**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: IA/39390/2013

**THE IMMIGRATION ACTS**

| **Heard at : Field House** | **Determination Promulgated** |
|---|---|
| **On : 14 July 2014** | **On 08 Aug 2014** |

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**KARLENE EULALEE PALMER**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms J Heybroek, instructed by Eagle Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Jamaica, born on 23 June 1970. She has been given permission to appeal against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to remove her from the United Kingdom.

2. The appellant entered the United Kingdom on 16 December 2002 with leave to enter as a visitor valid for six months, but overstayed her visa. She had a son, born on 21 October 2005 in the United Kingdom. She applied for further leave to remain on 8 December 2011 but her application was refused on 11 September 2012. She commenced judicial review proceedings but withdrew once the respondent agreed to consider her application again and make an appealable removal decision in the event of further refusal. The application was then refused on 9 September 2013 and a decision was made on 11 September 2013 for her removal to Jamaica.

3. In refusing the appellant's application, the respondent considered the immigration rules relating to family and private life but concluded that she met the criteria of neither. With regard to Appendix FM and EX.1, the respondent accepted that she had a genuine and subsisting relationship with a seven year old child born in the United Kingdom who may have lived continuously in the United Kingdom for seven years prior to the application, but considered that her son could reasonably be expected to return to Jamaica with her. With regard to paragraph 276ADE it was not accepted that the appellant had lost all ties to Jamaica.

4. The appellant appealed against that decision. Her appeal was heard in the First-tier Tribunal on 12 February 2014 by First-tier Tribunal Judge Bartlett. The judge heard oral evidence from the appellant, who said that she was supported in the United Kingdom by family and friends, referring in particular to Sonia and Derek Brown who helped her out both financially and materially. She had two older brothers and an older sister in Jamaica. Her father was dead. Her mother lived in Jamaica. The judge also heard from Derek Brown and the appellant's flatmate Jessica Dixon. It was agreed before the judge that Article 8 applied in its wider context rather than under the immigration rules, which had come into force after the application was made, and that the sole basis of the appeal was in regard to proportionality and the best interests of the appellant's son.

5. The judge referred to various cases including Azimi-Moayed and others (decisions affecting children; onward appeals) Iran [2013] UKUT 197 and considered as a critical factor in the appeal the period of time spent by the appellant's son in the United Kingdom. At the time of the hearing, he had been living in the United Kingdom, since birth, for eight years and four months. Applying the principles in that and the other cases to which she referred, the judge concluded that the best interests of the appellant's son would be to return with her to Jamaica and that their removal from the United Kingdom would not be disproportionate and would not breach Article 8 of the ECHR. He dismissed the appeal.

6. Permission to appeal was sought on behalf of the appellant on the grounds that the judge had erred in his assessment of the best interests of the appellant's son and had misunderstood the ratio in Azimi-Moayed and Zoumbas v Secretary of State for the Home Department [2013] UKSC 74 and had applied a test that did not exist; and that he had made assumptions about accommodation and financial support in Jamaica that were not supported by the evidence.

7. Permission to appeal was granted on 25 April 2014.

**Appeal hearing and submissions**

8. At the hearing the appellant was in attendance but was not required to give oral evidence. I heard submissions on the error of law.

9. Ms Heybroek expanded upon the grounds of appeal. She submitted that the judge had erred in his approach to the best interests of the child and had created his own test from Azimi-Moayed, considering as relevant the period of time over and above seven years that the child had lived in the United Kingdom and ignoring the first four years of residence. Ms Heybroek relied upon the Home Office's statement on the new immigration rules, in particular with regard to the best interests of the child, in which the key test for remaining in the United Kingdom on a permanent basis was said to be a period of residence of seven years, "subject to countervailing circumstances". She also referred to the finding in Azimi-Moayed as to it being inappropriate to disrupt ties developed after lengthy residence in a country "in the absence of compelling reason to the contrary" and submitted that no such reasons had been identified in the appellant's son's case. With regard to the second limb of the grounds of appeal, the judge had made assumptions on the evidence as to the circumstances the appellant could expect to face in Jamaica and had made errors of fact which amounted to errors of law.

10. Mr Avery submitted that the judge had properly approached the competing issues and had undertaken a comprehensive review of all the evidence in accordance with the relevant case law. His decision was consistent with the approach taken in EV (Philippines) & Ors v Secretary of State for the Home Department [2014] EWCA Civ 874. With regard to the second ground of appeal, the judge was entitled to take the view of the evidence that he did and was entitled to reach the conclusions that he did in regard to the support available to the appellant in Jamaica.

11. In response, Ms Heybroek reiterated the points already made.

12. I advised the parties that in my view there was no error of law in the judge's decision and my reasons for so finding are as follows.

**Consideration and findings**

13. It is asserted that the judge erred in his understanding of the findings in Azimi-Moayed at paragraph (1)(iv) of the head-note and at paragraph 13(iv) of the decision, which states:

> "Apart from the terms of published policies and rules, the Tribunal notes that seven years from age four is likely to be more significant to a child than the first seven years of life. Very young children are focussed on their parents rather than their peers and are adaptable."

14. It is submitted that his reference to the appellant's son having spent only sixteen months in the United Kingdom since the age of seven indicated that he had ignored the first four years of the child's life in the United Kingdom and had created his own test not

intended by the Upper Tribunal in Azimi-Moayed. However it is clear that the judge was not attempting to create any such test and that he had fully understood what Blake J had said in that case. He was fully aware that seven years' residence was a significant factor in assessing the best interests of the child but was mindful of Blake J's qualification to that period as expressed in Azimi-Moayed. His decision involved a thorough assessment of the case law relevant to the issue of the best interests of the child and a detailed consideration of the appellant's circumstances in the United Kingdom and those to which he would return in Jamaica in line with the guidance and principles within that jurisprudence.

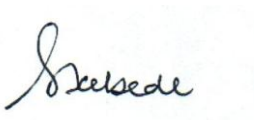
15. I find myself entirely in agreement with Mr Avery's submission that the judge's assessment was a thorough and comprehensive one, taking into account all relevant considerations. He reached a decision that was entirely open to him on the evidence before him and which was consistent with the recent and relevant jurisprudence concerning the best interests of the child.

16. With regard to the second limb to the grounds, it seems to me that this amounts to little more than a disagreement with the conclusions reached by the judge about the circumstances to which the appellant and her son would return in Jamaica. The judge was perfectly entitled to take the view of the evidence that he did and did not make any errors of fact. He was entitled to conclude, on the evidence before him, that the appellant would continue to have access to support from those already supporting her in the United Kingdom. In any event he considered in the alternative other sources of support including that from her family members in Jamaica and, at paragraphs 49 and 50, through her own employment prospects in Jamaica. He was entitled to find that she and her son would have adequate means of accommodation and support and to take that into account in considering proportionality and the best interests of the child.

17. Taken as a whole, the judge's determination contains a detailed and thorough assessment of the appellant's circumstances and the best interests of her child, together with clearly and cogently reasoned findings properly open to him on the evidence before him. The grounds of appeal disclose no errors of law in his decision.

**DECISION**

18. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed 

Upper Tribunal Judge Kebede Dated: 21 July 2014