



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

Appeal Number: HU/25344/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14<sup>th</sup> August 2018**

**Decision & Reasons Promulgated  
On 12<sup>th</sup> October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**STACY [L]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr R Sharma (Counsel)

For the Respondent: Ms A Holmes (Senior Home Office Presenting Officer)

**DECISION ON ERROR OF LAW**

1. The appellant's appeal against a decision to refuse her human rights claim was dismissed by First-tier Tribunal Judge Munonyedi ("the judge") in a decision promulgated on 24<sup>th</sup> April 2018. In an application for permission to appeal, it was contended that the judge erred in failing to give due weight to abuse suffered by the appellant in Jamaica, before she travelled to the United Kingdom, erred in finding that the appellant was not receiving specialist care for mental health issues and erred, overall, in failing to assess the appellant's Article 8 case.

2. Permission to appeal was granted by a First-tier Tribunal Judge on 4<sup>th</sup> June 2018. On 13<sup>th</sup> August 2018, the day before the hearing in the Upper Tribunal, the appellant's solicitors applied to adduce new evidence, consisting of a letter dated 10<sup>th</sup> August 2018 from the Ashiana Network, recording that the appellant has attended counselling sessions since 19<sup>th</sup> June 2018 and has been prescribed antidepressants by her GP.

### **Submissions on Error of Law**

3. Mr Sharma said that the judge erred in relation to whether or not there were very significant obstacles to the appellant's integration, on return to Jamaica. Paragraphs 27 to 29 of the decision contained the judge's reasoning in this respect. Prior to that, at paragraph 23, the judge found the appellant to be a credible witness. Taking the oral evidence with the appellant's witness statement, there was sufficient before the Tribunal to require engagement with the question of significant obstacles. It was accepted that the judge considered the evidence regarding the Article 3 case, in the light of the appellant's ill-health. For the purposes of paragraph 276ADE of the rules, however, paragraph 28 showed that the judge referred to positive factors, tending to show that the appellant would be able to integrate on return but not the negative factors present in the case, including the abuse she suffered in Jamaica before arriving in the United Kingdom in 1999, tending to show that there were very significant obstacles.
4. The appellant's witness statement detailed the ill-treatment she suffered, the attempts she made on her life and the counselling which followed. All of this was relevant to the significant obstacles threshold but the decision did not show that the judge had properly assessed this aspect. Paragraph 28 simply contained the reasons supporting the judge's finding that the appellant could adjust to life on return to Jamaica.
5. Ms Holmes said that the judge had done enough to show that there was no error of law. She considered the appellant's mental ill-health and treatment, in the Article 3 context. It was clear that she had in mind the treatment received by the appellant, summarised at paragraphs 13 and 14 and 15. The decision was detailed and the findings of fact regarding the appellant's mental ill-health were open to the judge. She considered available care in Jamaica, for example at paragraphs 21 and 22 of the decision and had regard to the appellant's health and wellbeing.
6. There was no need to rehearse the evidence regarding the abuse suffered by the appellant in the past in the Article 8 context, because the judge provided a clear summary earlier in the decision, when assessing the Article 3 case. Paragraph 28 of the decision set out positive elements showing that the appellant would be able to integrate but that paragraph was preceded by others in which the judge considered the health aspects in detail. Earlier paragraphs, including 13, 14 and 15, showed that the

judge was aware of the consequences of the abuse suffered by the appellant.

7. At paragraph 44 of the decision, the judge struck the overall balance, having taken into account the public interest and section 117A to D of the 2002 Act. The judge was entitled to conclude that the scales tipped in the respondent's favour. There were no exceptional or compassionate circumstances.
8. Mr Sharma made a brief response. Paragraph 44 illustrated the problem. The judge did not properly consider the rules themselves. At paragraph 28, the judge may have had the Article 3 case in mind but if that paragraph were taken with paragraphs 21 and 24, it was not clear that the judge properly considered Article 8. The judge did not expressly return to obstacles to integration, taking into account the abuse suffered by the appellant, the absence of a proper support network and the adverse memories associated with some parts of Jamaica. All of that fell to be considered. Although the judge might have set out some of these aspects in considering Article 3, the Article 8 question was different. The judge considered the availability of medical care in relation to the Article 3 threshold but appeared not to have done so in relation to paragraph 276ADE of the rules, in the Article 8 context. The impact of the abuse suffered by the appellant was not considered. The judgment in SL (St Lucia) [2018] EWCA Civ 1894 concerned a different argument. The question for the Court of Appeal in that case concerned the impact of the Strasbourg judgment in Paposhvili and whether Article 8 might be relied upon as an alternative to Article 3. The question in the present appeal was not confined to healthcare.

### **Conclusion on Error of Law**

9. As Ms Holmes submitted, the judge's decision is detailed and shows that she had in mind all the evidence relied upon by the appellant. At paragraph 2, the salient issue under the rules was identified in the context of the Secretary of State's decision to refuse the human rights claim. Also clearly identified was the appellant's reliance on Articles 3 and 8 of the Human Rights Convention. The account of abuse suffered by the appellant in Jamaica, before she arrived here aged 21 to visit relatives, is also clearly set out. The judge found the appellant to be a truthful witness.
10. Paragraphs 13 to 16 contain a summary of the medical evidence. In the written grounds, complaint is made that the judge could not properly find, at paragraph 22 of the decision, that the appellant was not receiving specialist care as a letter from her GP described her as having been seen by a clinical psychologist. This complaint is without merit. The judge accurately summarised what appeared in the GP's letter. The conclusion reached by the judge that the Article 3 threshold was not reached, in the light of the extent of the appellant's ill-health and having regard to the healthcare available in Jamaica, was open to her on the evidence.

11. So far as Article 8 is concerned, having set out the relevant rule at paragraph 27, the judge concluded at paragraph 29 that there were no significant obstacles to reintegration and that the requirements of paragraph 276ADE of the rules were not met. Paragraph 28 does contain, as Mr Sharma properly observed, an assessment of the factors tending to show that the appellant would be able to re-establish herself in Jamaica. However, a sensible reading of the decision shows that the judge had in mind and did not overlook the past abuse, the extent of the appellant's ill-health and the treatment she has received. The absence of rehearsal of the earlier findings does not amount to an error of law. The brief conclusion on the rules at paragraph 29 builds upon the earlier paragraphs in the decision and paragraph 28 cannot sensibly be isolated from the rest of the reasoning.
12. The judge went on to assess the appellant's case outside the rules, taking into account the factors set out in section 117B of the 2002 Act. She also took into account guidance given by the Supreme Court in Agyarko [2017] UKSC 11. At paragraph 44, the judge briefly restates her conclusion that the requirements of the rules were not met and adds that no exceptional or compassionate circumstances are present in the case.
13. It is apparent that the judge found the appellant's private life case not to be a strong one. She became an overstayer many years ago. In giving due weight to the appellant's particular circumstances, including the abuse she suffered and the extent of her ill-health, the judge concluded that the balance fell to be struck in the respondent's favour. That conclusion was open to her on the evidence.
14. The decision of the First-tier Tribunal contains no material error of law and shall stand.

Signed

Date 08 October 2018

Deputy Upper Tribunal Judge R C Campbell

### **ANONYMITY**

The judge made no anonymity direction and there has been no application for anonymity in the Upper Tribunal. I make no direction or order on this occasion.

Signed

Date 08 October 2018

Deputy Upper Tribunal Judge R C Campbell

