



IAC-FH-AR-V2

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

Appeal Number: IA/36431/2014

THE IMMIGRATION ACTS

Heard at Field House
On 4 November 2015
Prepared 6 November 2015

Decision & Reasons Promulgated
On 15 December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR MARQUIS ODEAN CLARKE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss P Yong of Divine Law Practice
For the Respondent: Mrs S Sreeraman, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Jamaica, date of birth 20 October 1981, appealed against the Respondent's decision, dated 8 August 2014, to refuse leave to remain and to make removal directions.
2. The appeal against that decision [D] came before First-tier Tribunal Judge Turquet (the judge) who on 30 March 2015 dismissed appeals under the Immigration Rules

and in relation to Article 8 ECHR. Permission to appeal that decision was given by First-tier Tribunal Judge Brunnen on 3 June 2015.

3. Ground 1 dealt with the issue of whether or not there was in effect a material difference between Section 117B(6) of the Nationality, Immigration and Asylum Act (NIAA) 2002 and the wording of the Immigration Rules and whether or not the Appellant met the requirements in relation to the eligibility requirements under Appendix FM particularly E-LTRPT2.2-2.4 and 3.1.
4. The other grounds were not separately pursued before me; albeit permission had not been refused in respect of those grounds.
5. It seemed to me the evidence in the case was essentially the key issue. With reference to paragraph 47 of the judge's decision namely that the judge had only considered the requirements under E-LTRPT2.4 the requirements of sole responsibility, access rights to the child, evidence they were taking and intended to continue to take an active role in the child's upbringing.
6. The key issues decided by the judge on finding that the Appellant did not meet the requirements were
 - (1) Appendix FM partner route. [D45, D49]
 - (2) E-LTRP 1.9. [D45]
 - (3) E-LTRP 2.1. [D46]
 - (4) E-LTRPT 2.4. [D47]
 - (5) Appendix FM EX1. [D47]
 - (6) E-LTRPT 3.1. [D49]
 - (7) Paragraph 276 ADE(iii) (iv) (v). [D50]
 - (8) Family life had not been established A8. [D51] [52]
7. The judge did not accept as fact the Appellant was taking an active role in the upbringing of K since birth.
8. The judge's finding that the Appellant had no intention of caring for K or taking an active role in K's upbringing [D47] or the child M [D49] was for the judge to make having heard the evidence.
9. The judge did not accept the Appellant had enjoyed family life with M or financially supported M or SBC (mother of M) [D49]. Similarly the judge found the same was so for K or SRit (mother of K) when SRit, was on benefits as a single parent. [D47]
10. The grounds do not refer to what evidence was lodged by the Appellant of financial support for K or SRit. Having received the Appellant's documents I can find limited evidence of payment to SRit for K's upkeep or her care.
11. Some bank statements (unidentified) show payments to:-

SBC	7/4/14	£500	SRit	2/5/14	£240
	6/5/14	£30		6/5/14	£10
	7/5/14	£10		18/6/14	£210
	28/5/14	£200		3/6/14	£40
	25/6/14	£60			
	7/7/14	£150			

12. Nor does the Appellant witness statements 12 March 2015 or 10 September 2009 assist the Appellant's oral evidence was of paying SRit 40-50 weekly. SBC said in oral evidence she supported her household and the Appellant did not give anything. In these circumstances without a proper context for the claimed support with intermittent payments April to July 2014 to SRit for K does not disclose any material error by the judge in March 2015.
13. Ground 1 does not disclose any arguable error of law.
14. The provisions of Section 117B(6) are as follows:
- "In the case of a person who is not liable to deportation, the public interest does not require the person's removal where
- (a) the person has a genuine and subsisting parental relationship with a qualified child, and
- (b) it would not be reasonable to expect the child to leave the United Kingdom."
15. Miss Yong argued that the Appellant did have a genuine and subsisting relationship with a child known as K, a British national, and in the circumstances of him living on his own with his mother it could not be regarded as reasonable to expect K to leave the United Kingdom. The submissions essentially argued that the failure to consider Section 117B(6) was a fundamental error of law when the judge was supposed to be considering an Article 8 ECHR claim outside of the Rules.
16. Miss Yong in general terms sought to argue that the current situation whereby SRit the mother of K and K had no contact with the Appellant since January 2015 and the Appellant had not sought access to K nor made an application for a contact order or to the family court in order to see and have contact with K. Within the Appellant's papers there are references to a lady called S who the Appellant married and with whom he had a step-son MA. In the submissions and arguments raised MA does not feature as a relevant consideration. The child MA was born in 2008 but since that time even by the statement of 10 December 2009, the Appellant did not identify any part he played in MA's life. I have taken into account the statement and a

handwritten letter dated 3 November 2015 from SRit concerning K's relationship with his father, the Appellant.

17. Ground 2 does not disclose any error of law to establish that the Appellant met the requirements of E-LTRPT3.1 nor how Appendix FM EX1 could be engaged by itself. The fact the children may be UK Nationals does not assist.
18. Ground 3
Does not disclose any error in the judge's assessment of the Appellant's ability to return to Jamaica. [D50]
19. Ground 4
The judge was aware the Appellant had worked and could speak English and considered these matters. [D65 66 67] and decided that the maintenance of immigration controls and other factors made removal proportionate and Article 8 ECHR compliant. [D68]
20. The Appeal before the Original Tribunal related to removal directions under s.10 IAA 1999. A form IS151A having been served removal remains and was proportionate.
21. The Original Tribunal's decisions stand.
The Appeal is dismissed.
22. No anonymity direction was made.

Signed

Date 2 December 2015

Deputy Upper Tribunal Judge Davey