



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: **UI-2023-001191**  
First-tier Tribunal No:  
**HU/55179/2021**

**THE IMMIGRATION ACTS**

Decision & Reasons Issued:  
On the 13 June 2023

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**MS ASHA MARISIA SPENCER  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Z Raza, Counsel  
(instructed by IConsult Immigration)

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

**Heard at Field House on 09 June 2023**

**DECISION AND REASONS**

1. Permission to appeal was granted by Upper Tribunal Judge Blundell on 3 May 2023 against the decision to dismiss the Appellant's Article 8 ECHR private and family life appeal (based on a claim of 20 years' continuous residence in the United Kingdom) made by First-tier Tribunal Judge Bart-Stewart in a decision and reasons promulgated on 11 February 2023.

(Permission to appeal had been refused by First-tier Tribunal Judge Athwal on 31 March 2023.)

2. The Appellant, a national of Jamaica born on 16 September 1975, had applied for leave to remain on continuous long residence and on Article 8 ECHR human rights grounds on 15 November 2020. The application was refused by the Secretary of State for the Home Department on 23 August 2021.
3. Judge Bart-Stewart found that the Appellant had not proved that she had remained in the United Kingdom continuously for a period of at least 20 years prior to the date of her application. The Appellant could return to Jamaica and resume her private life there without encountering very significant obstacles. The judge was not satisfied that the Appellant was a victim of domestic violence or faced any particular problems in Jamaica. There were no exceptional circumstances and there was no Article 8 ECHR disproportionality, within or outside the Immigration Rules. Hence the appeal was dismissed.
4. Permission to appeal was granted by UTJ Blundell because it was considered arguable that the judge had failed to deal with the evidence of the Appellant's mother and sister, both of whom had provided witness statements and given live evidence.
5. The Respondent filed a rule 24 notice dated 16 May 2023, opposing the onwards appeal. It was submitted that the judge had indeed referred to the mother and sister's evidence at [16] and [17] of the determination, where the lack of detail concerning the Appellant's presence in the United Kingdom had been noted. The evidence given by the witnesses was referred to in the "findings" section of the determination, specifically at [21] and [23]. It was clear that the mother and sister's evidence had been taken into account in the judge's reasoning. There was no error of law and the determination should be upheld.
6. Mr Raza for the Appellant relied on the grounds of appeal and the grant of permission to appeal and submitted that there were no proper findings about the oral evidence given by the Appellant's mother and sister. The judge's reasoning was inadequate and did not explain what she made of the Appellant's family's evidence. The judge's determination was unsafe and should be set aside. The error of law appeal should be allowed.

7. Mr Avery for the Respondent relied on the rule 24 notice. Sustainable findings had been reached and explained. The judge had noted the vagueness of the family's evidence. The onwards appeal should be dismissed.
8. Mr Raza reiterated the points he had made earlier by way of reply.
9. The tribunal finds that there was no error of law in Judge Bart-Stewart's decision, so that the onwards appeal must be dismissed. As was noted by First-tier Tribunal Judge Athwal when refusing permission to appeal, when the decision is read as a whole, as of course it must be, it is clear that the evidence of the witnesses was insufficient to establish that the Appellant had resided in the United Kingdom for 20 years continuously prior to the date of her application.
10. The subtext of the Appellant's permission to appeal application was that the evidence of the Appellant's mother and sister was somehow sufficiently compelling to have proved the Appellant's case on long residence. The summary provided by the judge at [16] and [17], of which no complaint of inaccuracy was made, shows why that evidence was far from compelling. As the judge noted concerning the sister's evidence at [17]:

"It was pointed out to her in re-examination that her statement did not reference the Appellant's life in the United Kingdom for 20 years or what the Appellant had been doing. She replied that she wrote what the Appellant means to her and her children. She did not know it was about her life in the United Kingdom."

At [23], reviewing the evidence she had heard, the judge said:

"The evidence fails to address the main issue of whether the Appellant was continuously resident in the United Kingdom for 20 years."

11. The judge drew attention to the vagueness of the Appellant's account of her claimed presence in the United Kingdom, noting that there was no evidence from the Appellant's church, people she said she had helped, her former employers or her partner. The judge did not rule out that it was possible that the Appellant had been in the United Kingdom for more than 20 years, but found that the required standard of proof, the balance of probabilities, had not been met. As Mr Avery submitted, the judge's decision was sufficiently reasoned and demonstrated that all of the evidence put forward by the Appellant or on her behalf had been properly considered.

12. In the tribunal's judgment the very experienced First-tier Tribunal Judge reached sustainable findings, in the course of a thorough determination, which securely resolved the issues.

**DECISION**

The appeal to the Upper Tribunal is dismissed.

There was no material error of law in the First-tier Tribunal's decision and reasons, which stands unchanged.

**Signed**

**Dated** 13 June 2023

**R J Manuell**

**Deputy Upper Tribunal Judge Manuell**