



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

Appeal Number: HU/04856/2017

THE IMMIGRATION ACTS

Heard at Field House

On 14 January 2019

**Decision & Reasons
Promulgated**

On 13 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**MS CHARMAINE CAMILLE MORRIS
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Sellwood, Counsel, instructed by Bindmans LLP

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge Pacey (the judge), promulgated on 15 June 2018, by which she dismissed the Appellant's appeal against the Respondent's refusal of her human rights claim.
2. In essence the Appellant's claim had been based on the following. She had had a very traumatic life in Jamaica. Having left that country and come to the United Kingdom in December 1999, she established herself here, albeit as an overstayer, and lived with three of her four children and,

over the course of time, her six grandchildren. On the basis of her circumstances she relied on paragraph 276ADE(1)(vi) of the Immigration Rules and on Article 8 in its wider context as regards her private and family life in the United Kingdom.

The judge's decision

3. The judge deals with the paragraph 276ADE issue. At [24]-[30] she accepts the fact of the Appellant's very difficult childhood, going on to state that it was the Appellant's "choice" to cut all ties with Jamaica after she had come to this country. It is said that the Appellant had spent most of her life in Jamaica and had not severed all cultural links.
4. The judge concluded that the Appellant could rely on her own resourcefulness in order to help re-establish herself back in Jamaica. It was said that the Appellant had failed to provide evidence to show that she would not be able to find employment of one sort or another.
5. Having rejected the arguments under the Rules, the judge goes on to look at the Appellant's circumstances in this country. Reference is made to the best interests of the Appellant's grandchildren, and the fact that there was a close relationship between them all. It is noted that the Appellant was not the sole carer for any of the grandchildren. Although it was said to be understandable that the Appellant's own children would want the grandchildren to be cared for by a grandmother, there would be no real disadvantage to those children if they had to have professional childcare instead. The judge concludes that the Appellant had not stepped into the shoes of the parents of the grandchildren.
6. Overall, the wider Article 8 claim is also rejected.

The grounds of appeal and grant of permission

7. The general thrust of the grounds is as follows. There are said to be errors in respect of the paragraph 276ADE issue, namely that the judge should not have taken account of any "choice" made by the Appellant to sever ties with Jamaica, that relevant factors had not been taken into account adequately or at all, and that the judge had failed to carry out a proper assessment according to the relevant case law (that being Kamara [2016] EWCA Civ 813).
8. The second aspect of the grounds relates to a challenge to the wider Article 8 issue. Most significantly, it is said that the judge failed to have any regard to the report of an independent social worker, Ms Pearce, and that this constituted a material error of law in respect of an assessment of the grandchildren's best interests.

9. Permission to appeal was granted by First-tier Tribunal Judge Hodgkinson on 1 August 2018.

The hearing before me

10. At the outset of the hearing Mr Clarke fairly accepted that the judge had failed to deal with the independent social worker's report and that this constituted an error of law insofar as the issue of the grandchildren was concerned. However, he opposed the Appellant's challenge in relation to paragraph 276ADE.
11. Mr Sellwood relied on those grounds relating to this particular issue. He submitted that the judge had not in substance carried out a broad evaluative judgment. He emphasised that all of the relevant factors set out in the grounds had been included in his skeleton argument that was before the judge. He emphasised the fact that the Respondent himself had acknowledged that there were employment difficulties in Jamaica. Aspects of the independent social worker's report related to the Appellant's own view of having to return to Jamaica and this evidence had not been referred to. No proper account had been taken of the Appellant's actual history as that related to the traumatic experiences of her childhood.
12. For his part Mr Clarke quoted from paragraph 14 of Kamara. The judge was entitled to have concluded as he did, particularly as the burden of showing very significant obstacles rested with the Appellant. It was difficult to see quite how her past experiences would be relevant to an assessment of her situation on return to Jamaica. In respect of any security issues in Jamaica, he noted that there was no protection claim here. The fact that the Appellant had spent very many years of her life in Jamaica before coming to this country was clearly relevant as was her potential ability to find work.
13. In reply, Mr Sellwood submitted that the judge had in fact factored in the Appellant's "choice" to sever ties with Jamaica, and this was wrong. The issue of security of returnees in Jamaica went to the issue of whether the Appellant would be considered an insider or an outsider. The Appellant's subjective views of trying to re-establish herself in Jamaica were clearly relevant and these had not been adequately dealt with by the judge.

Decision on error of law

14. In light of Mr Clarke's properly made concession, I find that the judge materially erred in failing to address the independent social worker's report, particularly as that related to the circumstances of the Appellant's grandchildren and their relationship with her. On this basis alone I would set aside the First-tier Tribunal's decision.

15. However, it is important for me also to deal with the issue of paragraph 276ADE as well. I conclude that there are also material errors in respect of this matter.
16. At the time of the hearing before the judge the Court of Appeal's judgment in Kamara had been out for a considerable period of time. It is perhaps unfortunate that no reference to the Court's guidance was made by the judge, despite it being expressly referred to in Mr Sellwood's skeleton argument. Notwithstanding this, it is almost always more important to look at substance over form, and this I have done when assessing the body of the judge's decision.
17. In my view there is a strong possibility that the judge took account of and placed weight on the fact that the Appellant had made a conscious decision to sever all ties with Jamaica after she left that country in 1999. I base this on what I consider to be a reasonable reading of [26]. This represents something more than a simple statement of bare fact: it appears to me as though this was an aspect (by no means a determinative one) of the assessment being carried out by the judge. I conclude that the so-called "choice" made by the Appellant was irrelevant for the purposes of the assessment.
18. First, in the circumstances of the Appellant's case, it is entirely understandable that she would have wanted to have left behind any contacts with the country in which she suffered so much in the past.
19. Second, in any event, choice and/or motive does not come into play when carrying out a broad evaluative assessment of the individual's circumstances. Rather, it is a question of taking into account and weighing up subjective and objective matters in the round.
20. Perhaps more importantly than the first point is my conclusion that the judge has failed to deal adequately with the Appellant's traumatic experiences whilst in Jamaica when undertaking the assessment of her circumstances on return. I fully appreciate that she has accepted the fact of those experiences ([26]). However, what was important in this case was for those circumstances to be actually weighed up. It is clear that not only was there strong evidence from the Appellant about her subjective fear and anxieties about returning, but that this issue was also dealt with in the independent social worker's report, a source that has been overlooked by the judge both in respect of this issue and the best interests of the Appellant's grandchildren.
21. The country information relating to the potential security concerns of returnees (of which the Appellant would be one) was in my view a relevant factor and one that was not addressed by the judge. It is of course the case that there is no protection claim here and there is nothing to show that any and all returnees would face a risk from criminals. Having said that, the reality of the security situation combined with the Appellant's subjective fears was something that needed to be weighed up when

considering whether the Appellant would consider herself or be considered by others as an “insider” or an “outsider”. This has not been done.

22. There are other factors that the judge has taken account of which would point against the existence of very significant obstacles, and as I indicated to the parties at the hearing, my view on the error of law has been reached by a relatively narrow margin. If I had taken the view that this aspect of the Appellant’s case would be bound to fail in any event, I would not of course regard any errors as being material. However, there is enough in the evidence to show that what I regard as being an erroneous approach by the judge had a genuine impact on the outcome.
23. In light of the above I set the judge’s decision aside in respect of both issues in this appeal.

Disposal

24. There was a discussion with the representatives as to what should happen next. Mr Sellwood was of the initial view that the matter could and should be retained in the Upper Tribunal for a resumed hearing. Mr Clarke suggested that fairly significant factual findings would need to be made in light of written and quite possibly oral evidence, and that remittal was appropriate.
25. Having considered this matter with care and with reference to paragraph 7.2 of the Practice Statement, I have concluded that this appeal should be remitted to the First-tier Tribunal.
26. It would appear to be the case that fairly significant findings of fact are indeed needed: there will have to be an assessment of oral evidence relating to both the main issues in the case; there will need to be findings on the independent social worker’s report which until now has been overlooked; there are other related issues which require clear findings.
27. On top of this is the fact that the Appellant and all of her family members live up in Birmingham. It is important that the Appellant has the opportunity of presenting her evidence on its best footing and in my view this would be best facilitated by sending the case back to the First-tier in the home city rather than requiring everybody to come down to London (I have not forgotten that the Upper Tribunal also sits in Birmingham, but in light of the factual findings issue this possibility has not altered my view on the correct course of action.)
28. There is no good reason to disturb the judge’s finding at [26] as to the Appellant's childhood experiences, and I expressly preserve it.
29. I issue relevant directions to the First-tier Tribunal, below.

Notice of Decision

The decision of the First-tier Tribunal contains errors of law and I set it aside.

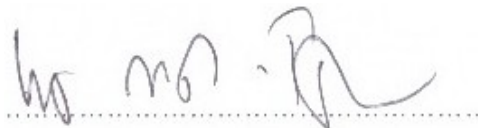
I remit this appeal to the First-tier Tribunal.

No anonymity direction is made.

Directions to the First-tier Tribunal

- 1. This appeal is remitted to the First-tier Tribunal, for re-hearing at the Birmingham centre;**
- 2. The appeal shall not be re-heard by First-tier Tribunal Judge Pacey;**
- 3. Judge Pacey's finding at [26] is preserved;**
- 4. The relevant issues in this appeal are paragraph 276ADE(1)(vi) and Article 8 in its wider context, including the family ties in the United Kingdom.**

Signed



Date: 27 January 2019

Deputy Upper Tribunal Judge Norton-Taylor