



**Upper Tribunal
(Immigration and Asylum Chamber)
OA/02970/2013**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 29 July 2014**

**Determination
Promulgated
On 4 August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE PLIMMER

Between

**CCM
ANONYMITY DIRECTION MADE**

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent**

Representation:

For the Appellant: Ms P Glass (Counsel)

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

DETERMINATION AND REASONS

1. The appellant is a citizen of Jamaica. She was born in 1996 and is now 18 years old. She applied for entry

clearance as a child of a person settled in the United Kingdom (UK) on 10 August 2012 when she was 16 years old. In a decision dated 5 November 2012 the respondent refused to grant the appellant entry clearance.

2. I have made an anonymity order because this determination relates to sensitive matters during the appellant's minority.

Procedural history

3. This is a matter that has previously been considered by First-tier Tribunal Judge Herlihy in a determination promulgated on 29 April 2014. The Judge made clear findings of fact and dismissed the appellant's appeal under the Immigration Rules and Article 8 of the ECHR.
4. The appellant appealed against this decision in wide ranging grounds of appeal. When granting permission to appeal on 2 June 2014 First-tier Tribunal Judge Andrew identified one arguable error of law - Judge Herlihy did not consider the best interests of the appellant in accordance with the guidance in **Mundeba (s. 55 and para. 297(1)(f))** [2013] UKUT 88 (IAC).
5. The matter now comes before me to decide whether or not the determination contains an error of law.

Hearing

6. Ms Glass asked me to find that the Judge had erred in law in failing to consider the appellant's best interests and in reaching her findings on 297(i)(f). She however focused her attention on the appellant's best interests in light of the grant of permission and argued that I should remake the decision by allowing the appeal under Article 8 because of a combination of factors in this case including inter alia the family life of the sponsor, his wife and son in the UK, the fact that there had been neglect of the appellant in the past, the grandmother's health, and the assertion that the appellant did not have a real home in Jamaica.
7. Mr Whitwell asked me to find that there had not been no error of law because the Judge had considered best interests when he was considering the relevant circumstances under 297(i)(f).

8. I reserved my decision, which I now provide with reasons.

Findings

Sole responsibility

9. For the avoidance of doubt I address this issue. Although permission to appeal was not granted on this point at times Ms Glass's submissions on best interests strayed into this issue. I have no doubt that Judge Andrew was correct to find only one *arguable* error of law. The determination is a detailed one. The Judge was entitled to find that the appellant's father did not have sole responsibility for her for the reasons that have been provided. The Judge was prepared to make a number of findings supportive of the appellant's case (para 6.3) but was entitled to find that the appellant's father at most retained shared responsibility with her grandmother (para 6.5). The appellant has lived with her grandmother for a very lengthy period (since she was seven months old). Although there has been regular contact with her father they have only seen each other for 8 weeks since she was five years old (when he stopped living with her in order to reside in the UK).

297(1)(f)

10. The Judge was also entitled to find that the evidence did not establish that there were serious and compelling family or other considerations which would make the exclusion of the appellant unreasonable for the reasons that have been provided (para 6.6). Ms Glass submitted that the Judge did not properly take into account the grandmother's medical condition. The Judge expressly took into account that evidence and was entitled to find that there was no evidence that her medical condition rendered her medically unable to care for the appellant. On the evidence available it was fully open to the Judge to conclude that the threshold in Paragraph 297(1)(f) had not been met.

Best interests / Article 8

11. I accept that the Judge has not expressly referred to the appellant's best interests. When the determination is

carefully considered as a whole I am satisfied that the Judge considered all the relevant evidence and had a full picture of the appellant's circumstances including her best interests and welfare, when carrying out the proportionality exercise. **Mundeba (supra)** at [36 and 37] makes it clear that an application under 297(i)(f) as to whether there are family or other considerations making the child's exclusion undesirable inevitably involves an assessment of what the child's best interests and welfare require. The Judge carefully weighed a number of matters relevant to the appellant's welfare and best interests both under 297(1)(f) (para 6.6) and under Article 8 of the ECHR (para 8.6): (i) the appellant was living for nearly the entirety of her life with her grandmother and continued to do so; (ii) at the date of decision the appellant was an older child and required 'less hands-on assistance'; (iii) in any event there were others available to provide assistance; (iv) the appellant received the emotional and financial support from her father and would continue to do so; (v) although the appellant has a father, stepmother and brother in the UK she has seen her father for very limited periods and has never met his wife and young son; (vi) the appellant enjoyed good health; (vi) there was an absence of compassionate and compelling circumstances in which the appellant is currently living.

12. Ms Glass asked me to note that as a starting point the best interests of a child would normally be served by a child living with one of its parents. However as pointed out in **Mundeba (supra)** at [38] continuity of residence is another factor as is change in the place of residence where a child has grown up for a number of years when socially aware. The Judge plainly regarded continuity of residence with grandmother as important in this case. Ms Glass's skeleton argument urged the Tribunal to "reunite" the family. However the appellant has never lived with her father's family in the UK or anywhere else. Indeed she has not lived with her father since she was five and has consistently lived with her grandmother since a baby.
13. Even if I am wrong in my assessment that the Judge has not erred in failing to expressly address best interests, I would not set the decision aside. Taking the Judge's findings of fact at their highest, she is being looked after by a grandmother that has always looked after and she continues to enjoy support from her father. This is a case in which the appellant's father has seen his daughter infrequently since she turned five. This is not case in

which the appellant is being deprived of a reunion with a recent carer or needs admission to supply unmet needs. Although no doubt it might be beneficial for the appellant to see more of her father and his new family, relocation to the UK would mean a change in her living arrangements and leaving behind her life in Jamaica and her grandmother in circumstances where the evidence does not demonstrate any risk of harm there.

14. I find that there was no error of law in the Judge's conclusions and in any event no material one as taking the case at its highest I would have reached the same decision on Article 8 on the material available.

Decision

15. I do not set aside the decision of the First-tier Tribunal and I dismiss the appellant's appeal.

Signed:

Ms M. Plimmer
Deputy Judge of the Upper Tribunal

Date:
30 July 2014