



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

Appeal Number: IA/34498/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 29th January 2016

Promulgated

On 4th February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS ARKEYIA YANEISA BIANCHA BISH
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr M H Kotas, Home Office Presenting Officer

For the Respondent: Ms M Hannah of Corban Solicitors

DECISION AND REASONS

1. This is an appeal against a decision and reasons by First-tier Tribunal Judge Harris promulgated on 24th July 2015 in which he allowed an appeal against a decision made by the Secretary of State on 22nd August 2012 that removal of Miss Bish to Jamaica would not be in breach of the Immigration Rules or Article 8 ECHR.
2. The appellant before me, is the Secretary of State for the Home Department and the Respondent to this appeal, is Miss Arkeyia Bish.

However for ease of reference, in the course of this decision I shall adopt the parties' status as it was before the First-tier Tribunal. I shall in this decision, refer to Miss Bish as the appellant and the Secretary of State as the respondent.

3. The findings made by the Judge insofar as the application of the Immigration Rules is concerned, are far from clear. At paragraph [10] of his decision the Judge states "It is argued that she meets the requirements of paragraph 276ADE(1)(i), (ii) and (vi)." At paragraph [12], the Judge then states "There is no dispute over the appellant satisfying in this appeal paragraph 276ADE(1)(i) and (ii)". Be that as it may, the Judge went on at paragraphs [14] to [17] of his decision to consider whether the appellant was able to meet the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules. He concluded at paragraph [18]:

"It may be challenging for the appellant to return to Jamaica but, on the evidence before me, I am not satisfied she demonstrates there would be very significant obstacles to her integration into that country."

4. The Judge found at paragraph [19] that the decision of the respondent was in accordance with the immigration rules. He then went on to carry out an assessment of the appellant's Article 8 claim, outside the rules, having particular regard to the presence of the appellant's son T in the UK. T was born on 2nd July 2008. His father is O R. The Judge states at paragraph [36]:

"...I accept that the appellant is the primary carer of T. It is clearly in the child's best interests to be with his mother. However, it is also raised by the appellant that he has at least weekly contact with his father. This contact has not been disputed before me."

5. The Judge goes on at paragraphs [37] to [42] of his decision to state:

“37.the respondent treats the father as having no lawful status in the UK and so considers that she cannot consider this to be an exceptional circumstances to allow the appellant and her son to remain in the UK.

38. Yet, although not focussed upon particularly in submissions by the appellant before me, somewhat buried in the poorly paginated bundle of the appellant at the second of the two pages numbered 69 are passport details for the father being a British citizen moreover a British citizen at the time of T’s birth in this country.

39. Before me the respondent did not challenge the reliability of these passport details. In the circumstances, I find I have to treat the respondent as making a material error about the immigration status of the father when considering the appellant and her child’s case under s.55 of the 2009 Act and her exceptional circumstances policy. This is unlawful.

40. This is relevant not only to the assessment of interference with the family life between child and father but also to the status of T. If the child’s father was already a British citizen at the time of the child’s birth, on the face of it T could well be a British citizen himself under s.1(1) British Nationality Act 1981.

41. If T is a British citizen, then the appellant is able to rely upon policy concerning the best interests of the child, published by the respondent in Immigration Directorate Family Migration: Appendix FM 1.0b November 2014, particularly section 11.2.3.

42. These are matters that are directly relevant to assessing whether it is proportionate and in the public interest to require T to uproot the ties he has to this country and relocate with his mother to Jamaica and which are capable of being compelling reasons that outweigh factors going against the appellant. “

6. In light of the concerns that he had about the potential nationality of T, the Judge considered that he was not properly armed to consider the best interests of the child because the respondent is in a better position than the Tribunal, to verify whether the passport details of the father do establish that T should be treated as a British citizen. The Judge

allowed the appeal to the limited extent that the appellant's case is remitted back to the respondent for further consideration.

The Grounds of Appeal

7. The respondent appeals on sole the ground that the Judge's understanding that Ts father is a British Citizen, is flawed and misconceived. The respondent submits that evidence had in fact been provided by the Presenting Officer on the day of the hearing, to show that the child's father is an overstayer in the UK. In the circumstances, the Judge should have gone on to make an assessment of the Article 8 claim on the basis that Ts father is not a British Citizen, and has no lawful basis upon which he himself can remain in the UK.
8. Permission to appeal was granted by First-tier Tribunal Judge Hollingworth on 12th November 2015. The matter comes before me to consider whether or not the decision of First-tier Tribunal Judge Harris involved the making of a material error of law, and if the decision is set aside, to re-make the decision.

Discussion

9. In light of the very narrow issue in this appeal, I can deal with the matter in short form without rehearsing the background to the appeal. At the hearing before me, Ms Hannah on behalf of the appellant conceded that there is a material factual error in the decision of the Judge. She informed me that the father of T is in fact a Jamaican national, who she understands, has no lawful basis to be in the UK. It is T's grandfather who is a British Citizen.
10. The parties agreed that following on from the error of fact as to the nationality of T's father, the Judge failed to consider the best interests of the child, and they agreed that further factual findings will be necessary in that respect. T is now over the age of seven and both

parties submit that the matter should be remitted to the First-tier Tribunal for hearing afresh.

11. Having read the decision of the Judge and it being common ground that T's father is not a British Citizen, I am satisfied that the Judge made a material error of law in his decision.
12. I note that the Upper Tribunal in accordance with Part 3 of the Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal is in terms of disposal of appeals, likely on each occasion to proceed to remake the decision, instead of remitting the case to the First Tier Tribunal unless the Upper Tribunal is satisfied that the effect of the error of the First Tier Tribunal Judge has been to deprive a party before the First Tribunal of a fair hearing or other opportunity for that parties case to be put to, and considered by the First Tier Tribunal.
13. In my view the most fair and proportionate way in which to deal with this case given the nature and extent of the factual findings to be made, is to remit the matter for a de novo hearing in the First-tier Tribunal.

Notice of Decision

14. The appeal is allowed and the matter is remitted to a newly constituted First-tier Tribunal for a fresh hearing of the appeal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

15. No application for an anonymity direction was made, and no such direction is made.

Signed

Date

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT
FEE AWARD

The First-tier Tribunal declined to make a fee award. Whether or not a fee award is appropriate can be determined by the First-tier Tribunal when it decides the appeal.

Signed

Date

Deputy Upper Tribunal Judge Mandalia