Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07168/2018

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On 21 January 2019	**On 14 March 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

BEULAH [P]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Toora, Counsel, instructed by IAS Liverpool Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by a citizen of St Lucia, born in November 1946, against the decision of the First-tier Tribunal dismissing her appeal against a decision of the respondent on 6 March 2018 refusing her leave to remain in the United Kingdom and on the basis of her private and family life.

2. Permission to appeal was granted by First-tier Tribunal Judge Froom who was concerned about allegations that the hearing was unfair. He said:

> "While the appellant may ultimately struggle to succeed in her appeal, she is entitled to a fair hearing. It is arguable that, if it is shown that the FtTJ was unduly dismissive of the appellant's health concerns, as alleged, there was procedural unfairness. This goes to the issue of whether there is an extant family life between the appellant and her adult children."

3. The allegations that the hearing was conducted unfairly are set out in extensive grounds, apparently written by the appellant and supported by witness statements from close members of her family. I paraphrase them by saying that they complain that the judge was hectoring and impatient and unwilling to listen. This is not quite the point picked up by Judge Froom when he gave permission. He was particularly concerned that the judge may not have had proper regard to the appellant's health concerns. Additionally, it seems to be his worry that the degree of dependency established by the evidence, or that should have been established by the evidence, gave more weight to the appellant's case.

4. The grounds are sufficiently cogent for the judge to have been asked to comment and her comments were sent in a memorandum. Essentially, she recognised that she speaks loudly and endeavours to speak clearly. She denied that she was behaving in any way improperly. She appears to concede there was some slight justification in some of the other criticisms because she said:

> "I was surprised by [the appellant's] claim to have ongoing yearly reviews after five years as this was not supported by her evidence nor my own experience of having had breast cancer."

5. The point is that the judge was looking at the appellant's own evidence. She was not making herself into an expert because of her own experience. The judge did not trivialise the risks facing the appellant in the event of her return. She acknowledged that it was the appellant's case that she would be particularly vulnerable to burglary but pointed out there was no evidence to support that fear beyond the appellant's own experience which was of being burgled twice in her lifetime.

6. I find it noteworthy that there is no supporting evidence from the representative who appeared in the First-tier Tribunal. Neither is there any evidence that the First-tier Tribunal Judge was challenged about the way she was conducting the hearing at the hearing. Mr Toora properly and professionally recognised the difficulties in the case that he had to put and the absence of support from the lawyers previously involved.

7. The grounds further criticise the judge for assuming that the appellant's money was in the United States, rather than East Caribbean, dollars but there is no evidence that the judge erred as alleged. The judge does not identify the currency beyond using the dollar sign. Certainly there is nothing in the decision that indicates the judge thought the currency given were US dollars.

8. I also note the Rule 24 notice from the Secretary of State and Mrs Aboni's contention that there was nothing that she had needed to draw to my attention to support the idea that the hearing was in any way improper.

9. There is also concern about the finding that the claimant has been a burden to public funds. The evidence about this is rather obscure. There is no direct evidence that any substantial sums were paid. There is evidence that there is a national health number and it seems that is given to person when she tries to pay a bill. It is important to read what the judge said. She said that the appellant "has been a drain on the NHS as she has been registered and made regular use of a GP and been referred to a number of specialists for further examinations and tests.

10. The appellant cannot help being ill and it is not suggested that the appellant acted improperly in seeking treatment. The judge noted the absence of any evidence that payments had been made or that the surcharge is levelled against everyone.

11. It is unsatisfactory when a person leaves the hearing room feeling that her case has not been done properly. However it is the nature of appeals that one party will lose and it is hard for people sometimes to distinguish objectively between being treated unfairly and losing an unwinnable case. As the First-tier Tribunal Judge recognised, there is a lot of emotional investment in this case. The appellant wants to remain in the United Kingdom and her relatives want her to remain in the United Kingdom. They want her to remain in the United Kingdom for very human reasons. She is the matriarch of the family and is respected. She plays a role in the family and is appreciated.

12. The fact is she cannot come within any of the Rules. She entered the United Kingdom in June 2016 with six months' leave as a visitor. After seven months she applied for leave to remain on human rights grounds.

13. The appellant has clearly not established any right under the Rules. The judge, appropriately, looked for "very significant obstacles" to the appellant's reintegration into life in St Lucia. The judge found that the claimant had been living there for many years, that she owned a house there that had been let out during her stay in the United Kingdom and found no evidence of a high degree of support or dependency on her relatives in the United Kingdom.

14. Clearly there is a close personal relationship and Mr Toora drew my attention particularly to the finding at paragraph 39 "that there has been some financial support since she has been in the UK". The judge also noted evidence of practical support.

15. I decided not to give an extempore decision, in the hearing room, because I wanted to step back a little. It is quite obvious to me that there are strong feelings here based around human and loving concerns between family members and the appellant who is now 72 years old.

16. I do not find it helpful to look for a sharp demarcation between "private life" or "family life". The concept of "private and family life" is an entire entity under the European Convention on Human Rights which is about the state respecting human relationships and leaving people to get on with their lives. What matters is not so much the categorisation of a relationship as "family" or "private" but whether it is a relationship that the United Kingdom is required under the Convention to promote or respect. The degree of care and affection here is not properly analogous to that that exists between husband and wife or between parents and minor children. It is a loving relationship based on respect for a person who is no longer young. There is no obligation to promote that relationship in the way there is an obligation to promote the relationship between life partners or parents and little children. There is no evidence that the appellant's illness is anything like the level of severity necessary for it to be a major consideration in any human rights balancing exercise. The judge's mind was appropriately focused on the kind of relationship. The judge was clearly entitled to regard it essentially as private life established during a precarious time so not something to which much weight should be given.

17. I can see nothing here which would justify a decision to allow the appeal on human rights grounds. The appellant has lived for most of her life in the Caribbean and lived there apparently successfully until applying for a visitor visa. She has some property there. It is very hard to see why she cannot return and I do not criticise the First-tier Tribunal in any way for reaching the conclusion that she could. The short point is the judge considered the things that really mattered and reached a wholly sustainable conclusion. Even if the judge might have categorised something at the private life end of the spectrum when categorising it as family life would have been more appropriate, there is nothing here that begins to suggest that refusing leave on human rights grounds is in any way disproportionate. There is just nothing to this case that could lead to it succeeding.

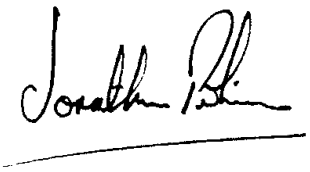
18. Neither am I persuaded that there is anything in the judge's conduct which is so bad that the decision should be set aside. I do not find anything wrong in the judge's conduct at all. She may well have genuinely lost the confidence of the appellant and her family but they are disappointed because they are not getting the result they wanted. There has been no error here and, if there has, there has been no material error. I realise this decision is going to disappoint the appellant but the fact is she is not entitled to live in the United Kingdom with her children and grandchildren. The law does not provide for that and it not a human right.

19. I dismiss the appeal against the decision of the First-tier Tribunal.

Notice of Decision

This appeal is dismissed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 11 March 2019