



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

Appeal Number: IA/31757/2013  
IA/31772/2013  
IA/31762/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decisions and Reasons**

**On 6 August 2015**

**Promulgated**

**On 14 August 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW**

**Between**

**M  
J  
N**

(ANONYMITY DIRECTION MADE)

Appellants

**And**

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

Respondent

**Representation:**

For the Appellant: Mr Jafar of counsel

For the Respondent: Ms Pal, a Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Introduction**

1. No application for an anonymity order was made to me and there has not previously been an anonymity order made in respect of the appellants.

However, given the young ages of the children I have decided to make an anonymity order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269). Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellants. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. This is an appeal by the appellants. The appellants are a mother and two daughters. They are citizens of St Vincent and the Grenadines ('St Vincent'). M (the mother of the two children appellants) was born on 9 April 1967. The two daughters are; J now aged 10, and N now aged 8.

### **Immigration History**

3. The appellants entered the United Kingdom as visitors in April 2010 with a visit visa allowing a visit of no more than 6 months. The appellants currently reside with M's daughter, Ms G and G's husband Mr W.
4. The appellants applied on 8 April 2013 for leave to remain in the UK on the basis that removal would breach their Article 8 family and private lives in the UK. The respondent refused to grant leave to remain in a decision dated 22 August 2013 and issued Notice of a decision to remove the appellants under s 10 of the Immigration and Asylum Act 1999. The appellants appealed to the First-tier Tribunal against the decision of the respondent to remove them on 29 August 2013.
5. There was a hearing of the appellants' appeal by First-tier Tribunal Judge Geraint Jones QC. In a determination promulgated on 12 November 2013 he dismissed the appellants' appeals.

6. The appellants sought permission to appeal against Judge Jones's decision. Upper Tribunal Judge Goldstein granted permission. An error of law hearing was held before Deputy Upper Tribunal Judge Davidge and in a determination promulgated on 10 April 2104 she found that the First-tier Tribunal decision was vitiated by error and set the decision aside without preserving any facts. The appeal was remitted to be re-heard by the First-tier Tribunal.

### **The First-tier Tribunal Judge Grant's Decision ('the First-tier Tribunal decision')**

7. After a re-hearing, in a decision promulgated on 19 February 2015, First-tier Tribunal Judge Grant (the judge') dismissed the appeals. The judge found that the appellants *'have not shown that their removal to St Vincent and the Grenadines is disproportionate to the aim of maintaining effective immigration control.'*

### **Permission to Appeal**

8. The appellants applied to the First-tier Tribunal for permission to appeal to the Upper Tribunal against the judge's decision. Permission to appeal was granted by First-tier Tribunal Judge Heynes. The judge summarised the lengthy grounds of appeal identifying the salient points as; the judge erred in stating that an agent could remove the children subject to a prohibited steps order without leave, that the evidence from the family court was of no assistance in determining the best interests of the children and in making a flawed assessment of risk on return. Judge Heynes granted permission to appeal stating that *'...the determination is detailed, thorough and well-reasoned. It is, however, arguable that the assertion that a residence order has no impact upon the respondent is a material error of law.'*
9. At the hearing I heard submissions from Mr Jafar on behalf of the Appellants and Ms Pal on behalf of Secretary of State for the Home Department.

## **Error of Law**

**10.** There were 3 grounds of appeal set out in the appellants' application for permission to appeal, i) failure to consider the evidence from the family court, ii) failure to consider section 55, and iii) irrationality.

### **Ground i)**

**11.** In respect of ground i) it is asserted that the First-tier Tribunal judge erred in finding that the evidence from the family court was of no assistance in determining the best interests of the children. It was submitted that the judge failed to understand the implications of the family court orders which are; that the court accepted that the welfare of the children requires residence jointly with their mother, sister and brother-in-law, that they should remain within the jurisdiction and that there was no other means of ensuring the children's welfare. Set out in ground iii) there is a further assertion linked to this ground, namely that the residence and prohibited steps order represent a conclusion from the family courts that the first appellant was not capable of placing her children's best interests first.

**12.** In oral submissions Mr Jafar, in answer to an inquiry made by the Tribunal, indicated that he reserved his position with regard to the finding of the judge in paragraph 29 that the prohibited steps order *'has no impact on the power of the Secretary of State to remove aliens from the United Kingdom'*. His position was that the important part of that paragraph in relation to error of law was the finding that *'Thus the family proceedings add nothing to the assessment of the children's best interests that I have to make'*.

**13.** Mr Jafar's central case can be summarised briefly - the judge failed to take into consideration the evidence that was before the family courts, namely, that the children were at risk from M as she had abused them. Mr Jafar was

asked how the judge would have known about evidence of abuse by M that was before the family courts. The only information made available to the First-tier Tribunal by the family court were the Orders, the application for the Orders and the CAFCASS report which did not raise concerns about M abusing the children. They concerned a risk that M would remove them from the UK to St Vincent where they would be at risk of violence from their father. In response Mr Jafar submitted that G had made a further application to the family court as a result of M behaving erratically, because M was a risk to the children, beat the children and had no ability to protect the children. Real concerns for the children's welfare led to the family proceedings, M resisted the application, there was a contested hearing, and M was represented separately. Mr Jafar advised that M had now been referred for counselling following the breakdown of her son, who is the army, and who made 'allegations' about M. He described M as a broken woman and that she had turned to abusing her own children, which was not unexpected as victims of domestic violence often also abuse their children. When asked where details of the violence by M was in the evidence before the judge Mr Jafar said that G had given evidence to the Tribunal and had referred to the contested family proceedings and the evidence that was given there about M's violence. He referred to the bundle of documents prepared for the Upper Tribunal that was before the First-tier Tribunal judge. I set out below the principal evidence referred to by Mr Jafar from that bundle:

- Page 46, paragraph 8 (grounds of appeal) '*...there were strain in M's behaviour towards everyone, this triggered the couple to consult with solicitors to seek advice on how to obtain parental responsibility in order to keep the children in the UK and prevent M from removing them unceremoniously. Obviously an application had to be sought on the best interests of the children*'
- Page 156 (an Initial Assessment carried out by Redbridge Children's Trust following a referral from N's school dated 8 December 2010) '*N... did not want to go home as she was scared of her mum...I don't want to*

*go home early because my mummy will be really angry and with me and I am scared. I am not allowed to go home early...her mummy would beat her...her mummy hits her with a belt on her legs.'*

- P100 (core assessment dated 31 October 2013) *'M had legal representative at recent court hearing and was able to present her case to the court. She felt that that made things better as she was not cross examined in a manner she could not express herself, as her legal representative spoke on her behalf.'*

**14.** Mr Jafar, in summary, said that given all the evidence that was before the family court and the fact that the court cannot make a residence order unless it considers that the children's welfare can only be safeguarded if an order is made the judge took a completely erroneous view that the family proceedings had no bearing on Article 8.

**15.** Ms Pal for the respondent submitted that the CAFCASS report, set out in detail by the judge, expresses the view that there are no safeguarding risks to the children and questions whether there is any need for anyone other than M to have parental responsibility. It was not implicit from the family court orders that the family court viewed M as having a detrimental effect on the children. If the family court considered that M was a risk they would not have made a residence order in M's favour. The judge fully considered the CAFCASS report and given the very limited information in the court orders the judge was correct in finding that the family proceedings did not add anything to the assessment of the children's best interests.

**16.** I have considered the record of proceedings. Mr Jafar submitted that the evidence of M's abuse of the children was put before the judge at the hearing by G. There is nothing in the record of proceedings to support that assertion. She referred solely to the violence of the father. I do note in the record of proceedings that G said in cross examination - *'at some point in 2010 she agreed not to go back to St Vincent with the children. Yes that is when she made the extension application.* There is nothing in G's witness

statement to indicate that she considers the mother is a risk to children. I note that in Mr W's witness statement, dated 25 February 2014 at para 6, that he explains the reason for applying for the residency order was, '*...wife and I have taken on responsibility for the children....therefore we thought it appropriate to formalise that arrangement by applying to the court for a joint Residence Order over the two girls shared with their mother. This makes it easier to participate in the girl's upbringing and to make day to day decisions about their care.*'

**17.** I do not consider that the judge made an error of law in finding that '*...the family proceedings add nothing to the assessment of the children's best interests that I have to make*'. My reasons are that I can find no support in the First-tier Tribunal proceedings for Mr Jafar's submission that the First-tier Tribunal judge was made aware of the allegations of abuse and risk to the children at the hands of M that were part of the family court proceedings and were the reason for the orders being made. The only evidence before the First-tier Tribunal judge of alleged abusive behaviour by M was the referral made by N's school that Mr Jafar referred me to which was in 2010. I note the following from the evidence:

- i.* CAFCASS report dated 25/7/13 in which G and Mr W indicated that there were no concerns regarding the care of the children. The report notes the referral in 2010 regarding the allegation made by N of abuse and that no further action was taken.
- ii.* Application for residence order dated 10/10/13 which states - '*respondent instability is not trusted with removing children to her violent partner... residence order only solution to save the two children respondent is not opposing this either.*'
- iii.* P162 of the bundle (an Initial Assessment carried out by Redbridge Children's Trust following a referral from N's school dated 8 December 2010) '*Manager's comment: it appears from the special worker's account that N and siblings are safe and not exposed to*

*any risk. Mum denied hitting N who equally made no disclosure and rather observed to be happy, content and relaxed in mum's company'*

- iv. P152 of the bundle referred to above (an Initial Assessment carried out by Redbridge Children's Trust following a referral from N's school dated 8 December 2010) *Ms M reported that, she has not resided in the UK permanently since 1980, and she frequently travels to and from St Vincent where she has 4 other children living. When M is in the UK, she resides with G and her husband, however J and sibling reside permanently with G and her husband.*
- v. P152 (an Initial Assessment carried out by Redbridge Children's Trust following a referral from N's school dated 8 December 2010) *'Mr W was present during the home visit on 2<sup>nd</sup> December 2010... Mr W also reported that he does not understand why N's sibling may have made the allegation against her mother'*
- vi. P100 (core assessment dated 31 October 2013- in response to referral from CAFCASS) *'The home visit completed on two occasions...have not brought any issues for M to change her mind about not contesting the application put forward by G and Mr W...M clarified that since the children have been to England they have not visited St Vincent. She was not intending to take them to St Vincent for good or to see their father, whom both children have alleged physical abuse, and unfortunately there has not been an opportunity for him to defend himself... M has assured me that she is in support of the application [for a residence order] as she is of the opinion that it would be in the best interests of the girls'*

**18.** The evidence before the judge pointed to the residence order being granted by the family court on the basis of a risk from the father if the children were returned to St Vincent and to assist G and Mr W in



undertaking the responsibilities that they had voluntarily assumed in relation to the children. The only evidence of risk in relation to M was in relation her not being trusted by her daughter not to remove the children and to make appropriate decisions in order to protect them and the referral from N's school in 2010. However, there was also evidence (as set out above) that M did not intend to remove the children and the investigation into the allegation in 2010 had not resulted in any further action, the conclusions being that the children were not at risk.

- 19.** I do not accept Mr Jafar's submission that G gave evidence to the First-tier Tribunal regarding evidence in the family court proceedings that raised a risk to the children of physical abuse at the hands of M and the need for a residency order to protect them from M's abuse - the record of proceedings does not bear that out and there is no witness statement in evidence to that effect.
- 20.** The judge gave very careful consideration to the CAFCASS report and to the evidence in relation to the obtaining of the orders that was before the First-tier Tribunal. From the evidence specifically set out by the judge (and the evidence that I have outlined above) I do not find that there was an error of law in the approach of the judge in finding that the family court proceedings added nothing to the assessment she had to undertake with regards to the best interests of the children.

**Ground ii) - section 55**

- 21.** The grounds of appeal asset that the judge fails to take into account materially relevant evidence and failed to make substantial conclusions on the best interests of the children. Reference in the grounds is made to the family court material that indicated that there were concerns as to the welfare of the children unless supported by G and Mr W. The evidence points to a parental role of G and Mr W and that N had special educational needs.

**22.** The judge correctly cites relevant case law on the approach the Tribunal should adopt when considering the best interests of the children (paragraph 35). The judge set out the evidence that might have a bearing on where the best interests of the children lie. The judge sets out in detail in paragraphs 27-29 and 33-34 the evidence that she has considered. The judge notes that *'She [G] does not trust her mother to make good decisions because her mother previously brought a violent man into the family home who went on to abuse G...Understandably G does not trust her mother to make the right decision to look after her children'* (para 38). However, the judge found that M could re-locate to another area of St Vincent, that it was clear that the father had no interest in the children (para 39) and that therefore she was satisfied that the children were not at risk from their father if returned to St Vincent. The judge accepted that in the past M may have made poor life choices but the judge considered that with the support of her mother, sister, eldest daughter and son-in-law M would not return to the village she had previously lived in (para 42). The judge also considered that the support of G and Mr W was likely to continue when M and the children had returned to St Vincent. The judge took into consideration that the children were settled in school (para 45). She considered the background material and concluded that that there are schools and support for both children in St Vincent. The judge had taken into account the CAFCASS report wherein it was recorded that G and Mr W had indicated that there were no concerns regarding the children's welfare and the report records that there are no safeguarding issues. The judge found that the reason for seeking the order appeared to arise from G and Mr W already being involved in the children's care and M's trips abroad. Mr W's evidence in his witness statement bears that out.

**23.** Taking into account all the evidence that was before the judge, the factors specifically identified by the judge and the relevant evidence set out above in paragraph 17 the findings of the judge on the best interests of the children were reasonable. The children will be within the family unit consisting of their mother and two siblings and support of extended family

in St Vincent. I find that there was no material error of law in the judge's approach to, and consideration of, the children's best interests.

### **Ground iii) - Irrationality**

- 24.** The grounds assert that the bulk of the evidence suggested that all four of M's children had been at risk because of M and her inability to make decisions that would protect them. The residence and prohibited steps order represent a conclusion from the family courts that M was not capable of placing her children's best interests first. The judge's conclusions as to the risks from the children's father are unsustainable.
- 25.** An assertion of irrationality is a high hurdle to overcome. In this case the judge considered that the risks presented by the children's father were relevant if M were to return to the same village as their father. The judge acknowledges this at paragraph 36. The judge considered very carefully the options of relocating, finding that the father would not pose a risk in other parts of St Vincent. In my view, it is not evident that the residency and prohibited steps order represent a conclusion from the family courts that M was not capable of placing her children's best interests first. The residency order was made jointly in favour of M, G and Mr W. Given the findings of the judge and the evidence taken into consideration overall (as discussed above) the findings of the judge are not irrational. There is no material error of law.
- 26.** Serious allegations were made at the hearing that M posed a risk to the children because she abused them physically which caused me to raise with Mr Jafar the question as to whether he had any conflict in representing all three appellants and also whether his submissions amounted to a serious question as to whether M's interest and the children's interests were in conflict. It is open to the children appellants to make fresh representations to the Secretary of State on this basis if there is new evidence to support the allegations.

## **Conclusions**

**27.** There was no material error of law such that the decision of the First-tier Tribunal should be set aside.

## Notice of Decision

The appeal is dismissed. The decision of the First-tier Tribunal stands.

Signed P M Ramshaw

Date 11 August 2015

Deputy Upper Tribunal Judge Ramshaw