



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/14256/2016

THE IMMIGRATION ACTS

Heard at Field House
On 11 July 2018

Decision & Reasons Promulgated
On 21st August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

IVETH DELORIS FARQUHARSON
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Appiah, counsel instructed by JF Law Solicitors

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Jamaica born on 18 September 1943. She entered the UK as a visitor with leave on 18 October 2001 and subsequently obtained leave to remain as a student until 2007. Subsequent applications for further leave as a student and on human rights grounds were rejected until on 13 January 2016 the Appellant applied for leave to remain on the basis of her private and family life in the UK. This application was refused with the right of appeal on 20 May 2016 with regard both to paragraph 276ADE of the Rules and Article 8 outside the Rules.

2. The Appellant appealed against this decision and her appeal came before Judge of the First-tier Tribunal Ross for hearing on 7 November 2017. In a decision and reasons promulgated on 18 December 2017 the judge dismissed the appeal.
3. Permission to appeal was sought in time on the basis:
 - (1) that the judge had erred in not placing sufficient weight on the dependency by the Appellant on her British siblings who are all settled in the UK or British;
 - (2) he erred in his assessment of the exceptional circumstances given the evidence that the Appellant would, if returned to Jamaica, be homeless and destitute which is exceptional given that she is 74 years of age, and
 - (3) that insufficient weight and consideration had been given to the Section 117B(6) factors given that the Appellant is not a burden on the state but is financially supported by her siblings and is maintained and accommodated without recourse to public funds.
4. Permission to appeal was granted by First-tier Tribunal Judge Grant-Hutchison in a decision dated 25 May 2018 in the following terms:

"It is arguable that the judge has misdirected himself by failing to consider and apply sufficient weight to (a) the dependence of the Appellant upon her British siblings who are all settled in the UK and are supportive of her; (b) the Appellant's exceptional circumstances concerning her domestic and social care position if she is returned to Jamaica where it is claimed that she will be homeless and destitute more likely than not to be left living on the streets and her advanced age of over 74 years of age. The Appellant has lost all contact with her peers who remain alive having now resided in the United Kingdom for over sixteen years and (c) whether as a result the decision to remove her would be in the public interest".

Hearing

5. At the hearing before me, Ms Appiah took me through the judge's decision and submitted that the judge had heard oral evidence from the Appellant's brother Neville reported at [10], and that he had also made a handwritten statement at page 112 of the Appellant's bundle. The Appellant's sister Yvonne in her statement at page 4 of the Appellant's bundle refers to the support that she provides the Appellant in addition to the financial support provided by their brother Neville. Ms Appiah submitted that the judge neither accepts nor rejects this evidence and simply does not make a finding on the issue of dependency. She submitted that the evidence is that the Appellant has lost contact with her own children, [8] of the decision refers and due to the breakdown of her marriage she has no family life in Jamaica as her husband now has another partner. She submitted that the absence of findings was itself an error of law on these key issues of dependency and family life.
6. Ms Appiah further submitted that the judge had erred in carrying out the balancing exercise at [16], in that there is no reference to the fact that the Appellant has five

brothers and two sisters in the UK. The judge finds only “*she has a close relationship with her sister*”. The Appellant further has relationships with her nephews set out at [9] in the decision, but no findings are made in respect of them or that relationship either.

7. It is the case that the skeleton argument before the First-tier Tribunal Judge put forward the argument based on family life between the Appellant and her siblings and also the judgment of the Court of Appeal in Singh [2015] EWCA Civ 630 which provides guidance as to the need to show more than normal emotional ties when one is considering family life between adult children, siblings, etc., following Kugathas [2003] EWCA Civ 31. Ms Appiah submitted that the covering letter with the application addressed these issues. She further submitted that there was no assessment of the likelihood of destitution if the Appellant returned to Jamaica, which was also addressed in the covering letter. Ms Appiah further submitted that the finding at [16] that the Appellant had not produced any evidence to show she was financially independent failed to take account of the evidence of her brother that he financially supported her, albeit there was no other evidence of financial means.
8. In his submissions, Mr Duffy submitted that the grounds as pleaded in writing were simply disagreements with the findings of fact made by the judge, which were open to him. He submitted that the third ground of appeal is simply wrong in that the Appellant is financially dependent on her brother and is thus not financially independent as is required by the provisions of Section 117B(3) and, in any event, even if the Appellant was correct in this respect, it is clear from the decision in AM (Malawi) [2015] UKUT 0260 (IAC) that this is a neutral factor only. In respect of the other grounds Mr Duffy submitted these were simply a disagreement. He submitted that at [15] of his decision and reasons the judge did consider family life, he may not have used the language he expected but in essence he makes a finding that the relationship was not going beyond normal emotional ties.
9. There was no reply by Ms Appiah.
10. I reserved my decision, which I now give with my reasons.

Findings

11. I do find material errors of law in the decision of Judge Ross for the reasons set out in the first two grounds of appeal and in his assessment of whether or not the relationships between the Appellant and her siblings amount to family life. I find that although it was not expressly pleaded in this manner, it is a Robinson obvious point arising from the terms of the grounds of appeal and in light of the fact that this was an argument put forward before the judge. The judge held at [15]:

“The Convention does not normally protect the right of sisters to live together in the absence of strong evidence of dependency, or to live in the same country. The Appellant does not in fact live with any of her family in the UK. However her relations with various friends and members of her family do amount to a private life and the decision does amount to an interference with private life”.

12. I consider that the Judge was required to provide more in the way of reasoning and to make a clear finding in respect of whether family life existed or not, bearing in mind the Appellant's extensive family in the United Kingdom, including five brothers and two sisters, her emotional and financial dependence on her siblings and nephews in light of her age.
13. I further find the fact that the judge does not engage with material considerations *viz* the evidence of the Appellant's brother Neville or make any reference to the fact she has five brothers, two sisters and two nephews with whom she is in regular contact does undermine the safety of his findings that removal of the Appellant to Jamaica would be proportionate.
14. I further find that the judge failed to take account of material considerations *viz* the absence of family or support networks in Jamaica. In light of the submission that there is nobody there who could assist the Appellant, who is 74 years of age, the only reference to the Appellant's age is at [13] in respect of the arguments put forward relating to paragraph 276ADE(vi) of the Rules where the judge holds as follows:

"She lived in Jamaica for the first 58 years of her life. The fact that she has back pain, and is now 74 years old, does not mean that there are very significant obstacles to her integration into that country, bearing in mind that she has lived virtually all her life in Jamaica".

However, this does not engage with the case as put forward as to the absence of any emotional, financial or practical support and lack of accommodation in Jamaica.

15. I find that the absence of material findings and the failure to take account of material considerations undermines the proportionality decision as a whole. I therefore set the decision aside and remit the appeal for a hearing *de novo* before the First-tier Tribunal.

No anonymity direction is made.

Signed *Rebecca Chapman*

Date 11 August 2018

Deputy Upper Tribunal Judge Chapman