



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/08077/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On August 27, 2014**

**Determination  
Promulgated  
On September 2, 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**MR SHEVOR CHARLTON REID  
(NO ANONYMITY DIRECTION)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME  
DEPARTMENT**

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr Duffy (Home Office Presenting  
Officer)

**DETERMINATION AND REASONS**

1. The appellant, born April 18, 1987, is a citizen of Jamaica. On June 24, 2012 the appellant entered the United Kingdom as a visitor. His intention was to make an application to join the Royal Navy. By the time his leave was due to expire he had not concluded the process and he therefore applied to vary his leave on December 12, 2012. The respondent ultimately refused his application under paragraph 322(1) HC 395 and took a decision to remove him under Section 47 (Removal: person with statutorily extended leave) of the

Immigration, Asylum and Nationality Act 2002 on January 24, 2014.

2. The appellant appealed to the First-tier Tribunal Section 82(1) of the Nationality, Immigration and Asylum Act 2002 (hereinafter referred to as the “2002 Act”) on February 10, 2014 and on May 7, 2014 Judge of the First Tier Tribunal Wiseman (hereinafter referred to as the “FtTJ”) heard his appeal and dismissed it in determination promulgated on May 30, 2014.
3. The appellant lodged grounds of appeal on June 5, 2014 and on June 17, 2014 Judge of the First-tier Tribunal Cruthers granted permission to appeal finding it arguable the FtTJ had erred by not paying sufficient attention to the position/interest of the appellant’s son who was born on November 15, 2013.
4. The respondent filed a Rule 24 response dated July 3, 2014 requesting an oral hearing. She opposed the application and submitted the findings were sufficient and sustainable.
5. The appellant and his solicitors were sent notice of today’s hearing on July 10, 2014. The notice is deemed served. By 11.15am neither the appellant nor his representative had attended. I directed my clerk to make enquiries and at 11.35am I decided to proceed with the hearing because the solicitors had not responded to the message and of course the hearing was listed at 10am.

### **SUBMISSIONS**

6. Mr Duffy submitted that there was no material error. It was important to note that the appellant could not meet the requirements of Section E-LTRPT of Appendix FM. This section sets out what requirements the appellant must meet to be granted limited leave to remain as the parent of a British child. The appellant could not satisfy these requirements because he could not meet the requirements of Section E-LTRPT. The FtTJ did not err by not considering this application under the Rules.
7. He further submitted the appellant was also unable to meet the requirements of paragraph 276ADE HC 395 because he had only been here a short period and still had ties to Jamaica.
8. The only area of challenge was whether this was a case that should have been considered outside of the Rules. The FtTJ had regard to the full facts and made findings open to him and that included having regard to the fact

the child was British and the principle that the child should be with both parents.

9. The FtTJ considered the child in paragraph [45] and took on board the respondent's submissions in paragraph [44] of the determination.
10. He rejected the appeal under the rules and in paragraph [46] he did consider the appeal in line with the advice given in R (on the application of) Nagre v SSHD [2013] EWHC 720 (Admin) and Gulshan [2013] UKUT 00640 (IAC). There was no material error.

## **FINDINGS**


11. The appellant has lodged grounds of appeal that are somewhat confusing. In paragraph [1] of the grounds the appellant claimed the FtTJ had erred because he had not considered the appeal under the relevant sections of paragraph 276ADE. He then went on to refer to his rights as a parent of a British child. These are different issues and I propose to treat them as such.
12. The FtTJ did consider the appeal under paragraph 276ADE as evidenced by his examination of the evidence in paragraph [46] of the determination. The appellant had only been here since June 2012 and the FtTJ found he had not lost ties to Jamaica. He was over the age of 25 and he could only succeed under paragraph 276ADE (vi) but to do so he had to show he had no ties to Jamaica. The FtTJ reached a finding open to him.
13. The next issue raised in the grounds related to whether the FtTJ should have considered the application under Section E-LTRPT of Appendix FM. Whilst the appellant met the requirement Section E-LTRPT 2.2 and 2.4 possibly 2.3 he was unable to satisfy 3.1 because he had come to the United Kingdom as a visitor and that leave had been for six months or less. He also failed to provide evidence that he was able to comply with 4.1 or 4.2 in respect of the financial requirements. Paragraph EX.1 was not engaged.
14. Accordingly, whilst the FtTJ did not consider the application under this section there is no material error of law. I would also add that the appellant (who was legally represented before the FtTJ) did not seek to argue the contrary in any event.
15. The FtTJ was aware of all the factors and he did have regard to Nagre and Gulshan. In paragraph [46] he referred to these cases and went onto consider the

appeal outside of the Rules. For the reason contained in the preceding paragraphs of his determination he found removal was not disproportionate. This was a finding open to him.

16. I am satisfied there is no error in law.

### **DECISION**

17. There is no material error of law and I uphold the original decision.

 18. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I do not make a fee award as the appeal failed.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis