



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

Appeal Number: IA/00345/2014

THE IMMIGRATION ACTS

Heard at Field House

On 5th January 2015

**Decision & Reasons
Promulgated**

On 3rd February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS LATOYA STAINROD
(Anonymity Direction Not Made)**

Respondent

Representation:

For the Appellant: Mr P Nath, Home Office Presenting Officer

For the Respondent: No representative

DECISION AND REASONS

The Appellant

1. The application for permission to appeal was made by the Secretary of State but nonetheless for the purposes of this decision I shall refer to the parties as they were described before the First Tier Tribunal.
2. The appellant is a citizen of Jamaica born on 11th February 1986 and on 26th October 2013 her solicitors made an application for leave to remain in

the UK on the basis of Article 8 and at the respondent's discretion outside the Rules.

3. The appellant had entered the UK on 23rd August 2001 with a visit visa valid until 13th September 2001. Since that date she had no leave to remain. She was currently living with her cousin and her cousin's child.
4. The respondent found that she was not in a genuine and subsisting relationship with a British person, that she did not have a partner and did not have a child and therefore could not fulfil the requirements of Appendix FM. In relation to paragraph 276ADE of the Immigration Rules she had lived in the UK for twelve years since she was 15 but this was less than the period required of twenty years. She had failed to demonstrate that she had no social, cultural or family ties in Jamaica.
5. On 25th June 2014 First-tier Tribunal Judge Ross allowed the appellant's appeal. At paragraph 11 he found that the appellant was 28 years old and that she had lived in the UK for thirteen years but did not meet the requirements of the Rules and the remaining issue was whether there were any remaining ties with Jamaica. At paragraph 12 the judge set out his findings.
6. An application for permission to appeal was made by the Secretary of State, who observed that the judge allowed the appeal pursuant to Immigration Rule 276ADE(vi).
7. The judge found that the appellant had no friends in Jamaica and given the length of time she resided in the UK had no cultural links to Jamaica. The judge heard no evidence in relation to friends the appellant had had in Jamaica and it was submitted that the finding was unsustainable insofar as an analysis of no ties to her country of origin was concerned.
8. There was no consideration of the appellant's social and cultural ties to Jamaica in the light of the fact that she spent thirteen years of her life in that country.
9. The judge had undertaken a cursory analysis of the appellant's social and cultural ties to Jamaica and had not given a sufficiently rounded assessment in the light of **Ogundimu (Article 8 - new rules) Nigeria [2013] UKUT 60 (IAC)**.
10. Permission to appeal was granted by First-tier Tribunal Judge Cheales on the basis that the judge had not given enough weight to the fact that the appellant had lived in Jamaica for thirteen years and must retain some social and cultural ties there.
11. The question is whether returning the appellant to Jamaica after the length of time she has resided in the UK would be "unjustifiably harsh" as described in **Ogundimu**.

12. Submissions were made by Mr Nath such that the case law of **Ogundimu** had not been referred to and an assessment of the ties and the individual circumstances of the appellant had not been taken into account. Although the judge recorded at paragraph 10 that there were no ties there was no evidence in relation to the family members. The judge had not given any reasons for finding that there was a lack of cultural links. There were issues raised at paragraphs 10 and 11. In particular in relation to paragraph 10 there was no evidence that there were no family ties. The judge had not given reasons for this and there was no analysis of the other links in paragraph 12. The point that Mr Nath submitted was that there was a failure to demonstrate the appellant's case. I asked Mr Nath how it was possible to demonstrate a negative and he responded that there was little by way of evidence put forward by the appellant and he cited sections from **Ogundimu** and noted that in other cases the Red Cross had undertaken tracing on behalf of the Home Office. The appellant had not taken steps to track down or shown that she had taken steps to track down her parents.
13. The application for permission to appeal stated that the judge heard no evidence in relation to friends the appellant has or had in Jamaica and it was submitted that the judge's conclusions in relation to cultural links were unsustainable. There was no consideration of the appellant's social and cultural ties in the light of the fact that she spent thirteen years of her life living in that country.

Conclusions

14. The requirement set out at paragraph 276ADE(vi) that applied to the appellant was that she had to show that she "is aged 18 years or above, has lived continuously in the UK for less than 20 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 U.K."
15. The judge recorded at paragraph 4 that the appellant came to the UK when she was 15 years old in 2001 and was brought here by a cousin who subsequently obtained indefinite leave to remain. The appellant gave evidence that she had no relatives in Jamaica and that all her cousins lived in the UK and that all the people that she was close to lived in the UK. The judge recorded that she was cross-examined and that further that she had started living with her cousin Cherie Cox, (who had been given leave to remain) when she was very young. The appellant stopped going to school when she was 13. Further she had no qualifications.
16. At paragraph 6 the judge also heard from Antoinette Hemans, a friend who was cross-examined and who confirmed that the appellant could not remember "much about Jamaica and has nobody there. She said that the daughter of the appellant's cousin who is called Kayla spent a lot of time with the appellant".

17. This witness was also cross-examined and stated that she personally was not sure whether the appellant “has a family in Jamaica and has never met any”. The judge clearly considered the evidence recorded in the determination and as I pointed out to Mr Nath it is difficult for the appellant to prove a negative. Nonetheless the judge took account of and accepted the fact that the appellant did not know the whereabouts of her parents in Jamaica bearing in mind she was brought up from a very young age by her cousin who brought her to the UK when she was 15. It did not escape the judge that the appellant was brought here as a minor and he accepted the fact that she did not know of any family members in Jamaica.
18. The judge clearly was questioning the appellant’s account and stated that it would not be plausible “if it were not for the fact that the appellant has told me that she was brought up by her cousin from a very young age and she therefore does not know her parents”. Clearly the judge had noted that the appellant had left school at the age of 13, which in turn would have an impact on the appellant’s cultural ties, and he accepted the fact that Miss Hemans, the witness who was cross-examined, “also confirmed that she does not appear to know anybody in Jamaica and has not been there”.
19. As a conclusion the judge accepted that the appellant did not know of any of her family in Jamaica and did not have contacts there.
20. Although cross-examined it was not put to the appellant in the Record of Proceedings by the Home Office Presenting Officer that she was required to make enquiries of family in Jamaica and bearing in mind that she has little by way of formal education as recorded by the judge perhaps this is not surprising.
21. Nonetheless the judge considered that since the appellant had lived in the UK for thirteen years and came here when she was only 15 that it was correct to say that she had completely lost touch with her roots in Jamaica, “she does not know any family there, has no friends there and so far as her cultural life is concerned she has lived in the UK for such a long time” that he accepted that she had no cultural links to Jamaica.
22. I accept that the judge made no specific reference to **Ogundimu** but also note that the judge made an assessment on the evidence given to him by the appellant, both documentary evidence and the oral evidence of the facts that were presented to him, and in the absence of contrary facts presented to him by the Home Office I find that he did make an objective analysis of those facts.
23. I note that **Ogundimu** was related to an appellant who was being removed following criminal convictions albeit that he came at a much younger age than the appellant.
24. Although not specifically stated the judge clearly considered a rounded assessment for the relevant circumstances and the facts put to him and I

am not persuaded that he limited himself only to social, cultural and family circumstances. He was satisfied that the appellant had no ties with Jamaica and in effect would be estranged to the country in the way of life bearing in mind that she had come to the UK at such a young age. Even though the *witness*, who it appears was not a relative of the appellant's, may have stated that she had some ties in Jamaica this does not necessarily mean that those are the ties of the appellant. Indeed in **Ogundimu** it is stated:

"Unsurprisingly, given the length of the appellant's residence here, all of his ties are with the United Kingdom. Consequently the appellant has so little connection with Nigeria so as to mean that the consequences for him in establishing private life there at the age of 28, after 22 years' residence in the United Kingdom, would be 'unjustifiably harsh'."

25. As stated in **Ogundimu** at paragraph 125, each case does turn on its own facts, circumstances relevant to the assessment of whether a person has ties to the country to which they would have to go if they were required to leave but are not limited to:

"the length of time a person has spent in the country to which he would have to go if he were required to leave the United Kingdom, the age that the person left that country, the exposure that person has had to the cultural norms of that country, whether that person speaks the language of the country, the extent of the family and friends that person has in the country to which he is being deported or removed and the quality of the relationships that person has with those friends and family members."

26. The judge made a brief but overall assessment of the familial ties and cultural links with Jamaica. It was not a question of considering whether dormant ties could be revived. In essence the appellant was found to have no links with Jamaica and by definition the quality of links would not exist. As such the judge allowed the appeal. **Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC)** confirmed

'Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge'.

27. Although the reasons given are relatively brief in view of the evidence presented I am not persuaded that there is an error of law which is material and therefore the decision of First Tier Tribunal Judge Ross shall stand.

Signed

Date 31st January 2015

Deputy Upper Tribunal Judge Rimington