Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/28381/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 25th April 2014	**On 15th May 2014**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MISS KEMISHA CHANTELLE SHENA PLUMMER

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Poyner of Counsel
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Jamaica, born on 25th August 1982.

2. The appellant sought to remain in the United Kingdom on the basis of her long residence. That application was refused by the respondent in a

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detailed decision of 24th June 2013,when a decision to remove the appellant from the jurisdiction was also made.

3. The appellant sought to appeal against that decision which appeal came before First-tier Tribunal Judge Vaudin d'Imecourt on 14th January 2014.

4. The appeal was presented to the Judge as can be seen from the skeleton argument, on the basis that the appellant had been lawfully resident in the United Kingdom for in excess of ten years and therefore fell to be granted leave to remain under paragraph 276B of the Immigration Rules.

5. The Judge was not satisfied that the appellant had been lawfully resident for that period and dismissed that appeal. He also dismissed the appeal in respect of Article 8 of the ECHR.

6. A complaint is made however in the grounds of appeal that the Judge failed to address the decision made by the respondent under paragraph 276ADE, in particular 276ADE(1)(vi), namely to analyse whether or not the appellant had any ties to Jamaica. It was further argued that the Judge had misunderstood the number of occasions that the appellant had been to Jamaica in any event.

7. Leave to appeal was granted on that basis. It is understandable why the Judge should focus upon long residence, as under the old Immigration Rules, because that was the basis of the argument which was addressed to him both in the skeleton argument and in submissions.

8. Paragraph 276B of the Immigration Rules had been considered by the respondent in detail in the reasons for refusal letter and thus it is entirely right that findings should be made upon that.

9. The respondent however went on to consider the matter under the current Immigration Rules, in particular paragraph 276ADE.

10. It seems to me, therefore, that it was incumbent upon the Judge to have acknowledged that fact and indeed to have made findings upon it.

11. What seems not to be in issue is that generally speaking the appellant would meet the requirements of paragraph 276ADE with the exception of:-

> "(vi) 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."

12. It was not accepted in the reasons for refusal that the appellant had severed all ties with the country. Therefore the issue of ties with Jamaica was an important and key factor to be considered in the determination.

13. Mr Nath, who represents the respondent, sought to argue that the Judge had made sustainable findings on the issue of ties and therefore that it was academic that he had not considered 276ABD because the appellant would have been unable to satisfy that requirement in any event. He argues that, although the Judge may have been in error in not dealing specifically with that Rule, there has been no material irregularity in the outcome.

14. Ms Poyner, who represents the appellant, argued that had the Judge realised the importance of that issue to the outcome of appeal, he would have been more focused upon it. In any event there were errors involved in the findings that were made. Paragraph 41 of the determination said that her application showed that the appellant visited Jamaica on a number of occasions between March 2008 and May 2011. In fact the application gave the date of her absences from the United Kingdom but did not specify where the visits were to be made. Only on one occasion was that a holiday in Jamaica as can be seen from her passport. Other occasions were holidays to Portugal skiing and to Greece.

15. The determination is a detailed and careful one. No issue was taken as to the findings made as to long residence under the old Immigration Rules. The real concern is to what extent the new Rules were considered and the outcomes of the same properly dealt with.

16. It seems to me as a matter of procedural fairness that element of the respondent's decision, which dealt with paragraph 276ADE of the Immigration Rules, should have been specifically considered by the Judge, particularly when there would seem to be one live issue standing between the refusal and the grant, namely whether or not the appellant had ties to Jamaica.

17. In the case of **Olufisayo Olatuboshun Ogundimu v Secretary of State for the Home Department [2013] UKUT 00060 (IAC)** it was found that the natural and ordinary meaning of the word "ties" in the Immigration Rules imports a concept involving something more than merely remote or abstract links to the country of proposed removal. It involves a rounded assessment of all the relevant circumstances and is not to be limited to "social, cultural and family" circumstances. I find that in the circumstances of this particular case that degree of attention was not forthcoming. Had the Judge realised the significance of that issue, I have no doubt that he, being a very experienced Judge, would have focused more particularly on that issue.

18. Clearly there is some evidence on that matter but it was considered more in the context of an Article 8 application, rather than a specific requirement under the Rules. In such circumstances the evidence may be less extensive than otherwise might be the case. This is particularly so if compounded by the error on the number of visits made to Jamaica. It is

common ground that the appellant entered the United Kingdom in March 2002 and generally has remained since that time. Her mother remains in Jamaica and she has a number of aunts living in the United Kingdom. It is noted in the course of the determination that the appellant has developed strong ties with her Aunt Angela, particularly now that her father died in August of last year.

19. The finding that the appellant may be a highly qualified individual who could find employment in Jamaica and who may be able to re-establish her private life in Jamaica, does not address the issues of ties which is the focus of the decision in **Ogundimu**.

20. In the circumstances, therefore, I consider particularly by way of procedural fairness that the decision should be set aside although certain of the findings are to be retained. Ms Poyner, on behalf of the appellant, accepted that there was no error in the approach taken by the Judge to the long residence provisions as set out in 276B and therefore the findings of that matter should be preserved. Similarly the detailed evidence of many witnesses is recorded in the determination. There was no challenge to their credibility and no doubt therefore that evidence can be adopted upon any rehearing.

21. In the circumstances I indicate that there should be a rehearing of the appeal focused particularly upon 276ADE and upon Article 8 of the ECHR.

22. As to 276ADE it is my reading from the refusal decision that the only issue that is joined between the appellant and the respondent was that she has no ties with Jamaica. I cannot find any indication that she fails to meet the requirements otherwise set out in the Rule. If, however, it is to be the contention of the respondent that the appellant fails to meet other ingredients of the Rules such that even were a decision made in her favour on ties that would not resolve the issue, notification of that position and the reasons why should be given to all parties without delay and certainly no later than three weeks before the hearing.

23. I would expect also that there be further evidence from the appellant or other sources as to her links with Jamaica. It would be necessary to examine the wider family profile, particularly the relations of her aunt who remain in Jamaica or indeed relatives of her parents. It would be helpful, therefore, to have some detailed evidence about the lifestyle of her mother and her family and of the links that they have with the community in Jamaica. Such evidence should be served no later than five days prior to the hearing. The hearing is scheduled to take place on 31st July 2014.

24. It will also be helpful to maintain that time estimate, that there be a limitation as to the number of witnesses who are to be called to give oral evidence. As I have indicated, a number gave evidence which was recorded in the determination. Unless they wish to give substantially different evidence to that which was given before, I see no reason why

those relevant paragraphs in the determination of First-tier Tribunal Judge Vaudin d'Imecourt should not be incorporated as part of the evidence in this appeal. That would save time and save the unnecessary attendance of witnesses to repeat that which they have already given.

25. Any further directions should be issued from the First-tier Tribunal.

26. I send the matter back for rehearing before the First-tier Tribunal having regard to paragraph 7 of the Senior President's Practice Directions and the necessity to make primary findings of fact on important issues.

Signed Date

Upper Tribunal Judge King TD