



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

Appeal Number: HU/17140/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 30<sup>th</sup> August 2018**

**Decision & Reasons  
Promulgated  
On 15<sup>th</sup> October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LEVER**

**Between**

**MISS L M T  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M Aslam of Counsel

For the Respondent: Mr S Walker, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant, born on 27<sup>th</sup> April 1957, is a citizen of Jamaica. The Appellant had made application for leave to remain in the United Kingdom on the basis of her private and family life. The Respondent had refused

that application on 21<sup>st</sup> June 2016. The Appellant had appealed that decision and her appeal was heard by Judge of the First-tier Tribunal Veloso sitting at Hatton Cross on 15<sup>th</sup> November 2017. He had dismissed the Appellant's appeal.

2. Application for permission to appeal was made and that application was granted by First-tier Tribunal Judge Hollingworth on 8<sup>th</sup> March 2018. It was said that it was arguable that the judge had only looked at the question of physical dependency and had not dealt with the question of emotional dependency. Directions had been issued for the Upper Tribunal to firstly consider whether or not an error of law had been made in that case. The matter had therefore come before me in accordance with those Directions on 7<sup>th</sup> June 2018. At that hearing Mr Tarlow on behalf of the Home Office conceded that there had been no assessment made of emotional dependency and conceded therefore that a material error of law had been made and that the decision needed to be re-made. I provided a written decision on 19<sup>th</sup> June 2018 reflecting the concession made on behalf of the Respondent and directing that there should be a fresh hearing in the Upper Tribunal. Directions for the rehearing of the case were also issued on 19<sup>th</sup> June 2018.

### **The Proceedings - Introduction**

3. The Respondent's documents remain the same as they had been before the First-tier Tribunal.
4. The Appellant's documents were re-served by cover of a letter dated 23<sup>rd</sup> August 2018 and contained those documents listed at pages 1 to 108 on the index sheet to the bundle.

### **The Proceedings - Evidence**

5. The matter proceeded by way of submissions. The Respondent relied upon the refusal letter.
6. In submissions on behalf of the Appellant I was specifically referred to the Appellant's witness statement at page 101 to 103 of the Appellant's bundle. In particular, I was referred to paragraphs 6 to 9 of that statement where the Appellant described the assistance and help that she gave her sister and brother-in-law since 2012 who had illnesses. It was also submitted in accordance with paragraph 8 of the witness statement that the Appellant had her own mental health problems since 2014. It was said that the Appellant's sister and brother-in-law were dependent upon her and they in turn assisted the Appellant. It was submitted there was family life in this case and that a removal of the Appellant to Jamaica would be disproportionate.
7. At the conclusion I reserved my decision to consider the evidence and submissions raised.

## **Decision and Reasons**

8. In this case the burden of proof lies on the Appellant and the standard of proof for both immigration and human rights issues is a balance of probabilities.
9. The Appellant was born in 1957 and is now 61 years old. She first came to the UK in 1999 and the evidence indicates that she has overstayed since that time. I also find that the evidence demonstrates on balance the Appellant has remained in the UK throughout the period from 1999 to the present and has not returned to Jamaica at any stage. Accordingly, she spent the first 42 years of her life living in Jamaica and the last nineteen in the UK without leave.
10. The totality of evidence demonstrates that additional to that lengthy period of residence in her home country the Appellant has during her time in the UK maintained contact with individuals in Jamaica and has a 31 year old daughter and sister in Jamaica. There is in my view no evidence to indicate that culturally, linguistically or in any other way the Appellant is now so estranged from Jamaican life that she would face very significant obstacles reintegrating into life in that country. That is not to say she would not potentially face problems, at least short term, that may include questions over employment and housing. However, the length of her connection with Jamaica, the position of close relatives there and within the UK, and her previous employment history does not raise the threshold of difficulty to the level envisaged within paragraph 276ADE(vi). I do not find that she meets this or any other requirement under the Immigration Rules.
11. I have therefore considered her family and private life outside of the Immigration Rules under Article 8 of the ECHR. I accept that eighteen or nineteen years in the UK is a not insignificant period of time, particularly given that paragraph 276ADE(1)(iii) does allow for leave to remain to a person who has lived continuously in the UK for twenty years. That is not to conflate a period of eighteen or nineteen years as being a “near miss” and allow for that reason. It merely illustrates an obvious fact that eighteen or nineteen years’ continuous residence in a country is a not insignificant factor.
12. There is no dispute that the Appellant has a sister and brother-in-law in the UK and she has been living with them for some years. I have considered the witness statements presented in the Appellant’s bundle. In looking at Article 8 outside of the Rules I have considered the five stage test under **Razgar**. I find that there is family life existing between the Appellant and her sister and brother-in-law. Firstly, the relationship between two siblings is naturally a potentially close relationship. They have been together for a significant period of time from when the Appellant was in her very early 40s until her current age of 61 years. They have all lived together for a number of years. The medical records demonstrate that the Appellant’s sister is 77 years old and has ill health,

as indicated within the medical documents. Given her age she cannot be described as a young lady or necessarily someone who is going to get better in terms of her medical problems. I also accept that the Appellant's brother-in-law, Mr Skeete, has health problems. He is 84 years old, born in 1933. His angina, OPD and chronic kidney disease are noted in his medical notes.

13. I have also noted the Appellant's intermittently poor mental health, also contained within the Appellant's bundle.
14. I find on balance that the Appellant, her sister and brother-in-law present as three individuals, one in late middle age and two elderly, who have a natural biological close relationship, who live together and have done so for many years and who provide clear mental and emotional support for each other in circumstances where because of their age and infirmities there is no suggestion that that mutual support and dependency is likely to disappear or be diluted over time. I find from all of the evidence that there is a strong and mutually beneficial bond between them such that there is a family life of some not insignificant strength and value. It is of course possible to say that the UK provides facilities such as care workers, social workers and NHS provision that could take the place of a family member such as the Appellant. That is an argument that could be raised in each and every case relating to any individual in the UK. The issue is whether the removal of the Appellant and the placing of the sister and brother-in-law in the care of the system, without the Appellant, together with the removal of the Appellant from her family back to Jamaica, would be a proportionate response in dealing with the facts as they now present.
15. I do not overlook that the interdependence and that family/private life has been built up over many years, merely one year away from a potential valid application under paragraph 276ADE(1)(iii). I further note that for almost all the time the Appellant has been in the UK, and certainly in latter years, the Home Office have been aware of her presence through either employment or prior applications that she has made but has not removed her from the UK.
16. I do of course have regard to Section 117B of the 2002 Act in its entirety. I do accept the Appellant's private life counts for little given her unlawful status. Amongst other things that should underscore the fact that the Respondent has a duty to maintain the public interest in immigration control by removal where deemed appropriate rather than allowing by default circumstances to reach such a pitch that matters need to be reassessed. When looking at all of the facts in this case I find that on balance the interdependency of the three who have lived together and supported each other over a significant period of time is such as to demonstrate a strong family tie or life and that removal of one part of that triumvirate would be disproportionate both for the Appellant and her other two relatives who reside lawfully in the UK. It would in my view present, by a small margin, a situation that could be described as unjustifiably harsh and accordingly a disproportionate removal.

**Notice of Decision**

17. I dismiss this appeal under the Immigration Rules.

I allow this appeal under Article 8 of the ECHR.

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.


Signed 

Date 7/20/18.

Deputy Upper Tribunal Judge Lever

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable

Signed 

Date 9/20/18.

Deputy Upper Tribunal Judge Lever