



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

Appeal Numbers: HU/04691/2019

THE IMMIGRATION ACTS

**Field House
On 1st October 2019**

**Decision & Reasons Promulgated
On 9th October 2019**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**DRM
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Balroop, of Counsel, instructed by Greenland Lawyers LLP

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Barbados born in January 2001. He arrived in the UK on 3rd December 2005 and remained here until 2011, but then returned to Barbados. He came back to the UK on 14th December 2014, and applied to extend his leave on 10th June 2015 on Article 8 ECHR grounds. This application was refused, and his appeal was

dismissed in December 2016, and he became appeal rights exhausted in August 2017. On 10th December 2018 the appellant applied for leave to remain on Article 8 ECHR grounds, and that application was refused in the decision of 25th February 2018. His appeal against that decision was dismissed by First-tier Tribunal Judge Louveaux in a determination promulgated on the 27th June 2019.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Povey on the 22nd August 2019 on the basis that it was arguable that the First-tier judge had erred in law in failing to have regard to the appellant's age as he was a child when he applied and had just turned 18 years at the time of the hearing, and in holding against him his history of involvement with social services and immigration history as a minor when he was arguably under the direction of his father at that time. It was also arguable that the First-tier Tribunal irrationally found that the appellant's grandmother would be a carer in Barbados when the evidence was that she lived in Jamaica for reasons of ill-health.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions - Error of Law

4. The grounds of appeal contend firstly that the appellant was 17 years old at the date of application, and just 18 years old at the date of decision and hearing. In the decision the applicant was viewed as an adult and it was held against him that he had twice sought to bypass immigration control and had failed to return to Barbados when his first appeal was dismissed with the result that he had cost the taxpayer money as he required social care. It is argued that the First-tier Tribunal did not consider that the appellant was a minor at the time of these matters, and that he acted on his father's instructions. In accordance with Kaur (children's best interests / public interest interface) [2017] UKUT 00014 the Upper Tribunal held that s.117B of the 2002 Act does not prevent a child's age, vulnerability and personal circumstances being considered and these could in principle counter balance the ascription to give little weight to his private life developed in times when he was unlawfully or precariously present particularly as there is a legislative intention to confer on children special levels of protection. There was also a failure to weigh his family life ties with the UK.
5. Secondly it is argued that the First-tier Tribunal erred in law by requiring documentary corroboration that the appellant's grandmother was unwell, and in failing to understand that the main reason that she could not care for the appellant was that she was in Jamaica.
6. Thirdly it is argued that Mr Chester's social work report was given little weight because the respondent could not test the evidence, when this was not a submission the respondent had made and also because the

appellant had ceased to be a child since it was written. However, the family life of a child does not cut off when a child reaches 18 years, and the findings of Mr Chester likewise did not cease to be relevant, see paragraph 22 of Singh & Anor v SSHD [2015] EWCA Civ 630.

7. These errors remain relevant despite the previous determination dated December 2016 as there were errors in that assessment under Article 8 ECHR because that First-tier Tribunal, which gave its determination in 2016, did not have the benefit of the guidance in Kaur.
8. In a Rule 24 response and in submissions by Mr Avery the respondent contends, in summary, that the First-tier Tribunal directed itself properly. The previous decision of the First-tier Tribunal had raised the issue of a lack evidence of the grandmother's ill-health and so it was reasonable to expect such evidence to be before this First-tier Tribunal. It is argued that the social work report was not given weight due to the fact that the appellant no longer lived in local authority care and was once again with his father rather than just because the appellant had become an adult.
9. At the end of the submissions on remaking I informed the parties that I found that the First-tier Tribunal erred in law for the reasons which I now set out below in writing. It was agreed that we would immediately proceed to remake the appeal with evidence being called as the three key witnesses, the appellant, his father and his step-mother were all present, and both representatives were ready to proceed.

Conclusions - Error of Law

10. The First-tier Tribunal erred by failing to consider the weight to be given to the family life ties the appellant has in the UK with his father, his step-mother (father's ex -partner), and his six minor half-siblings and his step-siblings with whom he now spends at least every other weekend, and which are found to exist at paragraph 27 of the decision. There is no prescription that only limited weight could be given to these ties within s.117B of the Nationality, Immigration and Asylum Act 2002. There was also a failure to consider the case of Kaur (children's best interests / public interest interface with respect to the appellant's private life ties with the UK, and to consider whether these were straightforwardly to be only given limited weight as they would if they had been formed by an unlawfully present adult. This was particularly relevant where there was evidence before the First-tier Tribunal that the appellant had been in social services care which would indicate a period, at least, of vulnerability especially as there are on-going social services payments and therefore involvement with the appellant.
11. The report of the social worker Mr Chester should properly have been put in the context of the developments in the appellant's

circumstances, which most importantly involved the change that he had returned to live with his father but it was not lawful to give it limited weight simply because Mr Chester did not attend to give evidence before the First-tier Tribunal as no further reasoning is given on this point or simply because some things had changed since it was written. I find that there was as a result a failure to properly consider relevant social work evidence in the report of Mr Chester, particularly going to the issues that the appellant's grandmother had ceased caring for him as she was unable to cope and why he returned to the UK in 2014, see the report at page 121 of the appellant's bundle, and also evidence of the close relationships he has with his younger siblings and step-mother at page 120 of the appellant's bundle.

Evidence & Submissions - Remaking

12. Prior to the start of the evidence I asked Mr Balroop to clarify the basic family structure. The appellant lives with his father, Mr MM in one household in Stanmore. Ms PW, his step mother and Mr MM's ex-wife, lives in another household in Harrow with her three children T (aged 22) who is her older daughter by a previous relationship, and MY (aged 10) and MN (aged 8) who are the appellant's half siblings. In a third household in Hayes there are Ms D, who is Mr MM's ex-partner prior to PW, who lives in with her children DA (aged 16) and K (aged 14), S (aged 10 years) who are all the appellant's half siblings and A (aged 7 years) a daughter of Ms D's from another relationship. The birth certificates of the children are all included in the appellant's bundle, as are British citizen passport copies for MY and MN.
13. The evidence of the appellant from his written and oral evidence in summary is as follows.
14. He was born in Barbados and lived initially with his mum and his younger sister who had a different father, but also spent time with his paternal grandmother. He left Barbados and was brought to the UK to join his father and step-mother when he was 4 years old. He last saw his biological mum and younger half-sister when he was 4 years old. He has had no contact with them since that time. He has no idea about the whereabouts of his maternal grandmother.
15. In 2011 he returned to Barbados and lived with his paternal grandmother. He completed his primary education and started secondary school. His paternal grandmother is now in Jamaica, and his father has obtained documents about her in Jamaica. He does not have contact with his father's siblings in Barbados, but they were around sometimes when he was in Barbados. He has not been to Barbados since 2014 when he returned to the UK to be with his father because his paternal grandmother became ill with heart problems and could not cope with him. On return to the UK he reconnected not only with father and siblings but also with his step-mother, Ms PW. He does not have social media contact with any friends from Barbados

because he left at a point when he had no phone or access to such media. He was there when he was aged 10 to 14 years.

16. In May 2018 he fell out with his father, and because Ms PW did not have any space he was accommodated for a while by Social Services, but he kept up contact with both his father and step-mother and all of his step and half siblings during that time. By June 2019 he had returned to live with his father.
17. He currently sees all of his half and step siblings most weeks. He goes to their houses or they come to his/ his father's and sleep over for the weekend. He is the oldest, they look up to him and he sometimes takes them out. They see films or do things like going to an Arsenal football match or paintballing. He feels closest with his brothers DA, K and MN. He babysits for MY and MN, and knows that they would be upset if he was no longer in the UK. He helps his step-mum, Ms PW, as she needs a helping hand.
18. He has two level one BTEC qualifications: the first in electrical engineering and the second in electrical installation. If he is allowed to remain his plan is to get an engineering apprenticeship and continue to study with this programme. He has never worked in the UK. The appellant does not think he would cope if he were sent to Barbados because as he would not know how to operate there as he is just 18 years old and would not know who to contact or how to get a job; his father doesn't want him to go there and he has no idea if his father would be able to contact his own half siblings for help but they are quite young as one is younger than him and the others around the same age as him and they now lived with their different fathers as their mother, his paternal grandmother, lives in Jamaica.
19. The evidence of the appellant's father, Mr MM, from his written statement and oral testimony is, in summary, as follows.
20. He is a British citizen who was born in Jamaica in 1979. He works as a gas engineer, and is doing a degree in civil engineering at the University of West London. He currently lives with the appellant, and has 6 other children who all live in the UK.
21. Mr MM was born in Jamaica and lived in Jamaica until he was about 16 years old when he moved with his Jamaican mother to Barbados as she married a man there. He lived in Barbados for about 4 years, during which time the appellant was conceived. The relationship with the appellant's mother broke down, and he came to the UK in August 2000. He returned to Barbados when the appellant was born in 2001 and stayed for a number of weeks. The appellant's mother could not cope with his care so his mother, the appellant's paternal grandmother, became his main carer but he provided money and kept in contact to make key decisions. He went again to Barbados for a couple of weeks in 2005 to collect the appellant and bring him to

live with him in the UK. Initially when he brought the appellant to the UK in 2005 he lived briefly with his then partner Ms D and their son DA, but then shortly after they moved in with his new partner Ms PW, and they cohabited with her daughter T and their daughter MY who was born in 2009 until that relationship ended in 2010. At this point Mr MM took the decision to return A to the care of his mother in Barbados as his brother had died and he needed surgery and was finding it difficult to cope. He continued to maintain contact with the appellant by phone, and visited him in 2012 for a couple of weeks when he graduated from primary school. This was the last time Mr MM visited Barbados. In 2014 the appellant visited the UK, and Mr MM decided that he should remain here as he received news his mother was unwell and there was no one else to care for him in Barbados.

22. Since his return the appellant has rekindled his relationships with his step-mother, Ms PW, T, MY, MN. Mr MM explains that he had a falling out with the appellant which led to the appellant being in social services care for a while, but even when he was in care the appellant still saw all members of the family. He now has all of the children around approximately every other weekend although it changes with their activities. All the children get on well and have no problems between one another. They have holidays, go to the cinema and go to football games together. He is also aware that the appellant babysits for MY and MN to help Ms PW. He has talked to the other children about the possibility of the appellant having to go back to Barbados and knows from them that they would be devastated. They wanted to attend the Upper Tribunal to give that evidence but he had said that they had to go to school.
23. Mr MM's evidence is that the appellant could not return to live in Barbados as there is no one there to care for him and no home owned by anyone as the appellant paternal grandmother's place was rented, and his paternal grandmother has returned to Jamaica around a year ago where she herself is being cared for by others. He obtained the documents about his mother, Mrs VK, from her as the last Tribunal commented on the lack of evidence about her. In Barbados he still has his younger half siblings: Y who is 21 years old, A who is about 17 years old and M who is 16 years old. They could not assist the appellant as they are children themselves and live with their fathers. His level of contact with them is to call them on their birthdays, and it would not be right for him to ask them to help him when they are children and he is a healthy person working in the UK. He understands that the appellant's mother has remarried, and he and the appellant have had no contact at all for the past ten years. The appellant could not survive on his own as he is still a child and cannot make adult decisions.
24. The evidence of the appellant's step-mother, Ms PW, from her written statement and oral testimony is, in summary as follows.

25. She is a British citizen born in the UK, although she lived in Jamaica from the age of 9 to 14 years. She is the biological mother of T, and MN and MY with Mr MM. She feels that the appellant is her son, and says he was very close to T before he returned to Barbados in 2011. Since his returned to the UK in 2014 she has rekindled this bond, and he frequently takes care of his younger siblings MY and MN with T, and sometimes babysits, collects them from school if she is running late and goes to MN's football matches. They also go on holiday together to places like Centre Parcs. She had not been able to take the appellant in when he fell out with his father in May 2018 because she is a foster carer and had insufficient space and a female foster child which made it impossible. She sees the appellant as part of her family unit. She believes that MN and MY would be detrimentally affected if he was not allowed to remain in the UK as they don't really remember a time without him and look up to him as their older brother.
26. Mr Avery submitted that he relied upon the refusal letter. Which concludes that the appellant could not meet the requirements of the private life Immigration Rules as at the point of application he was a child who had not been in the UK for 7 years. Mr Avery submitted that the Immigration Rules cannot be currently met as there would not be very significant obstacles to integration for the appellant on his return to Barbados, and his removal would be not be a disproportionate interference with his family life ties as there was nothing exceptional.
27. The refusal letter disputes that there was family life between the appellant and his father, Ms PW and his half and step siblings as he was not living with them at the time of application and also pointed to the lack of evidence with respect to his paternal grandmother being unable to continue caring for him as she had done between 2010 and 2014.. Mr Avery accepted that there was a fair amount of documentary evidence regarding family life, but commented that the expert report was out of date and that the oral evidence about family life was a bit hazy, as for instance the father had described his contact with his children at the weekend but had not mentioned that the appellant had baby-sat MN and MY, which was the evidence of Ms PW. Mr MM had not looked into family connections in Barbados to try to sort something out for the appellant if he were to return. The appellant is an adult with some qualifications who could try to get work in Barbados, but his family had not been motivated to help him with this.
28. Mr Balroop submitted that there would be very significant obstacles to integration on return to Barbados for the appellant as he had no accommodation and no family to return to there. His paternal grandmother was now unwell and living in another country. His uncles and aunts from his father are children living with their fathers. His father could not go with him as he has 6 other children from two different mothers in the UK, and does not live with either of the

mothers. The appellant only has level 1 BTEC qualifications and no employment experience. He would not be able to survive, and therefore the appeal should be allowed with reference to paragraph 276ADE(1)(vi) of the Immigration Rules. In addition, the appeal should be allowed as it would not be a proportionate interference with his family life with his half siblings and step siblings. The evidence of family life was extensive, and Mr Chester the social worker had concluded it would be emotionally harmful for the appellant to be required to leave the UK. His father is able to support him financially in the UK and the appellant speaks English. All of this outweighs the public interest in maintaining immigration control, and so the appeal should be allowed.

29. In addition to the witnesses who attended court the bundle includes: letters in support attesting to their close relationship from his step-sister T, his half-sister MY, and his half-brother DA along with photographs of him with half and step siblings; a letter from the Barbados Ethiopian Orthodox Church which confirms that when the appellant was christened in January 2001 he was presented by his paternal grandmother, Mrs VK, who was his guardian at that point; a statement from Mrs VK about her relationship with the appellant and the care she provided for him in the past, and her ill health together with a medical report from her GP in Jamaica; and the social work report of Mr Lawrence Chester dated 19th November 2018.
30. The social work report of Mr Chester records that he has been qualified as a social worker since 1995, and has a MA in social work awarded in 2015. He has worked in statutory roles and then as an independent social worker. He has worked with refugee children and an integral part of his work is to assess the best interests of children. Mr Chester includes a statement of his duty to the Court. I find it is a report which was written by a person with appropriate expertise and understanding of their duties. The report was made following interviews with the appellant, Mr MM and Ms PW, and with sight of the documents from Harrow Children's Services. Although the report was written when the appellant was in care it records that there was on-going contact with Mr MM, Ms PW and T, MN and MY even at that time.
31. It was the conclusion of Mr Chester that the appellant had experienced much of his childhood in the UK and had the majority of his family here, and that he thinks of himself as British. It is recorded that the appellant had had to return to the UK in 2014 because his grandmother was unable to cope with him in Barbados, and then had been abandoned by his father in May 2018, and had no contact with his biological mother, and Mr Chester expressed concerns that this would negatively impact on the appellant, and indeed refers to the fact that there is other evidence supporting this concern as he had been to see his GP about being depressed and upset (the GP notes for January 2016 being at p.129 of the appellant's bundle) and there was

a comment about the worrying degree of instability that there had been in the appellant's life in the Harrow Social Work Assessment. In these circumstances Mr Chester concluded that the attachments to the UK, which the appellant sees as home, are likely to be all the more important to him. In this context he went on to conclude that it would cause the appellant significant emotional harm if he were removed from the UK.

Conclusions - Remaking

32. My starting point is the decision of Judge of the First-tier Tribunal Rothwell promulgated on 23rd December 2016. Judge Rothwell found that Mr MM had not been a truthful witness as he said he did not know when the appellant returned to Barbados or how long he stayed, and she generally concluded that he was not trying to assist the Tribunal by being frank. She also noted that there was no evidence regarding the paternal grandmother's illness. In these circumstances, noting the very limited evidence before her, which included a lack of evidence about the appellant's private and family life ties in the UK, Judge Rothwell concluded that she did not accept that the appellant could not return to live with his paternal grandmother as he had done in 2010 and thus dismissed the appeal.
33. Mr Avery has submitted that the account of family life from the three witnesses was hazy before the Upper Tribunal. I do not agree with that assessment. The family is extensive and complex with a total of seven children and three households. There was no evidence given which was significantly inconsistent, and some evidence which echoed through the three different testimonies, such as the appellant's regular babysitting role with his younger half siblings MY and MN. Mr MM has perhaps learned from his experience before Judge Rothwell and I find that on this occasion he assisted the Upper Tribunal properly and gave truthful testimony as his evidence was detailed and heartfelt, particularly when he explained how he just did not feel it would be right to ask his minor half-siblings in Barbados with whom he has just annual birthday greeting phone calls to assist with the care of the appellant when he was a healthy working man; and further Mr MM's evidence was consistent with that of Ms PW and the appellant, and with the other supporting documentation – for instance the appellant's christening certificate recording that he was presented by his paternal grandmother as his guardian rather than by his mother. I find, for these reasons, that it is correct to treat all of the witnesses as credible.
34. I turn first to the Article 8 ECHR appeal by reference to the Immigration Rules at paragraph 276ADE(1)(vi). In SSHD v Kamara [2016] EWCA Civ 813 at paragraph 14 of the decision Lord Justice Sales said as follows: "The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society

in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

35. The appellant is 18 years old, and I find, based on the totality of the witness evidence, the social work evidence and the letters from three of his siblings, remains part of his father's family, with family life relationships of emotional and financial dependency akin to those of a child. He has never worked; he has some low-level qualifications; and he continues to live within the network of siblings and gains support not just from his father but also from his step-mother Ms PW. He does take his half-siblings MY and MN out but generally together with his older step-sister, T. He is a person who has suffered a number of abandonments in his life: firstly his birth mother who has played no material role in his life after he was 4 years old; then his paternal grandmother who became unable to care for him when he was 14 after being his main carer for the previous 4 years; and then his father in 2018 when they fell out and he had to seek help from Social Services. I am satisfied that his paternal grandmother has returned to Jamaica, her country of nationality due to her ill health and lives with her siblings given her statement supported by the GP letter, and the evidence of the witnesses. I find, relying on the social work evidence of Mr Chester and indeed the notes of his GP consultation about his anxiety and low mood in 2016, that there has been instability in the appellant's life which makes him more vulnerable than an 18 year old who had experienced a stable upbringing, and thus conclude that the family life relationship and stability of continuing to live in the UK are more vital to his emotional well-being. It is further clear that the appellant views himself as British and this country as home, and that this is the only place he feels he understands.
36. I also find that the appellant would not have any significant help to re-establish himself in Barbados. His father has quite reasonably not felt able to ask his very young step-siblings, with whom he has very little historic contact and who are without their own mother, who has returned to Jamaica in the last year and are now relying on their own fathers, to assist the appellant given his own fortunate circumstances in the UK. Mr MM is further not a citizen of that country, and only lived there for four years between the ages of 16 and 20, and has only made three visits there since that time, the first being when the appellant was born in 2001, the second being in 2005 when he brought him to the UK for the first time; and the last being in 2012 when he went to see the appellant and his mother. Mr MM also plainly has six other biological children for whom he must provide financially and emotionally in the UK, and could not return to Barbados with the appellant to help him.

37. In these circumstances I find that the appellant would lack the personal maturity and family help to be able to establish the necessary human relationship to give substance to his private and family life in Barbados, and would struggle even to establish the basics of accommodation and financial support for himself. I am therefore satisfied that the appellant would have very significant obstacles to integration if he had to return to country of nationality.
38. If I am wrong with respect to the Immigration Rules at paragraph 276ADE(1)(vi) and the appeal must be looked at more widely on Article 8 ECHR grounds I find the following to weigh in his favour. I have already concluded that the appellant has family life ties with his father, step-mother and six step and half siblings who are all settled lawfully in the UK, and that he has the emotional and financial dependency on his father and step-mother of a minor. I find that it would not be possible for these the two families of siblings to relocate to Barbados, a country of which none is a national and none has lived and given all families have school age children who have lived in the UK for more than 7 years. I find therefore that removal of the appellant would fundamentally interfere with these family life relationship which are based on very regular face to face interactions, and that this would be highly detrimental to the appellant who still has the emotional and financial relationship of a child to his father and step-mother and siblings. I find that it is also in the best interest of MN and MY, who are both British citizens, that the appellant remains in the UK given his regular contact as their caring older brother in light of the evidence from both their biological parents and older step-sister as well as the appellant, and that this must be a primary consideration. I accept the evidence that they would be devastated if he were not part of their lives. I find that all of the appellant's private life ties are also with the UK, and whilst normally these could not be given more than little weight as they have been formed whilst he has been present without leave to remain, for the reasons set out above when the appeal was considered under the Immigration Rules regarding his probable grave difficulties in forging a private life in Barbados I find that exceptionally it is appropriate to give weight to these ties. I place reliance on the conclusion of the Upper Tribunal in Kaur (children's best interests / public interest interface) in taking this approach. I also find that the appellant remains emotionally vulnerable to change due to his unstable upbringing and experience of abandonment which makes the importance of his keeping his private life in the UK greater than it would otherwise have been.
39. Against the appellant is the fact that weight must be given to the public interest in maintaining immigration control and removing those who do not qualify under the Immigration Rules, if I am wrong in my conclusions that he does so qualify with reference to paragraph 276ADE(1)(vi), and the fact that it appears that he continues to receive some financial support from Social Services as a care leaver

so is not financially independent. Ultimately, I find that the weighty family life ties and the impact of severing these on the appellant and his British citizen siblings in the UK, and the impact on his private life ties that removal would represent suffice to mean that his removal is not proportionate.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal and the findings of that Tribunal.
3. I re-make the decision in the appeal by allowing it on Article 8 ECHR human rights grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I 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 original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in light of the appellant's age and potential vulnerability as an 18 year old who has experienced time in social services care.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 2nd October 2019