



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

Appeal Number: IA/10131/2014

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court

**Decision & Reasons
Promulgated**

On 30 January 2015

On 9 February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**MS TANIESHA ITISHA ROWE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Bhachu of Counsel

For the Respondent: Mr Mills, a Home Office Presenting Officer

DECISION AND REASONS FOR FINDING NO MATERIAL ERROR OF LAW

Introduction

1. The appellant is a citizen of Jamaica. She first came to the UK in October 2001 as a student with leave until 31 December 2002. She subsequently sought further leave to remain under the provisions of Article 8 of the

European Convention on Human rights (ECHR) but this application was rejected. Her most recent application under Regulations 15A and 18A of the Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations) was refused on 5th February 2014 but in that refusal the respondent also considered the appellant's rights under article 8 of the European Convention on Human Rights (ECHR). On balance she considered the appellant's human rights to be adequately protected in the Immigration Rules. The respondent also refused her application the EEA Regulations. The appellant's appeal against that decision came before Judge of the First-tier Tribunal Stott (the Immigration Judge) on 30th July 2014. The respondent considered the fact that the appellant was the primary carer for her daughter, Connie Grant, who was born on 15 December 2006, but decided that as no decision had been made to remove her, but merely to refuse a residence card, there would be no breach of the appellant's rights under the ECHR. In any event, it was accepted by the First-tier Tribunal that the appellant was the primary carer of Connie Grant, who was a UK citizen. However, the Immigration Judge concluded that Connie's grandmother and elder sister were also available to provide care for her. Consequently they could provide that care if the need arose and the Immigration Judge did not accept therefore that the provisions of the 2006 Regulations were satisfied because Connie would be able to remain in the UK with one of those other carers if the appellant were removed. The Immigration Judge concluded that the child had no contact with her father for approximately two years at the date of the hearing. This was a factor of considerable significance in her view. But the Immigration Judge decided to allow the appeal on human rights grounds, specifically, under Article 8.

2. The Immigration Judge who granted permission (Judge Cruthers) considered that the Immigration Judge had not sufficiently taken into account the relevant Immigration Rules and if all factors were properly considered the respondent's decision was not disproportionate. He therefore gave permission to appeal on all grounds.

The Hearing

3. At the hearing Mr Mills conceded that the Rule 24 response submitted by the appellant's representatives on 27 January 2015 contained an answer to the respondent's grounds of appeal. In particular, the appeal was heard on 24 July 2014 but prepared on 28 July 2014. On the latter date the provisions of the Immigration Act 2014, which amends the Immigration, Nationality of Asylum Act 2002, came into force. Had the application been determined after 28 July he conceded that the respondent would find it difficult to succeed given the provisions of Section 117B (6). His concession went further; he accepted that the Immigration Judge's analysis of Article 8 was properly within the ambit of her discretion but although criticism can be levelled at the way she reasoned the case those criticisms were not material to the overall conclusion. Accordingly, he conceded that the appeal should be dismissed.

4. Ms Bhachu had nothing to add.

Notice of Decision

Having regard to the concession made the appeal against the decision of the First-tier Tribunal is dismissed. I find no material error of law and that the decision to allow the appellant's appeal under Article 8 of the ECHR stands.

No anonymity direction was made by the First-tier Tribunal.

In addition no fee award was made by the First-tier Tribunal.

Signed

Date

Deputy Upper Tribunal Judge Hanbury