Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/09114/2014

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court	**Determination Promulgated**
On 19th September 2014	**On 26th September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MISS MICHELLE NICOLE JOHN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Sellwood (Counsel)
For the Respondent: Mr Richards (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Frankish, promulgated on 3rd June 2014, following a hearing at Bennett House on 20th May 2014. In the determination, the judge dismissed the appeal of Michelle Nicole John. The Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Antigua and Barbuda, who was born on 14th June 1994 (being 19 years of age at the time of the determination of Judge Frankish). She appeals against the refusal of her application for indefinite leave to remain in the UK, that decision having been made by the Secretary of State on 29th January 2014.

The Appellant's Claim

3. The Appellant's claim is that although she arrived in the UK on a six month visa on 30th June 2013, and then subsequently overstayed this visa, she has family life rights in the UK, which she enjoys with her mother, Joycelyn All-John, and other family members in this country. She is a British overseas citizen (BOC), and although she holds the citizenship of Antigua and Barbuda (which are independent former colonies of the UK), she has lived her entire life with her mother in Montserrat (which is a British colonial territory) and of which she holds a British Overseas Citizenship passport.

The Judge's Findings

4. The judge heard evidence from the Appellant's close family members. They consisted of the mother, Joycelyn All-John (see para 7), her aunt, Petra Greenway, and her maternal grandmother, Daphne Allen. All these individuals were also present in the courtroom before me today. Additionally, the judge heard evidence from the Appellant's schoolteacher, Miss Katie Mason, and the report from her neurologist Dr Esmaell Nikfekn. There was also evidence from others.

5. On at least two occasions, the judge made it clear that "there is no dispute about the facts of the case" (see para 4, para 15). The judge then made his findings. He first considered the Immigration Rules. He observed that removal directions were to the country of the Appellant's nationality, namely, Antigua and Barbuda. He noted that "the Appellant has only been in Antigua, which has a better hospital, to be born, the rest of her life being in Montserrat" (para 16). He then observed, however, that the Appellant, "has obviously tricked her way into the UK with her visit visa by persuading the Respondent that she intended to return" (para 17) but never doing so.

6. The Appellant's mother had left Montserrat, after her father died, leaving the Appellant and her siblings behind, who subsequently all joined her. There are various appeals with respect to the others against decisions of the Secretary of State.

7. Nevertheless, the judge considered the Immigration Rules and observed that with respect to paragraph 276ADE, what was relevant was para 276ADE(vi) because this refers to a person who is

> "Aged 18 years or above, has lived continuously in the UK for less than twenty years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which

he would have to go if required to leave the UK" (see para 19 of the determination).

8. The judge noted that "Mr Sellwood contended that the Appellant falls under sub-paragraph (vi) above. I agree. My reasons for so concluding are as follows ..."

9. The judge then goes on to explain how the Appellant has "no connection with Antigua and Barbuda" and that it was relevant that

> "Some three-quarters of the population of that territory have already been admitted to the UK, leaving only some 5,000 souls none of which are relatives of the Appellant. Here, she has her entire and substantial extended family. These factors put an end to her family, social and cultural ties to her homeland of a bare few miles of habitable circumference" (para 20).

10. Having considered the Rules, the judge then went on to consider the Appellant's human rights situation and considered she was given two ECHR Article 8 rights. The judge set out the case law referring to **MM [2013] EWHC 1900** and to **Nagre [2013] EWHC 720**, and to **MF (Nigeria) [2012] UKUT 00393**. The judge then held that,

> "It could be said that the Rules have not been correctly applied by failing to allow for compelling circumstances. It could be said that the Rules do not cover the situation and that it is necessary to step outside to consider Article 8 jurisprudence. Either way, the Article 8 guidance is supportive of the Appellant through her wider connection to the family including consideration of their interests under **Beoku-Betts [2008] UKHL 39**. She has close ties with her family and none in what is left of her island in terms of **Huang (2007) UKHL 11** ..." (para 22).

Finally, the **Razgar** principles were applied (see para 24) and the appeal was allowed on the basis that the balance of considerations fell in favour of the Appellant.

Grounds of Application

11. The grounds of application state that the judge has failed to give proper consideration to **Gulshan [2013] UKUT 640** which makes it clear that the Rules are a complete code and that compelling circumstances have to be identified.

12. The Appellant had spent all her life in Montserrat until her arrival in the UK on 30th June 2013 and it was wrong for the judge to say that she had no ties there.

13. On 23rd June 2014 permission to appeal was granted.

14. Unusually, there was a sound and comprehensive Rule 24 response from the Appellant, in the words of Mr Sellwood, on 10th July 2014, to which I have given due regard.

Submissions

15. At the hearing before me, Mr Richards, appearing on behalf of the Respondent, stated that he would rely upon the Grounds of Appeal. He also explained that the determination did not make clear how the appeal was allowed in terms of findings on private and family life. The judge had simply said there were no ties left with Montserrat but the Appellant had until recently lived in Montserrat. The judge had failed to apply the five-step approach in **Razgar**, choosing simply to cite **Razgar** in the last paragraph of the determination. No findings were actually made in terms of the existence of family life. A proper proportionality exercise had not been carried out. There was therefore a material error of law. I should set aside the determination.

16. For his part, Mr Sellwood submitted that exactly that which it was claimed had not been done, had indeed been done, and that one only had only to look at his Rule 24 response which made this clear. First, the judge had made it clear that the Immigration Rules are a complete code because he had cited **MF (Nigeria)** at paragraph 21 of the determination. He had determined the matter under the Immigration Rules first (see paras 19 to 22) before stepping outside them. Second, he had made findings that there were "compelling circumstances" (see paras 22 and 23) when looking at the Article 8 situation. Third, the removal directions were to Antigua and Barbuda, the country of which the Appellant was a national, and yet this was a county in which the Appellant had never lived, having lived all her life in Montserrat. The removal directions were not to Montserrat. The judge took that into account. These were exceptional features and the judge made reference to them. Finally, insofar as it is said that the judge took into account immaterial matters, these are not specified, but the judge very comprehensively and properly took account of the family dynamics and explained in detail what the background Article 8 considerations were. Insofar as reference was made to the fact that the Appellant had "obviously tricked her way into the UK," this had been taken into account, but had been treated as a less than decisive factor, in the light of the fact that the Appellant's mother, with whom she had lived all her life, was in the UK, and her siblings were in the UK. The mother was a British citizen and was able to come into the UK on the basis of her British citizenship passport. The siblings were not. And they still had their appeals to run. Nevertheless, the family was together in this country.

No Error of Law

17. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of **TCEA [2007]**) such that I should set aside this decision. My reasons are as follows.

18. First, the judge appears to have already allowed the appeal under paragraph 276ADE(vi) which refers to the fact that the Appellant was aged 18 years or above, has lived continuously in the UK for less than twenty

years, "but has no ties" with the country of her origin. It is not enough to say that the Appellant had only recently come from Montserrat. This is because the judge considered the position of Montserrat, observing how,

> "The history and geography of Montserrat is not irrelevant. It is less than ten miles long, less than seven wide. Ninety per cent of the buildings were damaged by Hurricane Hugo in 1989. Seventy five per cent of the island now forms an exclusion zone, too dangerous to enter, since the volcano in 1995 ..." (para 16).

19. But even more importantly, the judge held, with respect to the Appellant, that "some three-quarters of the population of that territory have already been admitted to the UK, leaving only some 5,000 souls *none of which are relatives of the Appellant"* (see para 20).

20. Therefore, it is clear that the Appellant had no social or cultural or family life ties in that country. The judge found that she succeeded under paragraph 276ADE, although he neglected then to specifically say at the end of his determination that the appeal was allowed on this basis, as well as on the basis of human rights grounds. This was an oversight on the judge's part. The appeal should have been allowed expressly under the Rules as well.

21. Second, with respect to allowing the appeal under Article 6, if the appeal had already been allowed under the Immigration Rules, then this added extra weight to the balance of considerations with respect to Article 8 factors and the weight to be accorded to them.

22. In any event, the judge had express regard to the cases of **MM**, of **Nagre**, and of **MF (Nigeria)** at para 21 and went on to hold that the considerations of **Huang** (at para 18) applied in this case because "there comes a point at which, for some, prolonged and unavoidable separation from his group seriously inhibits their ability to live full and fulfilling lives."

23. The Appellant in her case had relied heavily upon her two disabled siblings (see para 23) and the judge did not consider this to be relevant. He was clear that the best interests of the Appellant lay in the Appellant remaining in the UK as did the Section 55 BCIA considerations and the judge cited authorities for this. There is no material error.

Decision

24. There is no material error of law in the original judge's decision. The determination shall stand.

25. No anonymity order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 26th September 2014