



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

Appeal Number: PA/00959/2019

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
On 16 January 2020**

**Decision & Reasons
Promulgated
On 31 January 2020**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**A M P
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Lewis instructed by Migrant Legal Project (Cardiff)
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Jamaica who was born on 19 July 1956. She is, therefore, now 63 years old.
3. The appellant arrived in the United Kingdom on 21 February 2008 with a six month visit visa valid until 21 August 2018. When her visa expired, the appellant overstayed and she has remained in the UK illegally.
4. On 10 November 2015, the appellant made an application for leave to remain on the basis of her private and family life. That application was refused on 5 February 2016 and her subsequent appeal to the First-tier Tribunal was dismissed by Judge Coaster on 7 February 2017. On 21 October 2017, the appellant was refused permission to appeal to the Upper Tribunal.
5. On 14 December 2017, the appellant claimed asylum. The basis of her claim was that her son-in-law in Jamaica had threatened to kill her after her daughter discovered that she had been born as a result of the appellant's father raping and sexually abusing the appellant as a child.
6. On 16 January 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under Art 8 of the ECHR.
7. The appellant again appealed to the First-tier Tribunal.

The First-tier Tribunal's Decision

8. The appeal was heard by Judge L Murray on 7 August 2019.
9. Before the judge, the appellant relied upon expert medical evidence from Dr Battersby which included a diagnosis that the appellant is suffering from moderate complex PTSD. Because of her background circumstances, and the report of Dr Battersby, the appellant did not give oral evidence before the judge. Nevertheless, the judge accepted the appellant's account concerning her history of sexual abuse and violence by her father. However, in the light of all the circumstances, including that the appellant had remained safely in Jamaica between 2002 and 2008, Judge Murray was not satisfied that on return to Jamaica she was at risk from her son-in-law as she claimed. Consequently, Judge Murray dismissed the appellant's appeal on asylum grounds. That decision is not challenged and I need say no more about it.
10. In addition, the appellant relied upon Art 8 of the ECHR. She relied, in particular, upon para 276ADE(1)(vi) and Art 8 outside the Rules. In relation to the former, Judge Murray did not accept that the appellant would face "very significant obstacles" to her integration into Jamaica on return. At paras 47-48 of her determination, Judge Murray said this:

"47. It is submitted that she would have no social support or network. Whilst I accept that she may have become estranged from her daughter as a

result of the disclosure of incest, and thus depart, in this regard, from the findings of Judge Coaster, I do not accept that she would be socially isolated for the following reasons. Firstly, I do not accept that she would have lost contact or tie [sic] with Jamaica in the 11 years she has been here. Secondly, she has moved away from her family in Gloucester and is currently living in Cardiff and has been since some point in 2018. She is a member of a Church as evidenced at A40 and has been attending weekly health walks (A38). She has clearly been able to integrate into a community in Cardiff. There would be no language issues on return to Jamaica, she was 51 when she left and hence has spent most of her life there.

48. I conclude that she would be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to her private life within a reasonable time.”
11. A central issue of the appellant’s Art 8 claim was that, on return to Jamaica, she would be destitute as she would not have the financial resources to survive. The appellant’s case, before Judge Murray, was that she would be unable to obtain support from Jamaica’s National Insurance Scheme (“NIS”) and would have no financial support from her relatives in the UK. In the earlier appeal determination, Judge Coaster had accepted that, at that time, the appellant had been financially supported by her family in the UK and that they would be willing to continue to do so.
12. Judge Murray approached the two related issues concerning financial support to the appellant in paras 41-43 as follows:
- “41. The Appellant relies on the objective evidence at C1 to 114 of her bundle which it is said in the skeleton argument establishes that she would not be able to access health care and support services on return to Jamaica. The parts of the report relied on are at C12 and C36 where it is said that around 85% of older people are unemployed in Jamaica and older women suffer high rates of unemployment in males and C12 where it is said that there are only two financial support programs for older people in Jamaica and only a small number of older people can access the NIS program because contributions need to be made and there are high levels of informality in the labour market. The other program, the PATH program covers only 40% of the aged population. 52% of older people in Jamaica have no access to either of the programs. It is also said that older people have lack of funds to purchase food, medication and pay utility bills and indicate they have to make a choice between spending their meagre resources on food and medicine.
42. Neither Dr Battersby’s report or all the other medical evidence before me address whether the Appellant may be able to do some form of work but it is clear from the decision of Judge Coaster that the Appellant worked as a carer in the past. Whilst I accept that the findings in relation to the Appellant’s ability to integrate in Jamaica need revisiting, the evidence and factual findings in that appeal are not irrelevant to this appeal. The decision of Judge Coaster was not overturned despite permission having been sought by the Appellant. The Appellant relies on a number of letters of support in her bundle and also did so at the hearing in 2017. The authors of those letters did not attend to give evidence in 2017 nor have they attended court to give evidence today. However, it is clear both from the decision of Judge Coaster and from the

letter at a 43 [sic] of the Appellant's bundle that she lived with a relative in Gloucester until she moved to Cardiff and that they supported her whilst she was here. She was provided with accommodation and food. There is no suggestion that apart from the assistance of her relatives she had any other source of funds. There is a letter dated September 2015 from the Appellant's sister who at that point in time was 60 years old and supported her application to remain in the UK. I find, as did Judge Coaster in 2017, that her family in the UK have supported her for many years and there is no subsequent evidence to show that they are no longer willing to do so.

43. The Appellant has also not disclosed whether whilst she was working in Jamaica she made any payments by way of national insurance contributions or otherwise which would mean she was entitled to benefits under the NIS scheme. I do not accept therefore that she would be without support or funds in Jamaica."

13. In addition to concluding that the appellant could not succeed under para 276ADE(1)(vi), the judge went on to find that the appellant's removal would not breach Art 8 outside the Rules. At para 51, the judge found that the appellant could not establish that she had family life with her relatives in the UK now that she was living separately from them - they lived in Gloucester and she lived in Cardiff. The judge said this:

"51. Judge Coaster found in 2017 that there was no family life between the Appellant and her sister, step-father or cousin. I accept that this finding was made in the absence of knowledge of sexual abuse and the vulnerability of the Appellant. However, I consider that it has not been established that there is family life between the Appellant and her sister or step-father. There are only letters before me and she no longer lives with them. They all live in Gloucester. At paragraph 9 of her witness statement she says that her sister has seen her twice since she moved to Cardiff and the last time her step-father came was before Christmas. There is currently no dependency. I find that there are normal emotional ties and that the evidence does not demonstrate that the relationships amount to family life. The evidence does not demonstrate a real committed or effective support. In view of the absence of frequent contact I also conclude that there would be no disproportionate interference with the family life of her relatives in the UK."

14. The judge went on to find that the appellant's removal would be a proportionate interference with her private life in the UK (at [55]). In the result, Judge Murray dismissed the appellant's appeal.

The Submissions

15. As I have already indicated, there is no challenge to the judge's decision to dismiss the appellant's appeal on asylum or, indeed, humanitarian protection grounds. Instead, the grounds of appeal focused solely upon the judge's decision in relation to Art 8.
16. In fact, as Ms Lewis acknowledged in her oral submissions, those grounds raise a single point. That point is that Judge Murray erred in law in concluding that the appellant had not established that she would not have access to the NIS in Jamaica because the judge had misdirected herself

about the appellant's previous employment. It was, Ms Lewis submitted, clear from Judge Coaster's decision that the previous employment of the appellant "as a carer in the past" would not entitle her to NIS as she would not have made any relevant contributions. Ms Lewis pointed out that there were two instances of employment by the appellant as a carer which were referred to at para 12 and paras 15-16 of Judge Coaster's decision. The first instance was between 2002 and 2008 when the appellant, in Jamaica, informally looked after an elderly great-uncle and aunt living with them in their home. That, Ms Lewis submitted was not employment which would have resulted in the appellant making relevant contributions to the NIS so as to be entitled to a NIS pension on return. The second instance occurred in the UK when the appellant, again, acted as a carer, this time for an individual when she lived in the home of that individual and his wife. Also, she helped her own sister to nurse her husband who passed away in October 2015. Ms Lewis pointed out that these were also informal arrangements and they occurred in the UK. It could not have resulted in contributions being paid to the Jamaican NIS so as to result in the appellant's entitlement to a pension on return.

17. Ms Lewis also relied upon the background material referred to by Judge Murray at para 41 of her determination. She submitted that, inter alia, "domestic helpers" were unlikely to make contributions and that only a small number of older people could access the NIS programme (at C34). Ms Lewis submitted, in effect, that the proper inference was that the appellant would not be one of those small number of older people who could access the programme.
18. Ms Lewis acknowledged that Dr Battersby had identified in her report (at A17) under the heading "Occupational History" that: "Her last job was when she was pregnant with her daughter. She worked in a high school in a canteen. She also worked in a cleaner company in advertising/sales." Ms Lewis pointed out that the appellant was pregnant with her daughter in 1981 and so that was her last job. Judge Murray had failed to make any findings as to whether or not this employment involved contribution which would entitle the appellant to a NIS pension on return.
19. Whilst Ms Lewis accepted that the grounds only challenge the judge's decision in relation to the availability of an NIS pension on return, in her skeleton argument she also sought to challenge the judge's finding in para 42 that the appellant's family in the UK had supported her in the past and that they would be willing to do so in the future. Ms Lewis submitted that Judge Murray had failed to make a clear finding as to whether there would be sufficient financial support from her family in the UK such that the appellant would not become destitute or street homeless on return to Jamaica on the assumption that she would not be entitled to an NIS pension. In particular, if such a finding were made then that would be inconsistent with the judge's finding in para 51 that family life did not exist between the appellant and her family in the UK because there was "currently no dependency".

20. Ms Lewis submitted that the judge's errors were material and, even if the grounds did not challenge the judge's reasoning in relation to future financial support from her family, that issue necessarily arose in the context of whether an error in relation to whether she would be entitled to an NIS pension was material.
21. On behalf of the respondent, Mr Howells relied upon the Rule 24 reply. He submitted that the appellant had not, in the grounds, raised any point in relation to the availability of financial support from the appellant's family. That point had been raised for the first time by Judge Adio when granting permission to appeal in the First-tier Tribunal.
22. Mr Howells submitted that the appellant had not raised in her witness statement any suggestion that she would not be entitled to contributions from the NIS. He submitted, relying upon the Rule 24 response, that the judge was entitled to conclude that the appellant would have access to an NIS pension. Further, he submitted that, in any event, the judge had made a finding that the appellant would be financially supported by her relatives in the UK and that, therefore, if there were any error in relation to the availability of an NIS pension that was not material to her decision, in particular the finding that the appellant would have adequate financial support in Jamaica.

Discussion

23. The appellant's challenge to the judge's decision to dismiss her appeal under Art 8 is a very narrow one. It relates exclusively to whether the judge found and, if she did, whether she was entitled to find, that the appellant would have adequate financial support either via a NIS pension (or from her relatives in the UK).
24. If the judge did not fall into any material error in that regard, no other aspect of her findings, leading her to conclude that the appellant had not established that there were "very significant obstacles to her integration" under para 276ADE(1)(vi), were challenged.
25. Neither is there any real challenge to the judge's decision that the appellant cannot succeed outside the Rules under Art 8. As regards that conclusion, Ms Lewis, via her skeleton argument referred to the judge's finding in para 51 that there was no family life between the appellant and her relatives in the UK on the basis that there was "currently no dependency" and that there were only "normal emotional ties" and that the evidence did not "demonstrate a real committed or effective support". That finding was, of course, based upon the factual situation, subsequent to Judge Coaster's decision in 2017, namely the appellant no longer lives with her relatives in Gloucester and she lives independently in Cardiff and, it would seem, without any present financial support.
26. There is no challenge to that finding in the grounds. Ms Lewis accepted in her submissions before me that the finding in para 51 was not necessarily

inconsistent with a finding (if indeed Judge Murray made such a finding) that the family would support the appellant financially if she returned to Jamaica. Given the evidence and the judge's reasoning in para 51, I see no conceivable basis upon which her finding that at present the appellant has no family life with her relatives in the UK could be successfully challenged. The judge plainly correctly directed herself in accordance with the relevant case law at para 50 of her determination, including Kugathas v SSHD [2003] EWCA Civ 31; Ghising [2012] UKUT 160 (IAC) and PT (Sri Lanka) v ECO, Chennai [2016] EWCA Civ 612. The judge's finding was not irrational on the evidence and she was correct, in my judgement, to determine the appellant's appeal under Art 8 outside the Rules on the basis of any interference with the appellant's private life.

27. Turning now to the judge's findings in relation to the appellant's financial circumstances if she returned to Jamaica, I accept Ms Lewis' submission that Judge Murray may have been misled as to the nature of the appellant's previous employment and whether that would entitle her to a NIS pension on return to Jamaica. In para 42, Judge Murray refers to Judge Coaster's determination and that it was clear that the appellant had "worked as a carer in the past". It may be that Judge Murray, in the context in which that was said, was simply reflecting that as the appellant had worked as a carer in the past she might well be able to do some work on return to Jamaica in the future. However, in para 43, Judge Murray noted that the appellant had:

"not disclosed whether whilst she was working in Jamaica she made any payments by way of national insurance contributions or otherwise which would mean she was entitled to benefits under the NIS scheme".

If Judge Murray had in her mind the examples of work referred to by Judge Coaster she could have been in no doubt that the appellant would not have made NIS contributions which would entitle her to an NIS pension in the future. Her employment in Jamaica was as a carer on an informal basis and it was highly improbable that NIS contributions would have been made. Her other employment, equally informal, was in the UK and therefore plainly could not have resulted in her making NIS contributions.

28. There was evidence in Dr Battersby's report of earlier employment in Jamaica, no later than 1981 but Judge Murray did not rely upon that evidence or make any finding whether it would have resulted in the appellant paying NIS contributions which would entitle her to a NIS pension. In the result, therefore, the evidence relied upon by Judge Murray did not entitle her to reach the finding that the appellant would have adequate support from a NIS pension.
29. Whilst that factual finding is flawed, I do not accept Ms Lewis' submission that that error is material. In my judgment, Judge Murray clearly found in para 42 that the appellant's family had provided her with financial support previously in the UK (and that is not disputed) and that they would do so in

the future. Judge Murray's conclusion in para 43 was, in my judgment, not limited to support from a NIS pension when she said:

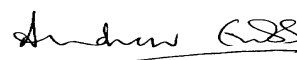
"I do not accept therefore that she would be without support or funds in Jamaica".

30. I do not accept Ms Lewis' submission that Judge Murray failed to find that it was *adequate* support such that the appellant would not be destitute or homeless. In para 42, Judge Murray noted that the assistance previously given by her relative was the only assistance she had received. There had not been "any other source of funds". The judge was, therefore, identifying that the appellant's relatives wholly provided financially for her needs in the UK and no doubt did so entirely adequately.
31. I am satisfied that the judge made a finding that was properly and rationally open to her on the evidence that, even if NIS support was not available, the appellant's relatives in the UK would provide her with financial support in the future, as they had done in the past, which would be adequate for her to live on in Jamaica. Consequently, in approaching the appellant's reliance upon para 276ADE(1)(vi) and her claim outside the Rules, the judge made a sustainable finding that on return to Jamaica she would have adequate financial assistance to support herself in Jamaica.
32. As I have already indicated, there is no other challenge to the judge's adverse finding in relation to para 276ADE(1)(vi) or under Art 8 outside the Rules. Consequently, I am satisfied that the judge did not materially err in law in reaching those adverse findings.

Decision

33. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal under Art 8 did not involve the making of an error of law. That decision stands.
34. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed




A Grubb
Judge of the Upper Tribunal
29, January 2020

TO THE RESPONDENT
FEE AWARD

Judge Murray, having dismissed the appeal, made no fee award. That decision stands.

Signed

A handwritten signature in black ink that reads "Andrew Grubb". The signature is written in a cursive style and is underlined.

A Grubb
Judge of the Upper Tribunal
29, January 2020