contact with anyone in Jamaica. Michael tells me that he has not spoken to his godmother whom he calls Momma since arriving in the UK." She referred also to paragraph 3 of Ms Glenville's witness statement, where she imported a further supplementary statement dated 26th July 2012, at paragraph 2 of which she said:

"Michael does not know this yet but when I visited Jamaica in 2010 and 2011 on holiday I tried to find any family Michael may have there. I could not find any of his family. I tried to go to the registrar's office but without any authorisation from Michael I could not get any information. I also went to Michael's home area and asked people there if anybody remembered or knew Michael or any of his family. Nobody knew them. Some people were even rather hostile to me asking this in the rather rough area where Michael came from. Life there seemed very hard and I do not believe Michael would survive there. I have yet to tell Michael that I have done this but I feel I now need to state this."
11. Ms Padya submitted that no finding was made by the judge to contradict this evidence. She submitted that it was clear from paragraph 17 of the judge's determination that the judge considered that the Appellant had ongoing contact with

his father and Momma where he referred to the Appellant re-establishing contact. She submitted that this therefore implied that the judge accepted that no ongoing contact currently exists.

12. She submitted that there was no evidence adduced in the First-tier Tribunal in support of the finding that the Appellant's father and Momma continue to reside in Jamaica and that therefore the finding at paragraph 17 has no basis on the evidence and runs contrary to the evidence before the Tribunal. She submitted that there were no adverse credibility findings in relation to the Appellant in the decision and no finding in relation to the evidence given by Ms Glenville in relation to his relationships in Jamaica.
13. She submitted that the case law of **YM (Uganda) v Secretary of State for the Home Department** [2014] EWCA Civ 1292 and **Ogundimu (Article 8 - new rules) (Nigeria) v SSHD** [2013] UKUT 00060 (IAC) state that there must be a continued connection to life in the country to which the person is to be removed and that the mere existence of family is not enough and that the Tribunal must consider what sort of support those family members could provide and she submitted that there was no mention of these sorts of considerations in this case. She submitted that, given the evidence of abuse from his father, it does not follow that the Appellant could re-establish contact with his father or with Momma, who he said sent him away to the UK.
14. In relation to this issue Ms Willocks-Briscoe submitted that the Appellant in his witness statement at paragraph 2.13 had said that he does not know anyone in Jamaica and this is not the same as saying that he has no contact with anyone in Jamaica. She submitted that the statement from Ms Glenville does state that the Appellant has no contact but does not explain how she has come to that conclusion. The second part of paragraph 2.15 of Ms Glenville's statement says that the Appellant told her but she submitted this is important in light of the judge's finding that Ms Glenville's evidence was lacking in credibility and attached very little weight to her evidence. She submitted that anything that Ms Glenville says must be viewed in light of that negative credibility finding.
15. She submitted that there is very little in the Appellant's own statement to demonstrate that he has no contact with anyone in Jamaica. In these circumstances the judge was entitled to conclude at paragraph 17 that the Appellant's father and Momma are still in Jamaica in the absence of any evidence to suggest that those circumstances had changed. She also submitted that the findings have to be considered in the context of the Appellant's own evidence. He says that he was given support by Momma and absent any evidence from the Appellant to the contrary the judge was entitled to find that he could turn to her for support and to re-establish contact with her upon return to Jamaica.
16. She referred to the case of **YM (Uganda)** and submitted that the judge was not relying on tenuous ties such as nationality in this case. Here the judge has relied on a de facto parent and the judge was entitled to conclude that the Appellant has links to

the community. She submitted that the judge undertook a rounded assessment, took into account the ties and was entitled to reach the conclusions she did.

17. I have considered the submissions in relation to the contact in Jamaica. The difficulty for the Appellant is that the judge really had very limited evidence in relation to this issue. The Appellant's own statement says at paragraph 2.13 that he does not know anyone in Jamaica. The evidence put forward by Ms Glenville, which was undermined by the judge's credibility findings in relation to her evidence as to the bond between her and the Appellant, was that the Appellant told her he had no contact with anyone in Jamaica (2.15) and that she, without authorisation from the Appellant, tried to get information about his family in Jamaica. This evidence is not sufficient in my view to lead to a conclusion that the Appellant cannot re-establish contact with his family members or people to whom he was close in Jamaica.
18. In these circumstances I consider that the judge's conclusions at paragraph 17 that the Appellant's father and Momma live in Jamaica and that the Appellant could re-establish contact with them were open to her on the evidence.
19. I also note that the judge attached significant weight to the fact that the Appellant had spent twelve years in Jamaica and attended school to the age of 10, which the judge stated were cultural and social links to Jamaica which were established during his formative years and have not been supplanted during his time in this country (17).
20. The second Ground of Appeal contends that the judge erred at paragraph 16 in that she took into account an irrelevant matter where she said:

"When he made his witness statement in 2012 he was living at an address in Brixton. He is currently living in an address in Peckham. I take judicial notice of the fact that both these areas have significant populations from the Caribbean and, while not determinative, find that during his time in this country the Appellant has not been divorced from the socio-cultural milieu of his country of origin."
21. Ms Padyana submits that whilst the judge points out that this issue is not determinative it does lend some indication to the Appellant's ties and it indicates that the judge has acted contrary to the guidance in YM.
22. In the decision in YM (Uganda) Lord Justice Aikens cited with approval the Upper Tribunal's conclusion in Ogundimu at paragraph 123:

"The natural and ordinary meaning of the words 'ties' imports, we think, a concept involving something more than merely remote and abstract links to the country of proposed deportation and 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."

23. Lord Justice Aikens went on to say:

“51. The UT in that case went on to recognise that 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. The UT concluded, on the facts, that Mr Ogundimu did not have ties with Nigeria, the country to which he would have been deported. It noted that his father might have ties but they were not the ties of Mr Ogundimu himself "or any ties that could result in support to [him] in the event of his return [to Nigeria]".

52. I agree with the analysis of the UT in *Ogundimu*. Whether this is a "hard -edged" factual enquiry, or a question of "evaluation", the question in this case is: what ties does YM himself have with Uganda and would they support him in the event of a return there. Ties of other relatives, particularly YM's mother, are irrelevant.”

24. I am satisfied that the judge considered the matter of the Appellant’s social and cultural ties in the round. At paragraph 17 the judge considered the fact that the Appellant had spent twelve years in Jamaica, had attended school there and could re-establish contact with his father and with Momma there. I also note that the judge had noted at paragraph 15 that the Appellant had previously stayed with Momma’s daughter in the UK.

25. I accept that, in taking judicial notice as to her understanding of the socio-cultural milieu in Brixton and Peckham, the judge may have erred. However, I do not consider that this is a material error in light of all of the other findings made by the judge. The judge said that this observation was not determinative and in my view the other findings can stand alone without this generalised statement.

26. The third Ground of Appeal is that the judge failed to give proper reasons for her findings that Ms Glenville was “an unimpressive witness who is a stranger to the truth” [26]. Ms Padyana submitted that there is no clear link between paragraphs 25 and 26 and that it is entirely unclear how the judge reached the conclusion that Ms Glenville was not credible.

27. Ms Willocks-Briscoe submitted that paragraphs 25 and 26 have to be considered in the round and that the reasons for not accepting Ms Glenville’s evidence are clear from reading both of these paragraphs.

28. I am satisfied that, when read together, paragraphs 25 and 26 make completely clear why the judge found Ms Glenville to be an unimpressive witness and decided that she lacked credibility and gave her evidence very little weight. I consider that the phrase “is a stranger to the truth” adds nothing to the judge’s assessment. However, it is clear from reading both of these paragraphs that the judge found that the claimed close bond between Ms Glenville and the Appellant is tenuous because there was little evidence apart from the fact that she provided a roof over the Appellant’s head that she had done anything for the Appellant. The judge set out all of the reasons in full in paragraph 25.

29. I am satisfied that the judge was entitled to conclude that Ms Glenville’s evidence was exaggerated in relation to this matter and I am satisfied that the judge was

entitled to conclude that the evidence lacked credibility and to give it very little weight.

30. Looking at the decision overall I have considered the guidance given by the Tribunal in the case of **Bossadi (paragraph 276ADE; suitability; ties) [2015] UKUT 00042 (IAC)**. I note that the Tribunal said that an assessment under 276ADE(vi) in force from 9th July 2012 until 27th July 2014 and applicable in this case requires a rounded assessment as to whether a person's familial ties could result in support to him in the event of his return, an assessment taking into account both subjective and objective considerations and also consideration of what lies within the choice of a claimant to achieve. I am satisfied that the judge in this case undertook such an assessment in relation to paragraph 276ADE of the Rules. I am satisfied that the judge considered all material factors in her assessment of Article 8.
31. In the circumstances I am satisfied that the judge reached a conclusion open to her.

Notice of Decision

There is no material error in the First-tier Tribunal Judge's decision. The decision of the First-tier Tribunal shall stand.

No anonymity direction is made.

Signed

Date: 4th January 2016

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date: 4th January 2016

Deputy Upper Tribunal Judge Grimes