



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

Appeal Number: HU/06463/2016

THE IMMIGRATION ACTS

Heard at Manchester

**Decision & Reasons
Promulgated**

On 3rd August 2017

On 13th September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MISS SCHANTOLL NORDIA WHYTE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr.C.Holmes, Counsel, instructed by Mohammed Anderson and Co, Solicitors

For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The respondent appeals, with permission, the decision of First-tier Tribunal Judge Lea promulgated on 28th November 2016. For convenience, I will continue to refer to the parties as they were in the First-tier Tribunal.
2. The appellant is a national of Jamaica who applied for leave to remain on the basis of her private life. The respondent considered her application

under paragraph 276 ADE (1). She did not meet paragraph 276 ADE (1) (v) because whilst she was aged between 18 and 25 she had not spent at least half her life in the United Kingdom. Instead, she was 21 at the time of the application and had lived here since the age of 15. The respondent considered paragraph 276 ADE (1)(vi) which covers the situation of someone who has not lived in United Kingdom for the applicable period but where there would be very significant obstacles to their integration into the country to which they would have to go. The respondent took the view these did not exist. She still had familial ties with Jamaica consisting of her brother and sister and her grandmother. She held Jamaican citizenship and had lived there until the age of 15.

3. The respondent considered article 8 on a freestanding basis but saw nothing about her situation which would mean the refusal was disproportionate. It was pointed out that the private life she had developed was in the knowledge she did not have permission to be here permanently.

The First tier Tribunal

4. Her appeal was allowed by First-tier Tribunal Judge Lea on the basis she satisfied paragraph 276 ADE (vi) and that the refusal breached her article 8 rights.
5. Permission to appeal was granted on the basis the judge arguably erred in not applying the high test in paragraph 276 ADE (vi) of very significant obstacles to integration. It was also arguable that the judge, in allowing the appeal on a freestanding article 8 basis, did not give adequate reasons as to why the appellant's interest outweighed the public interest in immigration control. Finally, it was arguable the judge did not correctly apply section 117 B.

Consideration

6. First-tier Tribunal Judge Lea heard from the appellant, her mother, her stepbrother and friends and found their evidence credible. The background is uncontentious. The appellant was born and grew up in Jamaica. Her parents separated and her mother began a relationship with a Mr Harris, a British national. They married on 17 February 2007 and went to live in Holland. The appellant stayed with her grandmother.
7. The appellant's mother gave birth to her stepsister, [M], on [] 2009. The appellant joined them in Holland. On 27 February 2010 she came to the United Kingdom to join them. The refusal letter sets out the various leaves she had, starting with a six-month visa.
8. She lived with her mother, stepfather, and stepsister until 1 September 2015. She attended college from 2010 until February 2015 and is employed as a care assistant. She now has her own apartment.

9. First-tier Tribunal Judge Lea found that she had close family ties and friendships in the United Kingdom. The judge found she has only occasional contact with her father. In her statement she said her father lived in Jamaica but worked on a cruise ship and was away for lengthy periods. The judge accepted that she did not have a good relationship with her grandmother in Jamaica. She does not have contact with her brother who lives with her grandmother. She does have contact with her sister in Jamaica. They are not in a position to provide her with accommodation or financial support should she be returned. The judge accepted that the appellant was suffering from arthritis. The judge found that she was financially independent and had her own flat and she is responsible for herself.
10. At paragraph 19 the judge found paragraph 276 ADE (vi) satisfied. The judge said she had been away from Jamaica seven years and during that time had established a private and family life in the United Kingdom. She had very close ties with her mother and stepfamily.
11. Without more, I find the judge materially erred in finding the very significant obstacles test satisfied on the reasons given. A high threshold is anticipated. In Treebhawon and Others (NIAA 2002 Part 5A - compelling circumstances test) [2017] UKUT 13 (IAC) it was held that mere hardship, mere difficulty, mere hurdles, mere upheaval and mere inconvenience, even where multiplied, are unlikely to satisfy the test of "very significant hurdles" in paragraph 276 ADE of the Immigration Rules.
12. The judge indicated that aside from paragraph 276 ADE (vi) the appellant, although 21 and living on her own, was still part of the family unit and played an important role in her stepsister's life. The judge found she had established a family life as well as a private life. To remove her would breach not only her article 8 rights but also those of her family members. The judge referred to section 117B and the appellant's ability to speak English, her financial independence and that she had formed her family and private life when she had leave to remain. However again I find the judge erred in consideration of section 117 B, particularly 117B(5). The section specifically requires that little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. Her time here has been precarious as it was based upon a series of leaves.
13. My conclusion is that the judge materially erred in law allowing the appeal on the basis that section 276 ADE(vi) was satisfied or that the factors listed at paragraph 21 outweighed the presumption that immigration control is in the public interest and the specific stipulation at section 117 B(5). Consequently that decision can no longer stand.
14. I indicated my conclusion at the hearing. Both representatives suggested the appropriate course would be to remit the matter back to the First-tier Tribunal for a rehearing. The appellant's representative wanted to provide up-to-date evidence about her life here. At hearing he had criticised the

respondent for not providing a representative at the hearing. The presenting officer accepted the desirability of a presenting officer attending but explained that on occasion there simply is not enough staff available. Had one attended they could have cross-examined the appellant particularly in relation to the section 117 B factors.

Decision.

A material error of law has been demonstrated by the respondent in the decision of Judge of the First-tier Lea. Consequently, that decision allowing the appellant's appeal under the immigration rules cannot stand. The appeal is remitted to the first-tier Tribunal for a de novo hearing.

3rd September 2017
Deputy Upper Tribunal Judge Farrelly

Directions

List for a de novo hearing in the First-tier Tribunal.

The appeal should be concluded within one and a half hours.

The appellant's representative should prepare up-to-date bundles. The appellant's representative should consider whether family life within the meaning of article 8 is engaged.

A presenting officer should attend.

There is no need for an interpreter.

3rd September 2017
Deputy Upper Tribunal Judge Farrelly