



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

Appeal Number: IA/51611/2013

THE IMMIGRATION ACTS

**Heard at Newport
On 7 October 2014**

**Determination
Promulgated
On 16 October 2014**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

CLINTON TULLOCH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Grubb instructed by Hoole & Co Solicitors
For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND REMITTAL

1. The appellant is a citizen of Jamaica who was born on 6 March 1969. He arrived in the United Kingdom as a visitor with his daughter on 5 May 2002. Subsequently, he was granted leave as a student valid until 31 December 2004. A subsequent application as a spouse of a person settled in the UK was made on 26 October 2004 but was refused and his appeal was withdrawn on 20 May 2005. Between 2005 and 2010, the

appellant remained in the UK without leave. On 15 September 2010, he made an application for discretionary leave in order to remain with his daughter as a dependent. That leave was granted to him and his daughter valid until 30 September 2013. On 25 September 2013, he applied for further leave to remain in the UK on the basis of his private life. On 18 November 2013, the Secretary of State refused his application under para 276ADE of the Immigration Rules (HC 395 as amended) and under Article 8 of the ECHR.

2. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 9 June 2014, Judge Britton dismissed the appellant's appeal. The Judge found that the appellant's removal would be proportionate.
3. On 26 June 2014, the First-tier Tribunal (Judge Bird) granted the appellant permission to appeal to the Upper Tribunal. Thus, the appeal came before me.

The Submissions

4. Ms Grubb, who represented the appellant, adopted the grounds of appeal. She submitted that the Judge had made a material error of law in reaching his adverse proportionality finding by concluding that the appellant had returned to Jamaica between 2005 and 2010 and thus, even though he may not have close family ties in Jamaica, finding he certainly had friends there and would have no problems returning there now. Ms Grubb submitted that contrary to the Judge's assertion in paragraph 22 of his determination, the appellant had produced evidence that he was in the UK during that period. At page 64 of the bundle, she relied on an email from his employer which stated that he had been continuously employed in the UK by that employer from June 2007 until 7 May 2012. In addition, Ms Grubb relied upon a number of payslips (at pages 67-92 of the appellant's bundle) dated between 6 February 2004 and 12 October 2013, the majority of which, she submitted, were evidence of the appellant's presence in the UK during the period that the Judge had found against the appellant on the basis that he had not produced any evidence that he was in the country.
5. On behalf of the respondent, Mr Richards accepted that the Judge had made an error in reaching his adverse proportionality finding and that that error was material to his decision to dismiss the appeal. He accepted that the First-tier Tribunal's decision could not stand and should be set aside.

Decision

6. I am satisfied that the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law. Its decision cannot stand and I set it aside.

7. Ms Grubb invited me to remit the appeal to the First-tier Tribunal in order that the decision could be made afresh in the light of current circumstances. In particular, she drew my attention to the fact that the appellant's grandfather was now dead and the appellant now had a grandchild in the UK. Mr Richards did not seek to suggest that remittal was other than the correct disposal of this appeal.
8. Having regard to the Senior President's Practice Statement at para 7.2 and the nature and extent of the fact finding exercise required, this appeal is remitted to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Britton.

Signed

A Grubb
Judge of the Upper Tribunal

Date: