



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/50906/2013

THE IMMIGRATION ACTS

Heard at Field House

On 20th August 2014

Determination

Promulgated

On 28th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

MISS NICKEISHA TRUDY-ANN CLARKE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Bajwa (Legal Representative)

For the Respondent: Mr S Walker (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant's appeal against a decision to remove her to Jamaica was dismissed by First-tier Tribunal Judge Howard ("the judge") in a determination promulgated on 19 May 2014. The appellant's case was

advanced in reliance upon Article 8 of the Human Rights Convention, in the light of family and private life ties established here.

2. It was accepted before the judge that the appellant could not meet the requirements of Appendix FM or paragraph 276ADE of the rules. The judge found that there were arguably good grounds for making an Article 8 assessment outside the rules. He took into account the appellant's family circumstances and, in particular, her two daughters, born in the United Kingdom in May 2008 and May 2012. Neither is a British citizen. The judge also took into account the presence here of other relatives and the extent of the appellant's ties to Jamaica. He concluded that the appellant could not succeed under Article 8 of the Human Rights Convention and dismissed the appeal.
3. An application was made for permission to appeal. Attention was drawn to the appellant's presence in the United Kingdom since her arrival here in 2001 and to the fact that she has sole custody of her daughters, who are described as being 5 years old and 1 year old. Her mother is in the United Kingdom and she has cousins and other relatives who gave statements in support. The author of the grounds states that the appellant has no family in Jamaica to return to with her two children, one of whom is at school. It is contended that it "would be contrary to private life to return the appellant to Jamaica", and that it is highly unlikely that both children would be able to adapt to life in Jamaica or want to live there. The judge did not give reasons why he felt it was safe for her to return "in the light of current civil unrest". The decision is described in the grounds as being contrary to Razgar [2007] UKHL 27 and Huang [2007] UKHL 11.
4. Permission to appeal was granted on 24 June 2014. The judge granting permission noted that the judge made mention of section 55 of the Borders, Citizenship and Immigration Act 2009 at paragraph 28 of the determination. This is described as the extent of the judge's reference to this statutory provision. Permission was granted on the basis that it was unclear how the judge reached an evaluation of the best interests of the children without specifically referring to factors in this context.
5. There was no Rule 24 response from the Secretary of State.

Submissions on Error of Law

6. Mr Bajwa said that the issue of the children had not been dealt with, or at least not dealt with comprehensively. The judge described them as being both young. One child was of school age.
7. Mr Walker made a response on behalf of the Secretary of State. At paragraph 14, the judge directed himself in the light of Gulshan [2013] UKUT 640. He then went on to make an Article 8 assessment and considered the salient facts. He found that the appellant and her daughters enjoyed family life here. He reached his conclusion at

paragraph 28 of the determination and had, by then, considered the best interests of the children. It was clear that the judge considered all of the evidence. The Secretary of State proposed to remove the appellant with her daughters, as a family unit. The judge accepted that this would have an impact on the children's relationship with their grandmother here. Overall, the judge had taken into account the best interests of the children in his assessment and did not make any material error in reaching his conclusions.

8. In a brief response, Mr Bajwa said that the judge had not explained how he came to the conclusion that it was in the best interests of the children that they should be removed with their mother. He had not referred to particular factors. The whereabouts of the children's fathers appeared to be unknown. The oldest child had started school. The judge's assessment was brief and it appeared that he fleetingly mentioned relevant factors and then stated his conclusion. It was clear that he put emphasis at paragraph 22 and elsewhere on the prospect of visits by family members to Jamaica.
9. Mr Bajwa also said that on the last page of the determination the judge mentioned two men in Jamaica whose whereabouts the appellant said that she did not know. The judge did not identify who these men were. It was clear that both children had been born in the United Kingdom. On this last point (made by Mr Bajwa after the formal conclusion of the hearing but without objection) Mr Walker responded that paragraph 24 showed that the judge had in mind the appellant's own father and the father of her oldest child. These two men were Jamaican nationals and the reference by the judge in paragraph 26, on the last page of the determination, was a reference to them and not to the father of the youngest child, who was a Ghanaian national.

Conclusion on Error of Law

10. The grounds in support of the application for permission to appeal sought to rehearse aspects of the appellant's case, including the extent of her ties here and in Jamaica. Mention is made of the two children and their ages and the fact that the oldest of them has started attending school. The judge granting permission drew attention to the brief mention of section 55 of the 2009 Act in the determination.
11. Paragraph 28 does indeed include the only express mention of section 55. However, it is readily apparent from that paragraph that the judge took into account the provision "in reaching" his conclusion that the appellant could not succeed under Article 8 of the Human Rights Convention. As Mr Walker submitted, the reasoning of the judge in fact appears at paragraphs 14 to 28. No case was advanced by the appellant that the requirements of the Immigration Rules in Appendix FM or paragraph 276ADE were met. The judge properly found that an assessment was

required outside the rules, having taken into account guidance given in Gulshan [2013] UKUT 640.

12. In paragraph 16 and those which followed, the judge set out all salient features of the appellant's case. He did not overlook any relevant or material matter. He accepted that the appellant has established family life in the United Kingdom, since her arrival here in April 2001. He took into account letters of support from her mother and several cousins, all adults. He properly took into account as a significant factor the birth of the appellant's two daughters, in May 2008 and May 2012. The father of the younger is a Ghanaian national but he did not attend the hearing and did not submit any written statement or letter supporting the appellant's case. The appellant's evidence was that she did not want to marry this man before resolving her immigration status. So far as the father of the older child is concerned, the appellant gave evidence that he is a Jamaican national, from Kingston, and that she is unaware of his whereabouts. Similarly, she is unaware of the whereabouts of her own father, also a Jamaican national.
13. The judge took into account the appellant's claim that she has no relatives in Jamaica but concluded, in paragraph 26, that the true picture had not been revealed. He made mention of two men in Jamaica about whom she knew little. It is apparent that he had in mind here the appellant's own father and the father of her older child.
14. So far as the appellant's children are concerned, the judge also took into account their regular contact with their grandmother (the appellant's mother) and aunts and the fact that the older child had started school. He noted that the two children have a relationship with the father of the younger but, again, there was no evidence from this person and nothing to show his status here.
15. The judge properly found that the appellant's removal with her daughters would constitute an interference with family and private life ties established here. The children are very young and the education enjoyed by the older was only recently established. He was entitled to find that a change in this context would not be detrimental. He was also entitled to find that all the important members of the appellant's family would be able to visit her and the children in Jamaica. He did not err in taking into account the fact that the appellant was educated exclusively in Jamaica and was as well equipped as her peers to find accommodation and employment there.
16. No material matter concerning the children has been identified as having been overlooked by the judge. He was entitled to place weight on their young ages and to the Secretary of State's proposal to remove them with their mother. In the light of the paucity of evidence regarding the circumstances of the children's fathers, the judge was entitled to conclude that the disruption to such relationships as were established here would be

relatively modest and that visits to Jamaica would be one means whereby they could be maintained from abroad. The judge clearly took his findings regarding the circumstances of the children into account in making his Article 8 assessment, which built upon his findings of fact. His approach is, I find, consistent with the guidance given by the Court of Appeal in AJ (India) [2011] EWCA Civ 1191. Paragraph 28 of the determination, which contains brief mention of section 55 of the 2009 Act, is manifestly not the extent of the judge's consideration of the best interests of the children. Although it might have been more appropriate to refer to the section earlier in the determination, no material error of law is shown by the late mention of it, after the assessment of the best interests of the children and the overall Article 8 assessment.

17. Mr Bajwa made no particular submission in the light of the contention in the grounds that the judge failed to give reasons why "he felt it was safe to return to Jamaica in the light of the current civil unrest" but there is no merit here at all. Paragraph 24 records the appellant's own evidence that the reason why she could not return to Jamaica was "no family" but the judge was entitled to take into account here his adverse finding regarding the true extent of family ties there.
18. Overall, I conclude that no material error of law has been shown. The judge was entitled to conclude as he did, in the light of the evidence before him. The decision of the First-tier Tribunal shall stand.

DECISION

19. The decision of the First-tier Tribunal contains no material error of law and shall stand.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell