



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002741

First-tier Tribunal No: HU/57368/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 16th of January 2025

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

NATASHA MARIE WALLACE
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Deb, Solicitor

For the Respondent: Ms S Lecointe, Home Office Presenting Officer

Heard at Field House on 6 January 2025

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Jamaica born on 8 April 1980. She appeals with leave against the decision of Judge of the First-tier Tribunal Lloyd-Smith dated 28 February 2024 in which the judge dismissed the appellant's appeal against a decision of the respondent dated 9 June 2023. That decision in turn was to refuse permission to the appellant to stay in the United Kingdom on the basis of her private Life. Her application for leave was dated 12 May 2022 and the effect of the refusal was to cancel any leave the appellant might have at that point.
2. The appellant entered the United Kingdom in 2009 and had leave to remain as a student until 2015 when an application for leave to remain

outside the Rules was refused. Thereafter the appellant had no leave to remain.

The Appellant's Case

3. The appellant argued that she met the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules. As a consequence of the appellant's circumstances considered individually or cumulatively there would be "very significant obstacles" to her integration into Jamaica. Outside the Rules her private life and in particular her relationship with her sister and nephew outweighed the public interest, she argued. She had lived in the United Kingdom for 15 years and had lost her ties to Jamaica. Recently she had been diagnosed as suffering from breast cancer. She required treatment which could not be accessed in Jamaica and removal would result in an irreversible decline in her state of health causing intense suffering or a significant reduction in her life expectancy.

The Decision at First Instance

4. At [13] of the determination the judge wrote: "It is apparent from the bundle that, by her own admission, the appellant entered the UK illegally in 2009 (page 306) but, despite that was then granted status as a student and her leave to be in the UK ended in 2015. Since then every attempt she has made to regularise her stay has failed. What is also accepted is that the appellant absconded for a period of time which obviously affects my assessment of her credibility"
5. Dealing with the appellant's claim to have no family or friends in Jamaica the judge wrote at [20] that: "I do not however accept that the appellant, who has spent the majority of her life in Jamaica has no extended family or friends still living there. In her oral evidence she stated that because she was studying so hard in the UK she has had little contact with friends and family in Jamaica. I struggle to accept this. The appellant's studies ended in the UK in 2015. She has known since then that she was liable to be returned to Jamaica. I do not accept that she has lost all ties with friends and family in Jamaica or would be without support if she returned."
"
6. At [24] the judge rejected the appellant's claim that the appellant needed to be in the United Kingdom to care for her nephew stating: "There is nothing within the medical evidence that has been presented that indicates that the appellant is anything other than a familiar family member who babysits for her nephew and would be on hand if his medication failed and the boy had a seizure."
7. Dismissing the Article 8 claim the judge wrote at [34]: "I find the factors raised by the appellant do not outweigh the public interest in removal. I find the scales fall on the side of the public interest and the decision is proportionate. Notwithstanding the appellant's private life in the UK and the difficulties she will face on return to Jamaica, the decision does not

lead to unjustifiably harsh consequences and does not breach Article 8 ECHR.”

8. Turning to the appellant’s claim under Article 3 in relation to the appellant’s medical condition the judge wrote at [35]: “the appellant confirmed that treatment is available [in Jamaica] but stated that it is incredibly expensive. She did not provide any supporting evidence to show that the medication or therapy that she currently receives or is due to, is unavailable to her in Jamaica. The Respondent’s Review sets out background information relating to access to treatment through the National Health Fund (NHF) (page 351) and cites a 2019 report that states Jamaicans can “now access world-class cancer treatment” and cites other similar guidance and available medication. There has been no up to date letter from a medical professional stating that removal of the appellant at this stage would have a detrimental impact upon her treatment or that there would be a serious, rapid and irreversible decline in [her] state of health resulting in intense suffering or a significant reduction in life expectancy.”
9. At [37] the judge concluded: “As I am not satisfied, taking the evidence in the round, that the necessary treatment [in Jamaica] is either not available or not accessible to the appellant, I am not satisfied that the appellant will suffer a serious, rapid and irreversible decline in her health which will lead to a reduction in life expectancy or intense suffering. The appellant has therefore failed to establish a prima facie case and the respondent does not therefore have any “serious doubts” to dispel. I am not satisfied that the refusal breaches Article 3 ECHR. “ She dismissed the appeal.

The Onward Appeal

10. The appellant appealed against this decision in grounds described by Upper Tribunal Judge Hirst as “verbose, unnumbered and difficult to follow”. The grounds argued that the judge had disregarded the appellant’s “precarious health conditions, her long residence in the UK, her being a victim of fraudulent legal advice in the past, the insurmountable obstacles awaiting her in Jamaica and her exponentially strong social and family ties in the UK.”
11. The appellant had arrived in the United Kingdom legally not illegally, (a point conceded by the respondent before me). The Appellant had no support network in Jamaica nor could she access or fund her treatment there. The problems in her immigration history had been exacerbated because she had been the victim of a well-planned immigration fraud conducted by an unscrupulous individual, who pretended to be legally qualified. Although on paper Jamaica has a functioning medical system it lacks the kind of medical facilities the Appellant needed to survive. The appellant did not have the finances to access private health care. The judge had erred in stating at [36] that the inability to access treatment because of cost was not a matter for her.

12. Permission to appeal was refused by the First-tier but on renewal to the Upper Tribunal was granted on 29 October 2024. The Upper Tribunal grouped the onward appeal into four main grounds. On ground 1 Judge Hirst found it “arguable that the judge made a mistake of fact in concluding that the Appellant had entered illegally in 2009. It is also arguable that the judge did not give adequate reasons for her conclusion that the Appellant’s credibility was undermined, which did not inevitably flow from the fact of the Appellant’s immigration history”. As to ground 2 it was “arguable that the judge misdirected herself as to Article 3 in light of **AM (Zimbabwe) [2020] UKSC 17** and **Paposhvili v Belgium [2017] Imm AR 867** by failing to consider not only whether treatment was available in Jamaica but whether the Appellant would be able to access such treatment.”
13. Ground 3 was arguable in part. It was “arguable that the judge, in summarising the Appellant’s individual characteristics at [29], erred by failing to consider the significance of the Appellant’s medical condition and treatment as relevant factors to her ability to integrate on return. However, it is not arguable that the Tribunal failed to consider the Appellant’s relationship with her nephew. The Tribunal reviewed the evidence relating to the nephew and his medical condition at [23-24] and it was unarguably open to the judge to find on that evidence that the Appellant’s role was not more than that of a familiar family member.”
14. The submission in Ground 4 that the judge had not structured her decision in accordance with the authority of **Razgar [2004] UKHL 27** was not arguable, as the judge had set out relevant matters at [30 to 34]. However “the arguable errors in the judge’s assessment of credibility and approach to the Appellant’s medical condition may have infected the Tribunal’s assessment of the proportionality of the Appellant’s removal.”

The Hearing Before Me

15. For the appellant Mr Deb relied on the Decision of the Upper Tribunal (summarised above) when granting Permission To Appeal. There were a number of errors of law in the First-tier Tribunal decision. The judge had misdirected herself as to both the appellant’s mode of entry and the question of whether there were significant obstacles facing the appellant in Jamaica including the availability of cancer treatment. The appellant was suffering from cancer and there was no one to look after her if she was returned.
16. In reply the presenting officer argued that the grounds were merely a disagreement with the outcome of the determination. The judge had directed herself appropriately. The judge had, it was accepted, overlooked the fact that the appellant had entered the United Kingdom with a valid visa in 2009 but on the 16 November 2021 the appellant had absconded until May 2022. Even if the judge was making an error by

referring to illegal entry in 2009 that did not affect the outcome of the case.

17. The issue of the appellant's medical condition had not been considered in the respondent's decision to refuse leave to remain because the respondent was not notified at that stage of the appellant's condition. However the respondent's review did deal with the appellant's health claim and gave a comprehensive list of medical facilities which would be available to the appellant. For example treatment was available in Kingston, the capital of Jamaica. There was little evidence of what the appellant specifically would require by way of treatment to establish if it was unavailable. The private and family life the appellant had built up in the United Kingdom was at a time while her status here was precarious.
18. In conclusion Mr Deb submitted that the appellant was of impeccable character. She had entered the United Kingdom legally in 2009 and had done everything in her power to regularise her immigration status after it expired in 2015. Unfortunately the appellant had been given wrong advice by an adviser. The appellant could not access medical treatment in Jamaica and the judge was wrong to say that the financial aspects of medical treatment were not something she should be concerned about. Jamaica had become an alien country for the appellant as she had not been back to Jamaica since arriving in the United Kingdom in 2009. She had no immediate family members there. She had received some help from her brother in the United states but there was no indication that she would be able to finance her treatment in Jamaica. The Jamaican health system was very rudimentary. It was for the returning state, in this case the United Kingdom, to dispel any doubts there might be as to the risk of treatment contrary to article 3, see **Paposhvili**. The appellant's nephew has many health problems but the respondent had tried to trivialise that aspect of the case. The appellant now had very strong support from her sister in the United Kingdom. The appellant's onward appeal should be allowed.

Discussion and Reasons

19. The appellant claimed on two bases. The first was that she had a life-threatening medical condition which could not be adequately treated in Jamaica thus putting her at risk of a serious, rapid and irreversible decline in her health which would lead to a reduction in life expectancy or intense suffering. The second basis of the appellant's claim was that she had an established private and family life in this country which would be disproportionately interfered with by her removal.
20. In relation to the medical claim the burden was on the respondent to show that there would be adequate medical facilities available to the appellant in Jamaica which she could reasonably be expected to access. As the authorities put it the obligation is on the respondent to dispel any doubts there may be that the appellant would suffer ill treatment contrary to article 3 (prohibition of torture) if returned. The judge had

before her a substantial body of material produced by the respondent showing medical facilities from which it was clear that the capital of Jamaica, Kingston was the hub of medical treatment throughout the West Indies. If it was to be successfully argued by the appellant that she had specific needs that could not be met by these facilities she needed to be able to point to something in the medical evidence to show what those particular needs were. The burden of proof rested upon her to demonstrate that she required international protection and/or leave to remain.

21. As the respondent pointed out in submissions to me there was no such evidence, what the judge had was the respondent's review which contained a very detailed description of the facilities for cancer treatment which existed in Jamaica and how such facilities could be accessed including by those on limited means. For example the review drew attention to the existence of The National Health Fund (NHF), an agency of the Jamaican Ministry of Health. There are of 3 types of card entitling the holders access to subsidised healthcare. The National Health Fund reported on 3 January 2019 that more Jamaicans can now access world-class cancer treatment with the opening of a National Cancer Treatment Centre at the St Joseph's Hospital compound on Deanery Road in Kingston. The review continued: "Medical authorities emphasise that LINAC devices will increase the efficacy of cancer radiation treatment as well as accessibility to cancer care in Jamaica."
22. Whilst therefore the appellant has a serious and most concerning condition the respondent was able to show in evidence presented to the judge and accepted by her that treatment would be available to the appellant upon return. Although the Upper Tribunal in granting permission to appeal referred to the judge's mistake in characterising the appellant's initial entry into the United Kingdom in 2015 as being unlawful, the medical aspect of the appellant's claim is not one in which the credibility of the appellant's claim is particularly significant. Either the respondent can show Jamaica has adequate facilities or she cannot and the appellant succeeds. The judge however found that the respondent could demonstrate this and nothing has been presented to me to indicate that the judge was wrong to come to that conclusion.
23. Turning to the second basis of the appellant's claim, the Upper Tribunal did not consider that there was an arguable error of law in the judge's treatment of the appellant's private and family life claim. It was argued before me that the Upper Tribunal had given generic directions in all cases where there was only a partial grant of permission that any such grant should nevertheless be taken to mean that all matters raised in the grounds of onward appeal could be argued regardless of what the Upper Tribunal thought of the merits of such further grounds.
24. In fact Judge Hirst has properly dealt with this matter in his grant of permission since permission was not refused in relation to the article 8 claim, instead Judge Hirst commented that the criticisms of the First-tier

made in the appellant's onward grounds were not arguable. This conclusion must be correct. The appellant although she had entered legally, had overstayed her visa and had therefore lived in the United Kingdom unlawfully for many years. At one point she had absconded. The appellant sought to blame bad advice from another adviser about her poor immigration record but that does not in my view excuse the fact that the appellant lived several years without leave or that she evaded the attentions of immigration authorities by absconding. The appellant must take some responsibility for her own actions.

25. As Judge Hirst put it, the appellant could not establish she was anything more than a familiar family member to her nephew. It is difficult to see therefore how the judge's mistake in characterising the appellant's initial entry into the United Kingdom as unlawful has any bearing on the outcome of this appeal. As I have already indicated in relation to the medical healthcare issue, the appellant's credibility is not of relevance in this case. The First-tier judge correctly analysed the appellant's claim under article 8 and correctly noted that the appellant would not face insurmountable obstacles upon return to Jamaica a country with which the appellant was very familiar. Although she asserts Jamaica is alien to her, it is difficult to see how that could be the case given that she lived the first 29 years of her life there.
26. I agree with the submission of the respondent that the grounds of onward appeal in this case are no more than a disagreement with the result. The conclusions of the judge were open to her on the evidence presented and I do not find that there is any material error of law in the determination in this case. I therefore dismiss the onward appeal. I make no anonymity order. I was not asked to do so and 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 9th day of January 2025

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Judge Woodcraft
Deputy Upper Tribunal Judge