



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/14050/2015

THE IMMIGRATION ACTS

Heard at Field House
On 5 December 2017

Decision & Reasons Promulgated
On 12 January 2018

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS CRYSTAL GAY MCINTOSH
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Nath, Home Office Presenting Officer

For the Respondent: Mr P Maku-Kemi, Solicitor, Jesuis Solicitors

DECISION AND REASONS

1. The respondent (hereafter the claimant) is a citizen of Jamaica aged 31. She has permission to challenge the decision of First-tier Tribunal Judge Buckwell sent on 3 April 2017 allowing her appeal on human rights grounds against a decision made by the appellant (hereafter the Secretary of State or SSHD) on 30 November 2015 refusing her leave to remain in the UK. The claimant entered the UK in June 1999 as a visitor and overstayed. However, on 5 August 2010 she was granted an EEA residence permit on the basis of her relationship with a Polish national. This was

granted until 5 August 2015. She applied for leave to remain outside the Immigration Rules on 26 June 2015.

2. The SSHD's grounds have two interrelated limbs. It is first submitted that the judge failed to view the claimant's Article 8 circumstances through the prism of the Immigration Rules and instead conducted a "freewheeling" Article 8 analysis. Secondly it is argued that the judge failed to make any finding on whether there were very significant obstacles to integration and the failure to weigh the lack of such obstacles vitiated the judge's analysis since it resulted in such factors not being factored into the proportionality assessment.
3. I heard succinct submissions from Mr Nath and Mr Maku-Kemi.
4. I consider that the SSHD's first ground has particular force. It is settled law that when considering Article 8 outside the Rules a judge must have regard to the extent to which a claimant is able to satisfy the Rules. That is necessary because the Rules broadly reflect the view of the SSHD as regards the relevant public interest: see e.g. Agyarko [2017] UKHL 11.
5. It is apparent that the judge wholly failed to consider the claimant's situation in relation to the requirements of the Rules, despite noting that the SSHD had found that the requirements of the Rules were not met. Indeed the judge went further in paragraph 56 in expressly stating that "no contrary view in that respect was advanced on behalf of the [claimant]".
6. Mr Maku-Kemi initially submitted that although the judge did not expressly address the claimant's position under the Rules, his assessment of Article 8 outside the Rules amounted in substance to the view that the claimant had shown that there would be very significant obstacles to her integration into Jamaican society. In light of what was stated in paragraph 56, he retracted that submission, but therein lies his difficulty. Given that there was no challenge at the hearing to the SSHD's assessment that the claimant did not meet the requirements of the Rules, the judge's substantive findings on the claimant's Article 8 circumstances outside the Rules could not demonstrate to the contrary.
7. I also consider the second ground to be made out. A clear example of the judge failing to deal adequately with the issue of significant obstacles to integration arises in paragraph 71, wherein the judge states:

"71. I therefore find that the actions of the Appellant's mother, in sending the Appellant to this country and apparently not requiring her return, clearly support the view expressed by the Appellant in general terms that she does not enjoy any form of current close relationship with her mother. Of course it is entirely understandable that the Appellant and Ms Mead would have met the Appellant's mother when they travelled on a brief holiday visit to Jamaica, but I accept the Appellant's evidence as to the current lack of any effective relationship with her mother or indeed with other relatives in Jamaica. Considering matters in that light, I do not find there to be any

meaningful conflict in the detail of the evidence given as between the Appellant and Ms Mead. The evidence of the second supporting witness, Claudette, does not run counter to that finding.”

8. If the judge had considered the issue of the claimant’s ties with Jamaica in the context of whether there were significant obstacles to her integration there, he would have had to consider a wide range of factors so as to make a broad evaluative judgment, including the extent to which she had social, cultural and linguistic ties, her job prospects and her family circumstances in terms of whether any family there would be able to provide support or assistance. The judge would also have had to consider not just whether family ties existed in the present but whether they could be rekindled. To the contrary the judge appears to have reduced the consideration of the claimant’s likely circumstances in Jamaica to whether there was a “current lack of any effective relationship with her mother or indeed with other relatives in Jamaica”. Further, in the next paragraph the judge appeared to consider that prior residence in the first twelve years of a person’s life is irrelevant to whether he or she can re-establish life in that country.
9. For the above reasons I am entirely satisfied that the judge materially erred in law and that his decision must be set aside.
10. Both representatives at the hearing indicated that if I were to set aside the judge’s decision the case could be retained in the Upper Tribunal. That is also my view.
11. I first considered whether it was necessary to hold a further hearing, taking into account that the claimant and one of her witnesses voiced at the end their concern that no decision should be re-made without hearing more about the particular circumstances.
12. Whilst I understand that concern, I am not persuaded a further hearing is necessary. The SSHD’s challenge to the FtT decision was confined to issues of law. That entails that the claimant is entitled to rely on all the findings of fact made by the FtT judge about the claimant’s circumstances. The claimant’s representatives were sent a Rule 15 notice requiring them to identify further evidence if they wished it to be considered. None has been forthcoming.
13. Considering first the claimant’s position under the Immigration Rules, it is not in dispute that she did not meet the requirements; but even if it were I am unable to conclude that she meets those requirements. She has no partner or child and no family life; hence her only possible route of success under the Rules was paragraph 276ADE(v) which required her to show “there would be very significant obstacles to [her] integration into [Jamaica]”.
14. On the judge’s findings of fact, the claimant had not lived in Jamaica since she was 12 and her mother had effectively abandoned parental responsibility for her by sending her to the UK. The claimant had no effective relationship with her mother or other relatives in Jamaica. On the other hand, it is clear that the claimant still has social,

cultural and linguistic ties with Jamaica and that she also has family members there. Whether or not she has a current effective relationship with them, it has not been shown that she could not look to them for some level of support at least while she finds her feet and has time to look for a job.

15. As regards her job prospects, the judge described her as a decent, hardworking person who has a strong ambition to be a nurse and wishes to contribute positively to society. When able to work during her period of EEA residence, she worked and paid taxes. I consider she would be able to put those qualities to use in her country of nationality as well. The claimant is able-bodied and has no significant health problems.
16. Having concluded that the claimant is not able to succeed under the Immigration Rules and in particular has not shown that there would be very significant obstacles to her integration into Jamaican society, I turn to consider whether she can nevertheless succeed on Article 8 grounds outside the Rules.
17. As regards her circumstances in Jamaica, I do not find that returning her there would have unjustifiably harsh consequences.
18. In relation to her situation in the UK, there are a number of factors that weigh in her favour. She has been here for most of her teenage and adult life and her period of residence (barring a few weeks of holiday) dates back to 1999 – some eighteen years. The FtT Judge’s evaluation that “[a]ll her meaningful life has been spent in this country” goes too far; but clearly much of it has.
19. She has shown during the periods when she was lawfully able to work that she is hardworking and able to pay taxes and contribute positively to society. She speaks fluent English. She identifies as British and is patriotic in her attitude to the UK. Although she has had significant periods during which she has been here unlawfully, she had five years’ lawful residence as an EEA partner in a durable relationship, and the application which led to the refusal decision appealed against was made whilst she still had the equivalent of limited leave. It is also fair to say that since she came at the age of 12 it was not her personal fault that she remained unlawfully, at least until she turned 18. On the basis of her talent, qualifications and general attitude, she is someone who is eminently employable and there are good prospects that if allowed to stay she will seek to train as a nurse in a profession where there is a national shortage.
20. Weighed against these facts, however, the claimant came to the UK as a visitor and continued to be an overstayer for some eleven years. It is reasonable to assume she was made aware in August 2002 that an application for her to remain as a dependent child was refused. Yet she remained. Furthermore, when her relationship with her EEA partner broke down, she failed to notify the Home Office of her change of circumstances. She is someone whose immigration status in the UK has always been precarious.

21. The claimant has no family life ties in the UK within the meaning of Article 8. She is not presently financially independent.
22. Given that the private life factors counting for and against the claimant relating to her circumstances in the UK are finely balanced, I consider that the lack of significant obstacles to her reintegrating into Jamaican society to point strongly to a conclusion that the decision appealed against was a proportionate one. I do have sympathy with the claimant's situation given her hopes for a nursing career, but in my view it would not be consonant with higher court authority to find a breach of Article 8 in the circumstances of her case. It would be open to her to apply from Jamaica to train and work in the UK as a nurse.
23. Accordingly, the decision I re-make is to dismiss the appeal.
24. To conclude:

The decision of the FtT Judge is set aside for material error.

The decision I re-make is to dismiss the claimant's appeal.

No anonymity direction is made.

Signed:

Date:10 January 2017



Dr H H Storey
Judge of the Upper Tribunal