



IAC-FH-AR-V1

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

Appeal Number: IA/11161/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 12th June 2015**

**Decision & Reasons Promulgated
On 19th June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

**MS ELIZABETH MADGETA YOUNG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Lewis, Counsel, Garden Court Chambers

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Jamaica whose appeal was dismissed by First-tier Tribunal Judge Fox in a decision promulgated on 19th September 2014. Grounds of application were lodged primarily on the basis that the judge had ignored the evidence of the Appellant's grandchild who was extremely vulnerable and the evidence was that he needed his grandmother.

2. While permission to appeal was initially refused, permission was granted by Upper Tribunal Judge Chamberlain. The Secretary of State lodged a Rule 24 notice setting out the Appellant's poor immigration history and the adverse credibility findings and submitting that the judge could not reasonably have reached a different conclusion.
3. Thus the matter came before me on the above date.
4. For the Appellant Mr Lewis relied on his grounds. The judge said (paragraph 12) that while it was unnecessary to call the Appellant's grandson Murdoq to give evidence in view of his vulnerability his evidence was given "full weight". This contracted very sharply with the finding at paragraph 50 that he was not placing "any weight" on the evidence of the grandchild. It was quite clear that the grandchild was an extraordinarily vulnerable person and he had attended court to give evidence to support the Appellant and the relationship between the Appellant and the grandchild was the main thrust of the appeal. There were other errors by the judge as he clearly had evidence before him that Diane Canaku was the Deputy Head teacher in the grandchild's school and had, contrary to what the judge had said, provided her credentials. Notwithstanding the Appellant's immigration history, the errors were material requiring the decision to be set aside and a fresh hearing fixed before the First -Tier Tribunal.
5. For the Secretary of State Mr Tufan submitted that the judge had engaged in a freewheeling Article 8 assessment but should have borne in mind that the Appellant did not qualify under the Immigration Rules. However the correct decision had been reached. Reliance was placed on the terms of the Rule 24 notice. I was asked to find that there was no material error in law.
6. I reserved my decision.

Conclusions

7. The judge made a number of negative credibility findings against the Appellant including that she was not a credible witness (paragraph 54). In fact the judge was particularly unimpressed with all the witnesses - see the finding at paragraph 56. The grounds of application take no issue with those findings but focus on the extreme vulnerability of Murdoq and the effect on him caused by the removal of the Appellant. What the judge was therefore bound to do was to focus on the nature of the relationship between the parties, its importance to the wellbeing of Murdoq taking the best interests of the child as a primary consideration and in the light of that decide whether the removal of the Appellant was proportionate.
8. Unfortunately the judge seems to have done the complete opposite to that. Having said in paragraph 12 that he was going to give the evidence of Murdoq "full weight" he then concluded that he was "unable to place any weight" on his evidence. There was nothing in the decision to indicate

that he had taken into account Murdoq's statement which is contained in the bundle and mentioned in paragraph 19 of the grounds, namely that he would be very upset if his nanny had to go back to Jamaica. Rather what appears to have happened is that the judge discounted this evidence and focused on other matters before going on to dismiss the appeal.

9. Not to consider the relationship between the Appellant and Murdoq in any meaningful way was a material error in law particularity when it was the principal reason why the Appellant was arguing that she should not be sent back to Jamaica. It cannot be said that another judge would have necessarily dismissed the appeal even if they had taken into account the relationship between the Appellant and Murdoq. Given that finding there is no alternative but that this case will have to be heard again and afresh by the First-tier Tribunal. I was not addressed by either party on whether, if that was the outcome certain factual findings should remain and for the sake of clarity I direct that no factual findings remain intact. The determination of the First - tier tribunal is therefore set aside in its entirety. No findings are to stand. Under section 12 (2) (b) (i) of the 2007 Act and Practice Statement 7.2 the nature and extent of the judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First- tier Tribunal.
10. In the event that I did find an error in law Mr Lewis asked me to see if the appeal could be heard at Taylor House, London for the convenience of the parties. I hope that suitable arrangements can be made.

Notice of Decision

11. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
12. I set aside the decision.
13. I remit the appeal to the First-tier Tribunal for a fresh hearing.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald