



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/50893/2014**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Birmingham

On 2 March 2016

**Decision & Reasons
Promulgated**

On 17 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**AUDREY PATRICIA HARRISON
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Miss. C. Johnstone, Home Office Presenting Officer

For the Respondent: Mr. B. Adekoya, Atlantic Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Asjad, promulgated on 13 April 2015, in which she allowed Miss. Harrison's appeal against the Secretary of State's decision to remove her from the United Kingdom.

2. For the purposes of this appeal, I refer to the Secretary of State as the Respondent, and to Miss. Harrison as the Appellant, reflecting their positions as they were before the First-tier Tribunal.
3. Permission to appeal was granted as it was arguable that the judge had not given proper consideration to the Appellant's immigration history. It was arguable that she had not given sufficient weight to the public interest and the maintenance of immigration control.
4. The Appellant attended the hearing. I heard oral submissions from both representatives following which I reserved my decision, which I set out below with my reasons.

Submissions

5. Miss. Johnstone relied on the grounds of appeal. She submitted that the judge had allowed the appeal on the basis that the Appellant had a right to family life but she has not identified what that family life consisted of.
6. Mr. Adekoya submitted that the judge had considered the facts of the case and the Appellant's immigration history. She had initially overstayed but she had given reasons why she had overstayed. In paragraph [29] the judge had set out her findings on family life. On the facts of the case the Appellant had come to join her family in the United Kingdom. I was referred to Kugathas [2003] EWCA Civ 31. The Appellant lived in the same household as her family members. He accepted that the decision did not elaborate on the nature of the Appellant's family life, but submitted that it had been put to the judge that the Appellant did have a family life in the United Kingdom. If the judge had elaborated on her findings, she would have made a finding that the Appellant had family life in the United Kingdom following Kugathas.
7. He submitted that the Appellant had enjoyed a family life with her relations in the United Kingdom prior to joining them in the United Kingdom. The judge had evidence before her that she was mainly dependent on them when she was living in Jamaica and she was still mainly dependent on them. She had no family in Jamaica.

Error of law

8. The judge allowed the appeal on the basis that it was a disproportionate interference with the Appellant's right to a family life, but there is no clear finding that the Appellant enjoys a family life with her relations in the United Kingdom.
9. The judge finds that the Appellant does not meet the requirements of either paragraph 276ADE, or Appendix FM of the immigration rules (paragraphs [17] to [20]). She considers Article 8 outside the immigration rules in paragraphs [21] to [31]. In paragraph [24] she sets out the step-by-step approach advocated in Razgar [2004] UKHL 27. However she has made no finding prior to considering these steps that the Appellant has a

family life sufficient to engage the operation of Article 8. Despite the fact that the Appellant is an adult and that her relations in the United Kingdom are also adults, there is no assessment of these relationships, and no consideration of whether the bonds that she has with these adult relatives go above and beyond the bonds normally to be found between such adult relatives.

10. It was incumbent on the judge, prior to considering the steps set out in Razgar, to make a finding that the Appellant had a family life and the nature of such family life. It is not enough that it was submitted to her that the Appellant had a family life in the United Kingdom. She needed to make a positive finding of such family life.
11. In paragraph [29] the judge states: “The family life that the Appellant now enjoys is very different from that which existed prior to 2005 and has grown further and beyond that.” This statement is made at the proportionality assessment stage, and there is still no reference to what family life it is that the Appellant enjoys. There are no clear findings as to what family life there was prior to 2005. The judge refers to the letters of support from the Appellant’s family. She refers to the Appellant’s love and devotion to her family and the life that she now enjoys with them, but there is still no finding that the bonds that she has go above and beyond the normal bonds to be found in such relationships.
12. Although it was submitted by Mr. Adekoya that the Appellant is mainly dependent on her family in the United Kingdom, the only finding relating to such dependence is in relation to financial dependence, and is made in the context of consideration of Appendix FM, [19]. In any event this refers to her being financially dependent on her “friends and family”. It is not a finding that she is mainly dependent on family members.
13. In parenthesis in paragraph [19] the judge states “(Indeed the evidence suggests the opposite and that the Appellant is the carer for her Brother)”. However, once more there is no clear finding of any dependence above and beyond the normal emotional ties. This comment alone is not enough to show that the judge has found that there is family life between the Appellant and her brother. In paragraph [29] she refers to the fact that she has devoted herself to looking after other family members and states that she now cares for her brother. However she then finds that this is simply another example of her love and devotion to her family, and gives no detail as to the extent of care that she provides. It is clear from the decision that the Respondent’s representative in the First-tier Tribunal made submissions that the Appellant was not her brother’s primary carer and that social services could care for him.
14. I find that the failure to make a clear finding as to the nature of any family life which the Appellant enjoys in the United Kingdom is a material error of law.
15. The proportionality assessment in relation to family life is set out in paragraph [29]. The judge states that she does not accept that “the

Appellant's motive in remaining in the UK was to in anyway abuse the immigration system". As a result of this she does not give weight to the fact that the Appellant overstayed and failed to comply with the immigration rules. She states that the Appellant felt "obliged to look after her mother", and proceeds to set out what she sees as her "devotion" to her family members. However there is no consideration of the fact that this has been done when she had no leave to remain. There is no consideration either of the other factors set out in section 117B, for example it is clear from the evidence before the judge that the Appellant was not financially independent. I find that the judge's assessment of proportionality is inadequate.

16. It was not submitted by Mr. Adekoya that the Appellant met the requirements of the immigration rules, and I do not set aside the decision in relation to paragraph 276ADE or Appendix FM.

Notice of Decision

17. The decision involves the making of an error of law. I set aside the decision relating to Article 8 outside the immigration rules to be remade.

Directions

18. No later than 7 days before the reconvened hearing the parties shall file with the Tribunal, and serve on each other, any witness statements and further documents relied upon, to include any new evidence, in relation to the Appellant's appeal under Article 8.

Signed

Date 14 March 2016

Deputy Upper Tribunal Judge Chamberlain