



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

Appeal Numbers: HU/01645/2017  
HU/01956/2017

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 3<sup>rd</sup> October 2018**

**Decision & Reasons  
Promulgated  
On 16<sup>th</sup> October 2018**

**Before**

**THE HONOURABLE MR JUSTICE DAVIS  
UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**CT AND AG  
(ANONYMITY DIRECTION MADE)**

Respondents

**Representation:**

For the Appellant/Secretary of State: Mr T Wilding, Home Office Presenting Officer

For the Respondents: unrepresented

**DECISION AND REASONS**

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/291)**

We make an anonymity order. Unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

1. We anonymise the Respondents. They are mother (CT) and minor daughter (AG). AG's date of birth is 18 May 2015. CT's date of birth is 22 April 1995. Both are citizens of Jamaica. We shall refer to CT as the Appellant as she was before the First-tier Tribunal (the "FTT").
2. On 27 June 2016 the Secretary of State decided to deport the Appellant. She made submissions setting out why she should not be deported and those were considered and rejected by the Secretary of State on 11 January 2017.
3. The Secretary of State's case is that the Appellant is a persistent offender having received ten convictions for seventeen offences between 11 February 2009 and 28 March 2014. The Appellant appealed against the Secretary of State's decision of 11 January 2017. Her appeal was allowed by First-tier Tribunal Judge Cohen, following a hearing on 12 April 2018. Permission was granted to the Secretary of State by First-tier Tribunal Judge Saffer on 5 June 2018.
4. There is no need for us to set out the lengthy history relating to the Appellant. The judge found at [20] that the Appellant was not a persistent offender. He concluded that removal would breach her rights under Article 8. The judge concluded that the Appellant's offending was relatively minor and that the exception to deportation in paragraph 399A(ii)(a) of the Immigration Rules applied. The thrust of the Secretary of State's grounds of appeal is that the judge failed to give the required anxious scrutiny and care to the determination. Mr Wilding made oral submissions that there was clear cross-pollination with a different decision.
5. In our view the grounds are made out. It is likely that the use of cut and paste has caused cross-pollination with another decision as asserted by Mr Wilding. The judge made significant errors. The decision shows a lack of care. At [19] the judge referred to the Appellant as having been a model prisoner whilst she has at no time been sentenced to a term of imprisonment. He stated at [22] that the Appellant was convicted "of sentences of 18 months years to be served consecutively". This does not make sense and has no application to the Appellant in this case. He stated in the same paragraph that the Appellant has six children and a stepchild. This does not accurately reflect the circumstances of this Appellant. A further error was made by the judge at [23] where he referred to the Appellant's "family life she has with his children (and wife)." This has no applicability to the appeal before the judge. The judge at [24] concluded

that the Appellant was a child at the date of the application which is clearly wrong. The judge at [27] concluded that the exception to deportation set out at paragraph 399 (a) (ii) (a) and (b) applied. CT is not a British citizen and she has not been resident in the UK for seven years. It is unarguable that she met the requirements of the Immigration Rules at the time of the hearing.

9. The judge concluded at [20] that the Appellant was not a persistent offender. That finding lacks reasoning and does not rationally follow from paragraphs 55 and 57 of the judgement in *Chege* (“*is a persistent offender*”) [2016] UKUT 00187 quoted by the judge at [19] of the decision. This finding was not the subject of a discrete challenge but we are satisfied that it is another example of the judge having failed to apply anxious scrutiny.
10. We gave the unrepresented Appellant the opportunity to address us. She understood that the judge had made errors. We expressed our sympathy. However, the only proper course of action available to us is to set aside the decision of Judge Cohen pursuant section 12(2) (b) (i) of the Tribunals, Courts and Enforcement Act 2007 (the “2007 Act”).
11. We have considered Paragraph 7 of the Practice Statement of 25 September 2012 regarding the disposal of appeals. In our view the cumulative effect of the errors has been to deprive this Appellant of a fair hearing. In addition, none of the findings of the judge can be maintained. The extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/291)**

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Signed                      Joanna McWilliam

Date 10 October 2018

Upper Tribunal Judge McWilliam