



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/24507/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 7<sup>th</sup> September 2018

Decision & Reasons Promulgated  
On 20 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MRS KISHANA GRANT-BROWN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Noor, Counsel  
For the Respondent: Ms Kiss, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Jamaica born on 12<sup>th</sup> July 1978. The Appellant has an extensive immigration history having first arrived in the UK on 18<sup>th</sup> June 2000. Her most recent application was made on 4<sup>th</sup> October 2016 when further submissions were

accepted as a new human rights application. That application was refused by Notice of Refusal dated 7<sup>th</sup> October 2016.

2. The Appellant appealed and the appeal came before Immigration Judge Goodrich sitting at Taylor House on 12<sup>th</sup> February 2018. In a decision and reasons promulgated on 7<sup>th</sup> June 2018 the Appellant's appeal was dismissed. Grounds of Appeal were lodged to the First-tier Tribunal on 20<sup>th</sup> June 2018. Those grounds contended that the judge had misapplied paragraphs EX.1 and EX.2 of the Immigration Rules in dismissing the appeal.
3. On 12<sup>th</sup> July 2018 Judge of the First-tier Tribunal Hollingworth granted permission to appeal.
4. It is on that basis that the appeal comes before me to determine whether or not there is an error of law in the decision of the First-tier Tribunal. The Appellant appears by her instructed Counsel, Mr Noor. Mr Noor is familiar with this matter. He appeared before the First-tier Tribunal and he is the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer, Ms Kiss.

### **The Relevant Rules**

5. *EX.1. This paragraph applies if*

*(a)*

*(i) the applicant has a genuine and subsisting parental relationship with a child who-*

*(aa) is under the age of 18 years, or was under the age of 18 years when the applicant was first granted leave on the basis that this paragraph applied;*

*(bb) is in the UK;*

*(cc) is a British Citizen or has lived in the UK continuously for at least the 7 years immediately preceding the date of application ;and*

*(ii) taking into account their best interests as a primary consideration, it would not be reasonable to expect the child to leave the UK; or*

*(b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK.*

*EX.2. For the purposes of paragraph EX.1.(b) "insurmountable obstacles" means the very significant difficulties which would be faced by the applicant or their partner in*

*continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.*

## **Submission/Discussion**

6. Mr Noor starts by advising me that this appeal turns exclusively on the application of paragraphs EX.1 and EX.2 of the Immigration Rules and that the primary issue in this appeal was whether or not there are “insurmountable obstacles” to the family life between the Appellant and her partner, Christopher Brown, continuing outside the UK (in this case in Jamaica), meaning “very significant difficulties/hardship” for either the Appellant or Christopher Brown continuing their family life together outside the UK. He points out that all other criteria for leave to remain under paragraph R-L.TRP 1.1(a), (b) and (d) are met, including the suitability criteria, eligibility criteria and that the Appellant and Christopher Brown are in a genuine and subsisting relationship.
7. Mr Noor takes me to the findings of fact of the First-tier Tribunal Judge, referring me to paragraph 4 of the Grounds of Appeal which sets them out in some detail. He submits that the important question to be asked is whether or not the Sponsor would suffer difficulties in moving to Jamaica and that it is noted that the Sponsor has two children by different mothers within the UK and that the judge had found that it would be in their best interests that the Sponsor remained in the UK and that the judge has made a conclusion ultimately that it would be necessary for there to be a separation between the Appellant and the Sponsor.
8. Having reached that conclusion he submits that the correct approach on an interpretation of paragraphs EX1 and 2 was to make a finding that there are very significant difficulties/hardships that the Sponsor would face in continuing his relationship with the Appellant together outside the UK. He points out that this is as per the specific wording of paragraph EX2. He submits that the conclusion therefore is that the First-tier Tribunal Judge has in effect made a finding that there are obstacles (i.e. the Sponsor’s two children) which cannot be surmounted and that that would prevent him from continuing his family life with the Appellant together in Jamaica.
9. Thereafter he submits that the First-tier Tribunal Judge having made findings of fact to the extent that the wording of paragraph EX.2 is fulfilled nonetheless refuses to allow the appeal on the basis that there may be time in the future when the Appellant can apply for entry clearance from abroad to re-join the Sponsor. He submits that this is an error of law because the potential viability of the Appellant applying for entry clearance from abroad at a hypothetical future date is not the way that the Immigration Rules have been drafted and that the only requirement within the Rules is that there are very significant difficulties/hardships that the Sponsor would face in continuing his relationship with the Appellant in Jamaica. That is something that he submits the First-tier Tribunal Judge has already found. He asks me to find that there are material errors of law in the decision of the First-tier Tribunal and to set aside the decision and to remake the decision allowing the appeal.

10. Ms Kiss in response takes me to the decision of the First-tier Tribunal Judge, looking back at the Appellant's extensive history and that the judge has given due consideration to the authority of *Devaseelan v SSHD [2002] EWCA Civ 804* as to the weight to be given by the Tribunal to previous decisions. Ms Kiss accepts the Sponsor will stay in the UK but contends the test for insurmountable objects is a stringent one and refers me to the Appellant's poor immigration history. She accepts that there have been delays in bringing this appeal on both sides. She states that the Appellant's immigration history showed that she had precarious status and that the Sponsor knew from the start that that was the case. She does however acknowledge that their relationship is genuine. She submits that following *Agyarko* the precarious status is something that must be considered as being a matter in the public interest and directs me to paragraph 49 of the decision, where she submitted it is clear that the judge has given due consideration to the interests of the Sponsor's children. Thus whilst accepting that the Sponsor would have to remain for the benefit of his children, she submits that pursuant to paragraph 117B(6) of the Immigration Rules it is in the public interest the Appellant be required to leave the UK. She asks me to dismiss the appeal.

### **The Law**

11. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

### **Findings on Error of Law**

13. I note that at paragraph 43 the First-tier Tribunal Judge has stated that

"I accept that any separation would be difficult but I do not consider that the loss of his active involvement with his children in the UK would entail very serious

hardship for the Appellant or the Sponsor in continuing their family life in Jamaica.”

14. I agree with the submissions made by Mr Noor that that statement is inconsistent with the bulk of the other findings of fact that the hardship that the Sponsor, Christopher Brown would face, i.e. his relationship with his children was so significant that he would actually not leave the UK and that there would be a resultant separation between him and the Appellant. Consequently I am satisfied that the First-tier Tribunal Judge having made the relevant findings in support of the Appellant’s case misapplies paragraphs EX.1 and EX2 in dismissing the appeal and that there is therefore an arguable error of law.

### **The Remaking of the Decision**

15. It is agreed by both legal representatives that if I find there is a material error of law I should go on to remake the decision, rather than remit it. The relevant wording is to be found in paragraph EX1(b). The Appellant and the Sponsor it is accepted have a genuine and subsisting relationship and there would appear to be based on the factual admissions insurmountable obstacles to family life with that partner continuing outside the UK. Consequently the provisions of paragraph EX.1(b) are met.
16. Thereafter it is necessary to go on to consider paragraph EX.2. That defines insurmountable obstacles. The factual matrix of this case makes it clear that that scenario would also arise. In such circumstances the accepted facts in this case show that the requirements of paragraphs EX.1 and EX.2 are met solely so far as they relate to the relationship between the Appellant’s partner’s relationship with his children and it is accepted that the Appellant and the Sponsor are in a genuine relationship. Consequently the appeal is allowed on human rights grounds.

### **Notice of Decision**

The appeal is allowed on human rights grounds.

No anonymity direction is made.

Signed

Date 20 September 2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris