Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/14545/2015**

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke	**Decision & Reasons Promulgated**
On 25th April 2016	**On 6th June 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

JODIE-ANN PATRICE O'GILVIE
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Malhotra of Counsel instructed by LAK Legal Services
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. On 17th February 2016 Designated Judge of the First-tier Tribunal Appleyard gave permission to the respondent to appeal against the decision of Judge of the First-tier Tribunal S J Pacey in which he allowed the appeal on human rights grounds against the decision of the respondent to refuse leave to remain applying the provisions of paragraph 276ADE and Appendix FM of the Immigration Rules. The appellant is a female citizen of Jamaica born on 22nd May 1990 who came to the United Kingdom in 2005 with entry clearance as the dependant of a student.

2. In the grant of permission Designated Judge Appleyard noted that the respondent's grounds of application contended that the judge had erred in his approach to the application of Rule 276ADE and his subsequent Article 8 analysis was flawed. In particular the judge had not applied the authority of *Bossade (Sections 117A-D – interrelationship with Rules)* [2015] UKUT 415 (IAC) when considering paragraph 276ADE and the test of "very significant obstacles" to the appellant's re-integration into Jamaica. Additionally the grounds contended that, in considering Article 8 outside the Rules, the public interest had not been given adequate weight. Designated Judge Appleyard thought all the grounds to be arguable.

Submissions

3. At the hearing before me Mr McVeety confirmed that the respondent relied upon the grounds which, in greater detail than the summary above, contend that the judge applied too lax a test in relation to the existence of very significant obstacles.

4. The respondent considered that the fact that the appellant had no contact with anyone in Jamaica and there was no evidence of property or assets there, ws not enough to meet the test, particularly since the appellant had spent the majority of her life in Jamaica and the judge had not explained why Jamaica and its culture and society would be alien to the appellant even if she had spent a long period of time in UK and had been settled here. Further, in relation to the application of Section 117B of the Nationality, Immigration and Asylum Act 2002 the decision did not show that the judge had attached little weight to the appellant's precarious immigration status. The appellant's dependency upon her mother and having no say in where she lived, was arguably inadequate to displace the public interest. The respondent referred to the decision of the Upper Tribunal in *E-A (Article 8 – best interests of child) Nigeria* [2011] UKUT 00315 (IAC) on the basis that those who had their families with them during a period of study in the United Kingdom must do so in the light of the expectation of return. The respondent also contended that the judge's proportionality assessment was inadequate, even if the appellant could speak English and had not been a burden on public funds since arriving here.

5. In further submissions, Mr McVeety conceded that the words "very significant obstacles" had not been defined in any case law although, as I comment later, the respondent's IDIs have some guidance for decision makers.

6. Mr McVeety also submitted that the judge's conclusions in relation to the obstacles test, particularly those in paragraph 15 of the decision, did not show that it had been met. As to the application of Section 117B to human rights issues outside the Rules, the judge also appeared to regard the appellant's English language ability and the absence of any state assistance as weakening the public interest in removal when in *AM (S117B) Malawi* [2015] UKUT 0260 (IAC) the Upper Tribunal made it clear that an appellant can obtain no positive right to a grant of leave to remain if able to meet some or all of the factors set out in Section 117B.

7. Ms Malhotra addressed me first as to the test in paragraph 276ADE(vi). She argued that it was open to the judge to make the decision he did based upon the factors which he identified. The judge had looked carefully at the appellant's background bearing in mind that she was someone who had arrived in the United Kingdom at the age of 15 and was now 26, and whose leave to remain as a dependant continued after the age of 18. The appellant had no choice but to join her mother who had

indefinite leave to remain and had formed a family life with other relatives who were British.

8. Ms Malhotra considered the section 117B analysis to be without error as, although the judge referred to the appellant's English language ability and absence of any reliance upon public funds, the remainder of the comments in paragraph 19 of the decision showed that the section had been applied correctly in assessing the public interest.

9. Mr McVeety submitted that none of the factors identified by the judge were compelling. The appellant was an adult and could return to Jamaica and there was no evidence to suggest that she would be destitute or ill there.

Conclusions

10. After considering the matter for a few moments I announced that I was satisfied that the decision did not show an error on a point of law and now give my reasons for that conclusion.

11. In essence, the respondent disagrees with the decision of the judge on the basis of an interpretation of the test of "very significant obstacles" which, it is argued, is higher than that applied by the judge.

    There is some guidance on the meaning of the term in the respondent's IDIs relating to Appendix FM section 1.0(b) which, at section 8.2.3.4, states that a very significant obstacle to integration means:

> "Something which would prevent or seriously inhibit the applicant from integrating into the country of return. The decision-maker is looking for more than obstacles in looking to see whether there are 'very significant' obstacles, which is a high threshold. Very significant obstacles will exist where the applicant demonstrates that they would be unable to establish a private life in the country of return, or where establishing a private life in the country of return would entail very serious hardship for the applicant."

    It is also stated that:

> "The fact the applicant may find life difficult or challenging in the country of return does not mean that they have established that there would be very significant obstacles to integration there."

12. However, whilst the respondent's own guidance to decision-makers in IDIs show that the test is clearly a stringent one, the factors which the judge applied in this case were plainly relevant to the decision-making process and cannot be excluded simply because they are not considered important enough in the respondent's view. If the judge had failed to identify any significant features inhibiting return when applying the test, then that would have been an error on a point of law but that is not the case here.

13. After properly identifying the relevant background to the appellant's application which showed that, at all material times, she had valid leave to remain in the United Kingdom, the judge then examines in detail her personal circumstances in relation to the issue of return to Jamaica. The judge was entitled to conclude and point out that

the appellant had no meaningful connection with Jamaica where there are no relatives with whom she has contact nor are there any family, property or assets there. The appellant had spent a very significant part of her life in the United Kingdom with her mother, has undertaken secondary education here and higher education. She has always relied upon her mother for support in all aspects of her life including the maintenance of her welfare and standard of living. In paragraph 15 the judge emphasises, with reason, that the appellant would be alone in Jamaica a country which is now alien to her. Thus, the judge was entitled to find that there would be very significant obstacles to the appellant's integration into Jamaica. Whilst the respondent may disagree with that conclusion it was one which the judge was entitled to make having identified factors which would seriously inhibit return.

14. However, the decision shows that the judge did not leave the matter there because he made an alternative decision on Article 8 grounds outside the Rules applying the guidance of the Court of Appeal in *SS (Congo)* [2015] EWCA Civ 387. In this respect I am unable to view the judge's consideration of the public interest, as defined in Section 117B, as containing an error. The judge correctly approaches the analysis on the basis of the five stage test set out in *Razgar* [2004] UKHL 27. In referring to the appellant's ability to speak English and absence of reliance upon public funds, the judge was merely acknowledging the existence of factors in the Section which the appellant ought to meet. That is clear from the judge's acknowledgement, in the same paragraph, that little weight should be given to a private life established by a person whose immigration status is precarious, which he acknowledges is the case for the appellant. It is evident that the judge's analysis of the proportionality issue does not show an error, the judge being entitled to rely upon the factors already identified in his analysis of private life under paragraph 276ADE of the Rules.

15. For the reasons I have given, I conclude that the judge was entitled to find that the appellant's right to private life on the basis set out in paragraph 276ADE is not flawed by error. To that extent, therefore, the judge's alternative finding on Article 8 outside the Rules was unnecessary. However, that aspect of the decision, also, does not show a material error on a point of law.

Decision

16. The decision of the First-tier Tribunal does not show an error on a point of law and shall stand.

Anonymity

17. Anonymity was not requested before the First-tier Tribunal nor do I consider it appropriate.

Signed Date 6 June 2016

Deputy Upper Tribunal Judge Garratt