



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

**Appeal Numbers:
IA/45343/2014
and IA/45349/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 7 April 2016**

**Determination
Promulgated
On 13 April 2016**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**(1) MISS NOVLETTE ELAINE FRANCIS
(2) MISS DENISE MESSIAS
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondents: Mr V Onipede, Counsel
(instructed by Stevjerne & Co)

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Colyer on 30 December 2015 against the decision and reasons of First-tier Tribunal Judge Seifert who had allowed the Respondents' appeals against the Appellant's decisions dated 22 October 2014 to refuse to grant the Respondents leave to remain on Article 8 ECHR private life grounds with reference to paragraph 276ADE(1)(vi) of the Immigration Rules and to remove them from the United Kingdom. The decision and reasons was promulgated on 25 August 2015 following a hearing on 4 June 2015.
2. The Respondents, mother and adult daughter, are nationals of Jamaica, both born there. The Respondents entered the United Kingdom as visitors, respectively on 27 June 1998 and 29 July 2001 and have since overstayed. Their immigration history is set out at [2] and [3] of Judge Seifert's decision and reasons.
3. Judge Seifert found that the Respondents' private life claims succeeded under Article 8 ECHR and under paragraph 276ADE(1)(vi) respectively. The judge found at [65] that there would be very significant obstacles to the Second Respondent's integration in Jamaica and that the separation of mother and daughter would amount to a disproportionate failure to respect their family life under Article 8 ECHR. The judge stated at [67] that although the Second Respondent had achieved qualifications in the United Kingdom, this was about ten years ago. Her life experiences since then, her disabilities and her depression and anxiety were relevant to her current problems and prospective integration on return. The judge found at [68] that the Second Respondent's return would not amount to a breach of Article 3 ECHR.
4. Permission to appeal to the Upper Tribunal as sought by the Appellant (the Secretary of State) was granted by Judge Colyer because he considered that it was arguable that the judge had failed (a) to identify any significant obstacles to integration in Jamaica; (b) to address the evidence of the assistance available to the Second Respondent in Jamaica; (c) to consider that the Second Respondent had lived in Jamaica to the age of 14, had

been educated there and had spent over half her life there and would be returning with her mother and (d) to take into account the fact that the Respondents had been a burden on taxpayers through, *inter alia*, their use of the NHS.

5. Standard directions were made by the Upper Tribunal indicating that the appeals would be reheard immediately if a material error of law were found. No rule 24 notice was filed on behalf of the Respondents.

Submissions – error of law

6. Mr Tufan for the Secretary of State relied on the grounds and the grant of permission to appeal. In summary he submitted that the judge’s errors were manifest. There was no proper discussion of the evidence and no adequate identification of the “very significant obstacles” to integration. The decision and reasons could not stand and should be set aside and remade.
7. Mr Onipede for the Respondents submitted that the judge had stated that she had considered all of the evidence when reaching her findings. There had been evidence from the Respondents about the consequences of return to Jamaica. The judge had been entitled to reach the conclusions she had and the balancing exercise had been properly conducted.

The error of law finding

8. At the conclusion of submissions, the tribunal indicated that accepted Mr Tufan’s submissions and found that the judge had fallen into all of the material errors of law of which the Secretary of State complained and in respect of which permission to appeal had been granted. Those faults are summarised at [4], above and so need not be repeated here. The judge’s decision on the key issues was not based on substantial independent evidence but rather on matters of impression, expressions of preference and personal opinion. The judge failed to consider the objective evidence concerning conditions in Jamaica set out in detail in the reasons for refusal letter, which the Respondents did not challenge. The principles of important

case law had not been applied, such as AM (S 117B) Malawi [2015] UKUT 0260 (IAC) and SS (Congo) [2015] EWCA Civ 387. There had not been a structured and balanced analysis, beginning with the fact that mother and daughter were to be removed together to their safe home country familiar to them. There had been no challenge to the judge's essential findings of fact, which would stand. The decision and reasons would otherwise be set aside and the appeal reheard immediately.

Submissions - fresh decision

9. For clarity the tribunal will now refer to the parties by their original designations in the First-tier Tribunal.
10. Mr Onipede for the Appellants submitted that the appeals should be allowed because of the very significant obstacles which existed to their integration on return to Jamaica. The facts fell within paragraph 276ADE(1)(vi) of the Immigration Rules. The Appellants were not a burden on the state because they were supported by the charity of their friends at their church. They spoke English and should benefit from section 117B of the Nationality, Immigration and Asylum Act 2002.
11. Mr Tufan relied on the reasons for refusal letter. The adult Appellants were long term overstayers who had no right to be in the United Kingdom. They would be removed together to the country from which they came, and of which they were nationals. There was thus no interference with their family life. It had been their choice to remain, unlawfully, even after the first appeal had been dismissed. It was clear from section 117B that little weight should be given to a private life developed while a person's immigration status was precarious. That section applied equally to children and adults. Forman (ss 117A-C considerations) [2015] UKUT 412 (IAC) and Deelah and others (section 117B - ambit) [2015] UKUT 515 (IAC) provided further guidance. On the facts of the present appeal it was plain that the public interest heavily outweighed the Appellants' private interests. Their appeals should be dismissed.

12. At the conclusion of submissions the tribunal indicated that its determination was reserved. The tribunal's reserved decision now follows.

The fresh decision

13. The burden of proof in these appeals lies on the Appellants. It is necessary for the tribunal to decide the issues in this appeal under the Immigration Rules and in relation to non-risk assessed human rights matters on the standard of proof of the balance of probabilities. Because these appeals are being heard "in country", the tribunal may consider all relevant matters as at the date of the hearing as section 85(4) of the Nationality, Immigration and Asylum Act 2002 provides. The tribunal may also review any exercise of discretion made under the Immigration Rules. Sections 117A-117D of the Nationality, Immigration and Asylum Act 2002 must be taken into account by the tribunal in assessing the Article 8 ECHR claim.
14. The findings of fact made by Judge Seifert were not challenged and stand. The judge's finding that the Second Appellant's removal would not result in a breach of Article 3 ECHR was plainly correct and so stands. There is family life between the Appellants notwithstanding that both are adults as the judge found but as they will be removed together such removal will cause no interference. No family in the United Kingdom was identified. There may be some family connections of the First Appellant in Jamaica.
15. In summary the facts are that the First Appellant and Second Appellant deliberately overstayed in the United Kingdom. The tribunal infers and finds that the First Appellant and Second Appellant had no intention of leaving the United Kingdom when they secured entry as visitors. They have since engaged in protracted litigation to avoid removal, which the Secretary of State compromised for reasons best known to her by granting the Appellants an "in country" right of appeal to the First-tier Tribunal.
16. It is plain and obvious that the Appellants ought to have left the United Kingdom on the expiry of their visit visas. Even after their belated applications for leave were refused

in 2013 they failed to depart. The United Kingdom is not a police state. The Appellants ought not to have somehow felt that they were entitled to remain without leave, to await enforcement action by the Respondent. It has been the Appellants' choice to defy the law and to remain in the United Kingdom illegally. Any delay has been manufactured by them to prolong their stay.

17. The Appellants are both nationals of Jamaica. There are substantial ties with Jamaica, where both were born and have spent the greater part of their lives. Their United Kingdom social life centres on their church, which plainly has a significant Jamaican cultural connection. Both Appellants have been generously supported by their fellow church members, who have been compassionate towards them. The tribunal infers and finds that such generous support will continue after the Appellants have left the United Kingdom, and that through the wider network of church connections through church members, other sources of support will be available if needed in Jamaica. Even if the Appellants' own church has no direct branch in Jamaica, it is more probable than not that there will be similar Pentecostal churches and that the Appellants will have no difficulty in practising their faith. There is no reason to believe that people in Jamaica will treat the Appellants unkindly and no evidence to support any such contention. The Second Appellant will continue to need her mother's assistance and guidance, but that will remain available.
18. There was no evidence to show that there are no adequate facilities and assistance available to deaf persons, brain damaged persons and depressed persons in Jamaica. Jamaica is a democratic and safe country. There is no responsibility on the United Kingdom to provide for the Appellants who have already had the benefit of NHS treatment (and in the case of the Second Appellant, education) at the unwarranted expense of the United Kingdom public purse. There was no evidence at all that removal to Jamaica would be more likely than not to cause the Second Appellant harm. Any necessary communication between doctors in Jamaica and doctors in the United Kingdom can take place. The tribunal finds that removal to Jamaica will not cause the Second Appellant harm.

19. Applying those findings to paragraph 276ADE(1)(vi) of the Immigration Rules, the tribunal finds that it is reasonable to expect the Appellants to return to Jamaica, notwithstanding the time they have spent in the United Kingdom. The First Appellant was well aware that they were in the United Kingdom illegally. Any suggestion that because no steps towards enforcement were taken by the Secretary of State that somehow an expectation or entitlement was created is absurd and untenable. It was reasonable to expect that the Appellants would comply with the law. The tribunal finds that there is no evidence that either Appellant would face very significant obstacles integrating into Jamaica.
20. As to section 117B(6) of the Nationality, Immigration and Asylum Act 2002, this is a factor which the tribunal is obliged to consider. The Appellants' private lives were formed at a time when their immigration status was precarious. The only "positive" factor was that the Appellants both speak English or BSL. Neither is financially independent. In any event AM (S 117B) Malawi [2015] UKUT 0260 (IAC) shows that even the positive factors create no right to remain of themselves.
21. There was nothing to suggest that the consequences of removal to the Appellants would be so unduly harsh that they could be regarded as so out of the ordinary as to be compelling or exceptional. Thus there was no reason for the Secretary of State to consider the exercise of her discretion outside the Immigration Rules.
22. The tribunal now turns to any residual Article 8 ECHR claim in the light of Shahzad (Art 8: legitimate aim) [2014] UKUT 00085 (IAC), and the related line of authority, including MM (Lebanon) [2014] EWCA Civ 985 and SS (Congo) [2015] EWCA Civ 387. Applying the Razgar [2004] UKHL 27 tests as explained by EB (Kosovo) [2008] UKHL 41, and at risk of repetition, it is plain that the Appellants' removal will not cause any interference with the respect due to their family life, as they will be removed together.
23. There was little evidence if any to show that the First Appellant or Second Appellant had developed any free standing and significant private life in the United Kingdom, apart from their social life conducted mainly with local friends and in their church circle. That private life can be

continued in Jamaica: see, e.g., Nasim and Others (Article 8) [2014] UKUT 00025 (IAC).

24. If, however, the tribunal were mistaken in any such finding, it is necessary to consider whether the interference in the First Appellant's and Second Appellant's private lives would be proportionate. Nothing is being taken from them as they have never had any right to settle in the United Kingdom. Many persons wishing to settle in the United Kingdom lawfully have been refused permission to extend their stays, but they have accepted the adverse decision and have left the United Kingdom as required without enforcement action at public expense. That is all which is expected from the Appellants. The continued presence of the Appellants has imposed a burden on the state, not least in terms of the provision of education and access to the NHS. It was admitted that the Appellants have used NHS services.
25. Paragraph 353B of the Immigration Rules has been held by the Upper Tribunal (as affirmed by the Court of Appeal) to provide no additional right of appeal to the tribunal: see Qongwane, Patel and Khanum v SSHD [2014] EWCA Civ 957.
26. The appeals must fail and are dismissed.
27. There was no need for an anonymity direction in either appeal and no submissions to any such effect. The anonymity direction made by the First-tier Tribunal is revoked.

DECISION

The making of the previous decision involved the making of an error on a point of law. The tribunal allows the onwards appeals, sets aside the original decision and remakes the original decision of the First-tier Tribunal as follows:

The appeals are DISMISSED

Signed

Dated

Deputy Upper Tribunal Judge Manuell

TO THE RESPONDENT
FEE AWARD

No appeal fees were paid so there can be no fee awards

Signed

Dated

Deputy Upper Tribunal Judge Manuell