



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

Appeal Number: IA/13042/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 11 February 2015**

**Decision & Reasons  
Promulgated**

**On 25 February 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM**

**Between**

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

**and**

**PAULINE MAUREEN DAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

**Representation:**

For the Appellant: Mr P Nath, Home Office Presenting Officer

For the Respondent: Ms M Malhotra, Counsel instructed by Chipatiso Associates LLP

**DECISION AND REASONS**

1. The respondent is a citizen of Jamaica and her date of birth is 1 November 1965. I shall refer to the respondent as the appellant as she was before the First-tier Tribunal.
2. The appellant came to the UK on 2 April 2002. On 30 November 2002 she was granted leave to remain as a student until 31 October 2003. She remained in the UK until 23 August 2007 when she made an unsuccessful

claim for asylum. She made an application to remain under the Human Rights Act on 28 October 2013 and this application was refused by the Secretary of State in a decision of 26 February 2014. The application was refused under Article 8, Appendix FM and paragraph 276ADE of the Immigration Rules.

3. The appellant appealed against the decision of the Secretary of State and her appeal was allowed by Judge of the First-tier Tribunal Iqbal in a decision that was promulgated on 13 November 2014 following a hearing at Hatton Cross on 15 October 2014. Judge Iqbal allowed the appeal under the Immigration Rules and Article 8. Permission was granted to the Secretary of State in a decision of 5 January 2015 by Judge Parkes. Thus the matter came before me.

### **The Decision of the First-tier Tribunal**

4. The Judge heard evidence from the appellant and her daughter. He had a report from an independent social worker, Charles Musendo relating to the appellant. The evidence was not challenged and it was accepted by the Judge.
5. The evidence was that the appellant lived in shared care scheme because she was not able to live on her own and needed 24 hour care as a result of her health problems. She has lupus and type 2 diabetes which has caused blindness and kidney failure. She developed stage 2 renal failure in 2006 and underwent a cadaveric renal transplant in January 2012. She has undergone a significant depressive illness which has required anti-depressant medication and community psychiatric care.
6. The independent social worker indicated that the appellant is anxious and worried about who would support her should she return to Jamaica. She no longer has contact with her extended family there and they would not be able to care for her given their own family commitments. The appellant has a network of support in the UK where she has lived since 2002. Her daughter and grandson live here. The appellant is in need of long term care she has nowhere to live in Jamaica and is unable to live independently.
7. The Judge found that the Secretary of State had not properly analysed paragraph 276ADE(vi). The Judge found that the length of residence of over twelve years at the date of the application "Is indicative having no ties in Nigeria (sic) and certainly in any case much stronger and deeper ties in the UK, including the fact that she has her daughter and grandson, who I find still forms part of her family unit, in the UK" (see [18]).
8. The Judge heard evidence that the appellant's diabetes deteriorated and affected her ability to study here and her condition worsened and she was hospitalised in 2004. She was hospitalised in 2006 when her kidney failed and it was then discovered she had renal failure. She went to the

Jamaican High Commission accompanied by a nurse at this time but the High Commission refused to give her a passport because she was not in a position to be able to travel. In October 2007 she became blind in both eyes and she is now living in accommodation provided by the social services with a carer.

9. The Judge found at [21] that it is clear that the appellant no longer has ties in Jamaica. The judge directed himself in relation to the case of Ogundimu (Nigeria) [2013] UKUT 60 (IAC). The Judge made the following findings:

“22. As I have noted the appellant has been in the United Kingdom for over twelve years. She as (sic) lost all social ties given her illness, which I have detailed above and she has no family ties left in Jamaica. It was argued that given the appellant had only been here for twelve years she had not lost the cultural ties to Jamaica. However, I have considered that the Rule is not exhaustive that is an individual would have to show that they had ‘lived continuously in the UK for less than twenty years ... but has not (sic) ties (including social, cultural or family) with the country to which he would have to go ...’

I find that social, cultural or family ties are alternatives and furthermore not exhaustive in terms of what is being considered in relation to the term ‘ties’. Certainly the facts particular to this appellant are quite specific. She is a vulnerable lady who needs a very strong support system around her with people whom she can trust. What becomes relevant to her then is whether or not she has any social or family ties upon whom she can rely if she were returned back to Jamaica. I find there are no such ties and in all the circumstances presented to me therefore that she should succeed with reference to 276ADE(vi).”

10. The Judge also went on to consider Article 8 finding that the appellant’s removal would not proportionate.

### **The Grounds of Appeal and Oral Submissions**

11. The grounds of appeal argue that the Judge erred in relation to paragraph 276ADE(vi). It is plain that any “more than merely abstract” ties (see Ogundimu (Nigeria) [2013] UKUT 60 (IAC)), including cultural will be sufficient to preclude an appellant from meeting 276ADE(vi). No explicit or sufficiently reasoned finding was made that the appellant has no cultural ties to Jamaica. Given that she had lived there for 36 years it is submitted that no such finding was open to the Judge. It is argued that the Judge gave undue weight to immaterial matters. At [22] the Judge considered that “What becomes relevant is whether or not she [the appellant] has any social or family ties upon whom she can rely if she is returned.” However this is not relevant to a decision under paragraph 276ADE(vi).
12. Ground 3 argues that the Judge gave inadequate reasons why the appellant’s private and family life outweighed the legitimate aim.

13. I heard oral submissions from both parties. It was established during submissions that the appellant's daughter has discretionary leave to remain in the UK until 2007 on compassionate grounds considering she has health problems. Her son, the appellant's grandson was born on 28 June 2010 and is a citizen of Jamaica.

## **Conclusions**

14. The Upper Tribunal in Ogundimu (Article 8 – new Rules) (Nigeria) v SSHD [2013] UKUT 60 (IAC) stated as follows at (123):

“The natural and ordinary meaning of the word ‘ties’ imports, we think, a concept involving something more than merely remote and abstract links to the country of proposed deportation and removal. It involves there being a continued connection to life in that country; something that ties a claimant to his or her country of origin. If this were not the case then it would appear that a person’s nationality of the country of proposed deportation could of itself lead to a failure to meet the requirements of the Rule. This would render the application of the Rule, given the context within which it operates, entirely meaningless.”

The Court of Appeal in YM (Uganda) v SSHD [2014] EWCA Civ 1292 stated:

“51. The UT in that case [Ogundimu] went on to recognise that the test was an exacting one. However, the exercise that had to be concluded was a ‘round assessment of all the relevant circumstances’, which were not to be confined to ‘social, cultural and family’ issues. The UT concluded, on the facts, that Mr Ogundimu did not have ties with Nigeria, the country to which he would have been deported. It noted that his father might have ties but they were not the ties of Mr Ogundimu himself ‘or any ties that could result in support to [him] in the event of his return [to Nigeria]’.

52. I agree with the analysis of the UT in Ogundimu. Whether this is a ‘hard-edged’ factual enquiry or a question of ‘evaluation’ the question in this case is: what ties does YM himself have with Uganda and would they support him in the event of a return there. Ties of other relatives, particularly YM’s mother, are irrelevant.”

15. In the case of Bossadi (paragraph 276ADE; suitability; ties) [2015] UKUT 00042 (IAC), the Upper Tribunal stated as follows:

“15. Whilst in the instant case it was open to the FTT to accept the claimant’s and mother’s evidence about the claimant’s lack of social and cultural ties in the DRC, it was (as already noted) part of their evidence that he had four uncles living there. Following Ogundimu (and now, for us considering the case, YM), the FTT was required to consider in the form of a rounded assessment whether the claimant’s familial ties could result in support to him in the event of his return to the DRC. In our view the Strasbourg jurisprudence understands assessment of this matter to require the decision-maker to take into account both subjective and objective considerations and also to consider what lies within the choice of a claimant to achieve.

16. In this case the FTT appears to have approached the matter of family ties as a purely subjective one, reasoning that because the two witnesses said there would be no effective family ties in the DRC, that must be the case objectively. This was at odds with Strasbourg jurisprudence which requires not only that assessment of ties has an objective as well as a subjective dimension but also that such assessment must consider, as a relevant consideration, whether ties that are dormant can be revived. Thus, in Balogun v UK App. No. 60266/09 [2012] ECHR 614 at [51] the court noted that whilst it accepted that the tie between a Nigerian applicant and his mother was 'not a strong familial tie', nevertheless 'it is one that could be pursued and strengthened by the applicant if he chose'. That assessment was not undertaken by the FTT."
16. The first challenge is that the Judge did not make a discrete finding whether the appellant has cultural ties with Jamaica. In my view there was no requirement for him to do so. In my view what is necessary is a rounded assessment and each case turns on its own facts. The Judge was aware that the appellant had spent 36 years in Jamaica, but he considered ties with Jamaica in the context of the unusual circumstances in this case, having accepted the evidence. The Judge considered ties in the context of the appellant's significant health problems including blindness which meant that she has a high level of dependency on the social services and needs 24 hour care. It was open to the Judge to find that the appellant has little connection with Jamaica. The ties generally must be more than merely remote or abstract and considered in the context of the individual circumstances of the particular case. The appellant here may speak the language of the country she may have had exposure to the cultural norms there but in the context of her individual problems it does not follow that she has "ties" in the natural and ordinary meaning of the word. The assessment is fact sensitive (see [125] Ogundimu).
17. The grounds challenge the findings in relation to social and family ties and asserts that the Judge "artificially imported an erroneously high threshold" in finding that "what becomes relevant to her then is whether or not she has any social or family ties upon whom she can rely if she were returned back to Jamaica". The grounds assert that the Judge applied the wrong test. Having considered the findings in Bossadi, it is clear to me that the Judge has not erred and that the correct test was applied.
18. In my view the Judge did not make a material error of law in relation to paragraph 276ADE and the decision to allow the appeal under the Rules is maintained. In the light of this there is no need for me to consider the grounds in relation to Article 8 outside the rules.

Signed Joanna McWilliam

Date 23 February 2015

Deputy Upper Tribunal Judge McWilliam