



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

Appeal Number: HU/17008/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 23 January 2019**

**Decision & Reasons
Promulgated
On 18 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MS KRYSTEL KYLA HODGE
(Anonymity order not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson of Counsel

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of St Kitts born on 1 June 1999. She appeals against a decision of Judge of the First-tier Tribunal Brewer sitting at Taylor House on 4 October 2018 in which the Judge dismissed the Appellant's appeal against a decision of the Respondent dated 1 October 2018. That decision was to refuse the Appellant's application for leave to remain on the basis of her private life. The Appellant entered the United

Kingdom in 2009 aged 10. She has had no lawful immigration status in the United Kingdom.

The Appellant's Case

2. The Appellant's case was that she had no ties to St Kitts because only her mother lived there, and she did not have a meaningful relationship with her mother. She had a strong private life in United Kingdom, specifically that she had friends here and had completed her education. She obtained a BTEC award in art and design but could not commence work because of her immigration status. She told the Judge she was keen to start work. She had a strong relationship with her father who brought her up and upon whom she was financially and emotionally dependent. He in turn was emotionally dependent upon her. She had other relatives in United Kingdom.

The Decision at First Instance

3. The Judge heard evidence from both the Appellant and her father. He noted at [28] of the determination that the question under the Immigration Rules was whether there would be very significant obstacles to the Appellant's reintegration into St Kitts. The Appellant was well educated and wanted to have a career in the healthcare sector. The Appellant could commence such a career in St Kitts.
4. Although the Appellant had been in the United Kingdom for 8 years the Judge took account of the fact that that time had been spent unlawfully (albeit that much of it was spent as a minor and the Appellant would have been unaware of her unlawful status). Upon return to St Kitts the Appellant was likely to have somewhere to live and she could commence looking for work as she would do if she stayed in the United Kingdom. It was only the Appellant's preference to remain in the United Kingdom. Nothing came close to the very significant obstacles threshold to be applied under paragraph 276 ADE.
5. Although there had been some delay in the Respondent's decision-making process, (the Respondent had taken approximately one year to refuse the Appellant's application), the Appellant's father had done nothing to regularise the Appellant's immigration status, (see [43]). The Appellant's father had dual nationality and he could if he wished return with the Appellant to St Kitts. The decision to refuse the Appellant's application was pursuant to a legitimate aim and in the light of the limited private life and the precariousness of the Appellant's immigration status the Respondent's decision was proportionate. The Judge dismissed the appeal.

The Onward Appeal

6. The Appellant appealed against this decision arguing that she had a family life with her father and it had been rejected by the Judge applying too

narrow a test. The Judge had required dependency in particular financial dependency over and above normal emotional ties. The Appellant was fully dependent in a financial and practical sense and there were more than mere emotional ties between the two of them. There was real and committed support which had been two-way with both the Appellant and her father testifying to the importance of the Appellant's presence when supporting the father following the death of his wife and especially during his illness when he was diagnosed with cancer.

7. The Judge had failed to undertake a fact sensitive assessment as to the strength of the father's ties to the United Kingdom and the disruption caused to him were the Appellant to be forced to return to St Kitts. There was no finding as to whether that would be reasonable for him.
8. Permission to appeal was granted on the papers by Judge of the First-tier Tribunal Hollingworth on 5 December 2018. He wrote: "It is arguable that the Judge had set out an insufficient analysis in relation to the matrix of factors bearing upon the question of real support in terms of whether family life existed and further whether that real support had the characteristic of mutuality. It is arguable that greater weight should have been attributed to the factors identified in the permission application in determining the question as to whether family life existed."

The Hearing Before Me

9. In consequence of the grant of permission to appeal the matter came before me to determine in the first place whether there was a material error of law such that the decision fell to be set aside and the appeal remitted to the First-tier to be reheard. If there was not such a material error the decision at first instance would stand.
10. For the Appellant reliance was placed on the case of **Lama [2017] UKUT 00016** which primarily concerned video recording evidence from witnesses. However, the point in the case relied upon was at (iii) and (iv) of the headnote which stated that there were no hard and fast rules as to what constituted family life within the compass of Article 8. A person's value to the community was a factor which may legitimately be considered in the Article 8 proportionality balancing exercise.
11. In his determination, it was submitted to me, the Judge had correctly cited various authorities at [40] to [43] but had not adequately considered whether there was something more than normal emotional ties. There was evidence of a close relationship between the Appellant and her father. He had lost his second wife not long after the Appellant came to the United Kingdom since when a very close bond had developed between father and daughter which went beyond normal affection. The Appellant had provided support to her father during his very serious illness. The only person that the father had told about his cancer was the Appellant. She had referred in her evidence to how important her father was to her. In her witness

- statement the Appellant had said her father had helped her with everything since she was 10 years old, helping her with money and advice.
12. It was argued that the Judge had not disclosed the basis of his findings. In his determination at [44] the Judge had said “for the reasons set out above there is nothing in this case from which I could conclude that there is family life which is protected by Article 8”. The problem was that what was written above was just the case law. When the Judge said that the Appellant would work if she could, there was a double error, firstly to focus on financial dependency and secondly to talk about what would or could happen if the Appellant’s status was changed. The Judge had to assess family life at the date of the hearing. Family life had developed in circumstances where the Appellant was a minor who had been fully dependent on her father. The Appellant’s private life had developed when the Appellant’s status was precarious, but one would have to look at the exceptional circumstances in this case. It was not correct to say that if the Judge had considered family life it would still have resulted in the dismissal of the appeal.
 13. For the Respondent it was argued that there was no material error in the determination. One could always criticise a determination for being too short but that did not mean the Judge had failed to consider the circumstances applicable in the case. The Judge set out the relevant case law and had this background in his mind but having considered the evidence he came to the view there was no more than normal emotional ties. That was a conclusion which was open to him. If the Judge thought there was nothing more than that it was difficult to see what else he could have added. The Judge had a good grasp of the law and the grounds of onward appeal were just an attack on the lack of detail.
 14. In response counsel for the Appellant pointed to paragraph 32 of the decision in **Lama** which in turn quoted from the Court of Appeal decision of **PT [2016] EWCA Civ 612**. Finding a family life did not entail an absolute requirement of dependency in the economic sense but if dependency was read down as meaning “support” in the personal sense and if one added “real” or “committed” or “effective” to the word support then that was the irreducible minimum of what family life implied.

Findings

15. The main issue in the onward appeal before me was whether the interference in the Appellant’s family life with her father caused by the Respondent’s decision to refuse leave to remain would be disproportionate. The Appellant argued that she had a very close relationship with her father and this was acknowledged by the Judge at [40]. The Judge also noted at [33] that “a significant part of the evidence centred around the Appellant’s relationship with her father”. The Judge was aware of what was being argued in the case.

16. He correctly directed himself on the test of very significant obstacles; the **Razgar** steps and himself cited **PT** to the effect that there was no requirement of exceptionality to find family life, it all depended on the facts. The love and affection between adult and the parents would not of itself justify a finding of family life. There had to be something more.
17. The Appellant argues that there is something more, a financial dependency because the Appellant has always lived with her father since arriving here and has been unable to work and support herself and a mutuality of emotional support for the reasons given in the grounds. The Judge's conclusion was that the Appellant was financially dependent on her father because she was unable to work as a consequence of her living in this country unlawfully. What the Appellant had to show was that the financial dependency in those circumstances was more than the normal emotional ties that would be expected of the relationship between father and daughter.
18. The Judge did not consider that the Appellant could show that. At [37] the Judge found that there was nothing more in the case than the Appellant's preference to remain in the United Kingdom. There were no obstacles to reintegration, the Judge referring to the possibility of assistance from the Appellant's mother. It is significant that the appeal in this case has not been put with any force on the basis that the Appellant would be unable to relocate to St Kitt's but rather that it would disrupt her private and family life that she has established in the United Kingdom. Given that the Judge did not consider that there was more than a financial dependence and the normal love and affection between a father and daughter, it is difficult to see how the Appellant could argue that she had a family life with her father that was deserving of protection.
19. The Judge cited a Court of Appeal decision **JB [2009] EWCA Civ 234** that financial dependence to some extent on a parent did not demonstrate the existence of strong family ties between adult children and the parent. The Judge clearly had that case in mind in rejecting the claim that financial dependency in this case gave rise to more than normal family ties. It is well established that the Judge is not obliged to set out each and every piece of evidence in the case. What the Judge considered important was that if the Appellant were required to return to St Kitts the Appellant's father would be able to accompany her as he held dual nationality. The Judge's focus was on whether there were significant obstacles to the Appellant's relocation to the country of her origin.
20. If as was being argued the Appellant's relocation to St Kitt's would have an adverse effect on her father this could be remedied by the father moving with the Appellant so that their relationship could continue if they so wished. The possibility of the father's relocation was a finding open to the Judge on the evidence before him. The Judge noted at [45] that the father given no evidence as to why he could not return with the Appellant to St Kitts. In effect the Judge found that family life could be continued elsewhere, and the Appellant could not therefore succeed either under the

rules because there were no very significant obstacles to her relocation to St Kitts but also outside the rules under Article 8. The interference with her relationship with her father would be minimised by the fact that it could be continued in St Kitts a country of which they were both citizens.

21. The Judge had acknowledged a close relationship between the Appellant and her father but considered that it could be continued elsewhere. I disagree with the grant of permission to appeal which appears to suggest that the Judge had not determined adequately whether family life existed in this case or whether the support which the Appellant and her father gave to each other was mutual. The financial support which the father gave to the Appellant could not of itself amount to more than normal emotional ties, the Judge evidently adopting the reasoning in **JB** hence that was why he had cited it in the first place. The mutuality of their emotional support for each other could similarly be continued elsewhere as the Judge considered at [45]. The grounds of appeal are a mere disagreement with the conclusions of the Judge.
22. The determination was criticised because the Judge said that the Appellant's financial dependency on her father would cease if she were able to find work. As a statement of the position in the United Kingdom it may be that that was incorrect and the Judge himself acknowledged that if he was wrong on that point there were other reasons why he rejected the claim.
23. However, a finding of what the position in the future might be if the Appellant were to return to St Kitts, is not necessarily wrong in law. It is an important factor when assessing the significance of obstacles to relocation, whether the person to be removed would be able to find work in their country of origin. The Judge dealt with this issue at some length and gave very cogent reasons why he felt the Appellant would be able to find work in St Kitts.
24. The Appellant had also made a claim to have a protected private life outside the immigration rules (which the Judge had found the Appellant could not meet). The Judge noted how limited the evidence was of that private life at [47]. The Appellant knew she was not British, knew where she was born and where she had lived for the first 10 years of her life. The Judge rejected the argument that that was sufficient to amount to a private life and her relationships with her friends could continue albeit in a different way should she return to St Kitt's. For these reasons I do not consider that the Judge made any material error of law. I dismiss the Appellant's appeal. I make no anonymity order as there is no public policy reason for so doing.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

Signed this 12 February 2019

Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed this 12 February 2019

Judge Woodcraft
Deputy Upper Tribunal Judge