



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

Appeal Number: IA/00501/2014

**THE IMMIGRATION ACTS**

**Heard at Phoenix House, Bradford  
On 13<sup>th</sup> August 2014**

**Determination Promulgated  
On 19<sup>th</sup> August 2014**

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**Before**

**UPPER TRIBUNAL JUDGE SOUTHERN  
UPPER TRIBUNAL JUDGE COKER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**NICOLA ANNE-MARIE HARDING**

Respondent

**Representation:**

For the Appellant: Mr M Diwinycz, Senior Home Office Presenting Officer  
For the Respondent: Mr B Marshall of NBS Solicitors

**DETERMINATION AND REASONS**

1. The Secretary of State seeks to appeal a decision of the First-tier Tribunal allowing the appeal of the claimant against a decision of the SSHD dated 28<sup>th</sup> November 2013 refusing to vary her leave to remain in the UK and to remove her from the UK pursuant to s47 Immigration Asylum and Nationality Act 2006. Permission was granted on the grounds that it was arguable that the conclusion drawn by the First-tier Tribunal judge that the claimant had severed all ties with her country of origin was in error given the findings of fact made. Permission was also sought (and not refused) on the grounds that the judge had failed to

identify circumstances such as would permit consideration under Article 8 'directly' (Gulshan [2013] UKUT 00640 (IAC), Nagre [2013] EWHC 720 (Admin)). The First-tier Tribunal judge had not reached a decision on the 'Article 8 grounds' having allowed the appeal under the Rules.

2. The claimant served a Rule 24 response through solicitors asserting that the grounds amounted to no more than a disagreement with the findings of the First-tier Tribunal judge.

### **Background**

3. The claimant, who was born in Jamaica on 8<sup>th</sup> July 1976, arrived in the UK on 14<sup>th</sup> January 1999 aged 22, having left Jamaica aged 18. She remained lawfully in the UK until 11 July 2002 and thereafter overstayed until on 5<sup>th</sup> October 2009 she was granted leave to remain on a discretionary basis until 5 October 2012 because of her relationship with Craig McIntyre. Her application for further leave to remain made on 1<sup>st</sup> September was refused firstly under Appendix FM on the grounds that she was no longer in a relationship with Mr McIntyre; secondly that she did not meet the requirements of Rule 276ADE and thirdly, under Article 8, that although she and Mr McIntyre were working towards a reconciliation this was insufficient reason to grant further leave to remain.
4. The claimant has extensive family members in the UK and a half sister in Jamaica. The claimant had been abandoned by her family in Jamaica and brought up in care from the age of 4; from age 14 to 18 she had been in the care of an elderly aunt who was now dead. Her half sister in Jamaica was aged 11 when the claimant left Jamaica and they had not been brought up together. That half sister has a daughter. Her evidence was that she did not consider them to be 'family'. She and Mr McIntyre had been together for 12 years by the date of the hearing before the First-tier Tribunal and they had separated in May 2013.
5. The First-tier Tribunal found, and this is not challenged, that the claimant does not meet the requirements of the Rules, notably E-ELTRP.1.7 and thus her application to remain as the partner of Mr McIntyre was justifiably refused under the Rules.

### **Error of law**

6. The First-tier Tribunal judge found that although she had a half sister in Jamaica who has a daughter, she was not brought up with her half sister and this does not amount "to "...family ties' such as to prevent the appellant from relying on Paragraph 276ADE(vi).....I find that the appellant can properly claim to have severed all of her ties with Jamaica."
7. The judge allowed the appeal because he found the claimant had no remaining ties with Jamaica. In reaching that decision he made a clear and unambiguous finding of fact that there was no family tie between her and her half sister or indeed with the child of that sister.

8. Mr Diwinycz specifically accepted before us that the grounds as formulated do not seek to raise a challenge on the basis that the judge should have looked beyond the existence of family ties and considered whether, as a person who had spent the first 18 years of her life in Jamaica, there remained cultural and social links. Mr Diwinycz accepted that that issue was not at large before the Upper Tribunal and the Secretary of State's appeal could succeed only if we found that the finding of fact that there was no family tie with the half sister was perverse and not open to the Judge. He confirmed he did not seek to widen the grounds of appeal.
9. We have no hesitation in concluding that the finding was open to the Judge who had before him all that was advanced in the grounds of appeal and the response in the refusal letter and the various witness statements.
10. Mr Marshall submitted that, in any event, when the grounds of appeal and evidence in the papers before the First-tier Tribunal were considered it was plain that the judge was entitled to conclude and had concluded that the appellant had severed all ties and was entitled to succeed under the 276ADE(vi).
11. It might well have been better if the judge had made that clearer but we agree with Mr Diwinycz and Mr Marshall that the focus of the appeal before us is upon the narrow finding of fact relating to the relationship with the half sister. Mr Diwinycz did not seek to say anything further in support of the Secretary of State's grounds of challenge. He accepted also that there was no arguable merit in the first ground relating to the 'Gulshan point', there having been no findings by the First-tier Tribunal judge as regards Article 8 because the appeal had been allowed under the Immigration Rules. We agree and need say no more than that.
12. On this basis we are satisfied that the challenge by the Secretary of State is not made out.

## Conclusion

The appeal to the Upper Tribunal is not made out and is dismissed.

The decision of the First-tier Tribunal stands.

Date

Upper Tribunal Judge Coker