



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

Appeal Number: HU/23946/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 12 February 2019**

**Decision & Reasons
Promulgated
On 05 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**MS PAULINE VERNETTA BROWN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S Ferguson, Counsel instructed by Anshah Solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant is a citizen of Jamaica born on 4 March 1951 who applied to the respondent for leave to remain on human rights grounds. The respondent refused that application on 27 September 2016. In a decision promulgated on 19 November 2018, Judge of the First-tier Tribunal D Barker dismissed the appellant's appeal on human rights grounds.

Grounds for Permission to Appeal

2. The appellant appeals, with permission, in summary on the grounds that it was argued the judge erred in her approach to the consideration of family life and the appellant's grandson's best interests and whether these could or did amount to exceptional circumstances.

Error of Law Discussion

3. The appellant entered the United Kingdom on 7 August 2000 on a six month visit visa. She applied for further leave to remain on 8 February 2001, refused on 17 August 2001 and made a further application on 7 July 2015, refused on 26 August 2015. The application which was the subject of the present appeal was made on 27 April 2016 and it was not disputed that the appellant has been resident in the UK in excess of eighteen years at the date of the First-tier Tribunal hearing, nor was it disputed that she only had leave to remain for the first six months of that period.
4. The judge, in a careful and comprehensive decision, took into consideration the appellant's relationships with her children, her grandchildren as well as her great-grandchildren and found, at [24], that she had a "very close relationship" with her family which the judge found to be "a deep family relationship and mutual support" and the judge noted that the appellant had close involvement in care for each family member.
5. The First-tier Tribunal went on to consider the appellant's medical conditions which included severe pain, diabetes and eye problems. The judge took into consideration that it was notable that the appellant was not good at attending appointments in relation to her poor diabetes control. The judge took into consideration that the appellant was severely obese as noted in the reports and although it was stated at one point that the appellant had poor mobility the judge found that the extent of the appellant's mobility had not been established and that whilst it was noted that she had a weight problem and was severely obese, it did not automatically follow that she had severe mobility problems. These findings were unchallenged.
6. The judge considered the appellant's immigration history and the claim that it was as a result of her illness that she had remained in the UK. However, the judge did not accept this explanation and did not find it credible that it would take the appellant and her daughter fourteen years to realise that the solicitor was not acting and then to find someone else (paragraph [26]). The judge quite properly considered that the fact the appellant had remained unlawfully in the UK for in excess of seventeen years at the time of the decision needed to be taken into account. Again these findings were unchallenged.
7. The judge then went on, at [27], to consider the arguments made in relation to paragraph 276ADE and for the reasons given (which have also not been challenged) found that there would not be very significant obstacles to the appellant's integration into Jamaica; although the judge accepted that there would be some obstacles and disruption, this did not

meet the test of very significant obstacles and in reaching this finding the judge took into consideration that it was not just disruption and sadness, this did not meet the amount to very significant obstacles and the judge concluded that the appellant did not meet the requirements of paragraph 276ADE. There has been no direct challenge to that finding.

8. The judge, at [28], considered that Article 3 medical grounds had been raised in the grounds of appeal but that it was accepted that treatment would be available in Jamaica and that the evidence did not meet the high threshold for finding a breach of Article 3 of the ECHR. Again, this was not challenged.
9. The judge also noted that it was not suggested that the appellant could meet the requirements of Appendix FM. The judge went on to consider the facts of the case at [30] including that the appellant had lived with her daughter and children and that she had a large and close family and that she had lived with her daughter for the whole of the life of her grandson with whom she had a very close bond and was involved in his upbringing, in that she helped to take him to and from school, although it was stated that the child was now being encouraged to travel to and from school independently and the judge found the appellant's role would in that respect diminish. The judge accepted that appellant assisted with child care due to the child's mother's work pattern within the NHS. The judge accepted that there would be significant changes and upset in the family if the appellant were removed and found that the main factor in the evaluation was the family and private life with the family and the general private life which would be formed after eighteen years in the UK.
10. The judge then went on at [31] to consider Section 55 and conducted a best interests assessment. The judge reminded herself that the best interests must be a primary consideration. Although it was submitted that the judge had erred in that assessment in stating that the fact that the appellant's grandchild could remain in the UK with his mother was sufficient to mean that his best interests did not warrant a grant of leave to remain for the appellant, that is to mischaracterise what the judge said at [31]: The judge took into consideration that the children involved in the appellant's life would be able to remain with their respective parents. The judge took fully into consideration that it is desirable for children to have contact with grandparents or great-grandparents but that it cannot be said that it would be contrary to the best interests of the children in this case, for the grandparent to leave. The judge took into consideration that contact could be maintained including by visits and communication.
11. The judge also noted that the grandchild to whom she was particularly close was getting older and that the events which were described when he could not eat or sleep without his grandmother's presence some of these events were when he was very young and that he was now at an age, at the final year of junior school, where he was maturing and becoming more independent. The judge found that there was no supportive evidence of a

real, necessary dependence of the child upon his grandmother and that the appellant did not have 'family life would be protected by the Rules'.

12. The judge therefore undertook a broad evaluative best interests' assessment, albeit that this was within the framework of considering the Immigration Rules. Having undertaken that assessment and considered all the factors, there was no material error in the judge finding that the best interests of the appellant's grandson in particular and the other grandchildren did not require the appellant to be granted leave. The judge, having set out in some detail the documentary and oral evidence and having evaluated that evidence including the age and dependency of the appellant's grandson on his grandmother, reached a sustainable best interests conclusion which cannot be said to reach the high threshold of irrationality and for which the judge gave adequate reasons.
13. It was not the case that the judge was not finding family life, rather the judge found that the appellant did not have 'family life which would be protected by the Rules' including given the lack of dependency upon her. In considering Article 8 more generally, the judge found that there would be an interference with the appellant's family and private life, at [33]. The judge directed herself properly, including that she had to consider the private and family life of all of those involved and acknowledged, as she had throughout the decision, that there would be 'substantial interference and disruption' to that private and family life. However, the judge gave adequate reasons for finding that such disruption would not be disproportionate taking into consideration the appellant's immigration history and weighing up all the evidence.
14. Miss Ferguson submitted that the psychological and emotional needs of the child which could not be met by a paid carer, was analogous with the situation considered under the adult dependent relative Immigration Rules as considered in **Britcits [2017] EWCA Civ 368** (paragraph 20) and that this together with all the factors was capable of amounting to exceptional circumstances, under Appendix FM GEN.3.2 with reference to GEN.3.3. I am not of the view that this materially assists the appellant's case and including as reiterated in **Britcits** (paragraph 78) the Article 8 balance depends on the facts of any particular case
15. In regards to exceptional circumstances Appendix FM provides as follows:-
 - "GEN.3.2. (1) Subject to sub-paragraph (4), where an application for entry clearance or leave to enter or remain made under this Appendix, or an application for leave to remain which has otherwise been considered under this Appendix, does not otherwise meet the requirements of this Appendix or Part 9 of the Rules, the decision-maker must consider whether the circumstances in sub-paragraph (2) apply.
 - (2) Where sub-paragraph (1) above applies, the decision-maker must consider, on the basis of the information

provided by the applicant, whether there are exceptional circumstances which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application.

- GEN.3.3. (1) In considering an application for entry clearance or leave to enter or remain where paragraph GEN.3.1. or GEN.3.2. applies, the decision-maker must take into account, as a primary consideration, the best interests of any relevant child.
- (2) In paragraph GEN.3.1. and GEN.3.2., and this paragraph, “relevant child” means a person who:
- (a) is under the age of 18 years at the date of the application; and
 - (b) it is evident from the information provided by the applicant would be affected by a decision to refuse the application.”

16. Whilst the judge did not explicitly dismiss the appellant’s case with reference to GEN.3.2. and exceptional circumstances resulting in unjustifiably harsh consequences, the judge was aware of the appellant’s case in this regard, as recorded at [17], that it was argued by Ms Ferguson that there were exceptional circumstances, including because of the relationship with her grandson and others. The judge fully considered all the factors including the appellant’s role in her grandson’s life (which although close, she ultimately found to be diminishing given the child’s increasing independence as he gets older). It is patently clear from the judge’s findings that she did not find there to be exceptional circumstances which would result in unjustifiably harsh consequences for the appellant or any of her family, including that she did not find that the child’s best interests required his grandmother to remain for the reasons given, including his maturity, increasing independence and the lack of adequate evidence of dependency on the appellant, together with the fact that all the children in question could continue to remain in the UK with their parents. On the basis of all the factors considered in the round, as reflected in the judge’s findings therefore, it is difficult to see what other conclusion could have been reached.
17. Although Miss Ferguson tried, belatedly, to suggest that the judge had failed to take into consideration all of the relevant factors in her proportionality assessment, including that the appellant had been a British subject at birth in Jamaica, I agree with Mr Jarvis that that was not properly before me. In any event, I cannot see what material difference it could

have made to the judge's decision even if it had been. Equally Miss Ferguson submitted that there was no consideration of the fact, when considered cumulatively, that the appellant's relationship including with her grandchildren was mutually supportive and that she would increasingly rely on her family as she aged; again this was not specified in the grounds of appeal. Even if it were, the judge considered all the circumstances including that there were not very significant obstacles to reintegration for the appellant, notwithstanding that there were some obstacles and disruption.

18. The appellant's grounds of appeal are not made out and amount to no more than a disagreement with the judge's reasoned findings.
19. The decision of the First-tier Tribunal does not disclose an error of law and shall stand.

No anonymity direction was sought or is made.

Signed

Date: 1 March 2019

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

The appeal was dismissed; no fee award can be made.

Signed

Date: 1 March 2019

Deputy Upper Tribunal Judge Hutchinson