



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

Appeal Number: PA/12218/2017

THE IMMIGRATION ACTS

**Heard at: Field House
On: 24 April 2018**

**Decision & Reasons Promulgated
On: 26 April 2018**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

CEBERT [K]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Plowright, instructed by Perera & Co Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Jamaica born on 28 February 1949. He has been given permission to appeal against the decision of First-tier Tribunal Judge Cohen dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant entered the United Kingdom on 21 March 2001 as a visitor and remained in the UK without leave after the expiry of his visa. On 22 June 2006 he was encountered in an immigration operation and served with papers as an overstayer. He claimed asylum on 16 May 2017 on the basis of a fear of gangs in Jamaica. His claim was refused in a decision dated 9 November 2017

and the respondent concluded that his removal to Jamaica would not breach his human rights.

3. The appellant appealed against that decision. His appeal was heard on 21 December 2017 by First-tier Tribunal Judge Cohen. The appellant withdrew the asylum aspect of his appeal before the judge and pursued his appeal on Article 8 grounds only.

4. At the appeal hearing, the judge heard from the appellant, his brother and his grandson. The appellant's evidence before the judge was that he had established a private and family life in the UK by virtue of his length of residence and his close family members living here including his brother, his daughter and his grandchildren, and that his children all lived outside Jamaica. His brother explained that he had cancer and was in remission, that the appellant had assisted him a lot during his illness and that they were close. His grandson gave evidence that the appellant was like a father-figure to him and had played a vital role in his upbringing. The judge also considered a statement from the appellant's granddaughter. The judge noted that the appellant could not meet the requirements of Appendix FM and paragraph 276ADE(1) on the basis of his private and family life and proceeded to consider Article 8 outside the immigration rules. He did not accept that the appellant's relationship with his family members constituted family life and considered proportionality on the basis of his private life. He concluded that the appellant's removal was not disproportionate and did not breach his Article 8 rights and he dismissed the appeal. His decision was promulgated on 17 January 2018.

5. The appellant then sought permission to appeal the judge's decision on the grounds that it was irrational for the judge to find that his ties to his brother, grandchildren and great-grandchildren did not go beyond the ordinary emotional ties between family members and that the judge had wrongly taken into account section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 given that credibility was not in issue.

6. Permission was granted in the First-tier Tribunal on 24 February 2018.

7. At the hearing both parties made submissions before me. I advised them that, in my view, there were no errors of law in the judge's decision requiring it to be set aside.

8. The judge plainly gave full consideration to the appellant's ties with his family members in the UK, having heard from and recorded the evidence of his brother and grandson. Mr Plowright, in his submissions, criticised the judge for his lack of elaboration at [20] with respect to his finding that the appellant's relationship with his family members did not extend beyond normal family ties and did not constitute family life. However it seems to me that there was little more that the judge could have said, given the limited evidence before him, which comprised of no more than statements from the appellant, his brother, his grandson, his granddaughter and some friends (with nothing from his daughter), and the oral evidence. There was nothing in that evidence which, in

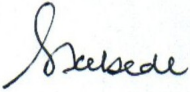
my view, could have led to a conclusion that there was anything more than the usual emotional ties between family members, in terms of the guidance in Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31. There was no evidence of any particular dependency, physical or emotional. The only aspects of the appellant's family ties that could have remotely been considered as relevant to the question of dependency were in fact fully considered by the judge at [20] where he specifically referred to the assistance the appellant provided to his brother during his illness and the length of time he had spent with his family in the UK. In the circumstances the judge properly concluded that Article 8 was not engaged in terms of family life and proceeded to consider his family ties in the context of his private life. There is no merit in the grounds asserting that he ought to have done otherwise.

9. As for the second ground, I consider that nothing material arises from this. The judge was perfectly entitled to take account of the appellant's lengthy period of overstaying in assessing proportionality. The fact that he made his findings in the context of section 8 of the 2004 Act, when credibility had not been raised as an issue, was neither here nor there and certainly had no material impact on his assessment. The judge considered all relevant matters when assessing proportionality, including the appellant's family ties and his length of residence in the UK, and was unarguably entitled to conclude that the respondent's decision was entirely proportionate.

10. For all of these reasons I find that the judge was fully entitled to reach the conclusions that he did and to dismiss the appeal on the basis that he did. I find no errors of law in the judge's decision. I uphold the decision.

DECISION

11. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed 
Upper Tribunal Judge Kebede

Dated: 24 April 2018