



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

Appeal Number: IA/15507/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On 19 January 2016**

**Decision Promulgated
On 27 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**PEARLYN WRIGHT
(Anonymity direction not made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Jafferji (counsel) instructed by ASR Legal, solicitors

For the Respondent: Ms C Johnstone, senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Stott promulgated on 18 June 2014, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 23 September 1955 and is a national of Jamaica. The appellant entered the UK as a visitor on 1st June 2002, and has remained in the UK since then. On 17 March 2014 the Secretary of State refused the Appellant's application for a certificate of entitlement to the right of abode in terms of s.10 of the Nationality, Immigration and Asylum Act 2002.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Stott ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged and on 1st December 2014 Upper Tribunal Judge Chalkley gave permission to appeal stating

"I believe that there may be merit in the argument that the First tier Tribunal judge erred at paragraphs 20, 21 and 23 of the determination ..."

The Hearing

6. Mr Jafferji, for the appellant, adopted the grounds of appeal and told me that the Judge had made a material error of law in his assessment of the terms of the Jamaican Independence Act 1962, and the effect that that 1962 Act had on the citizenship of the appellant and her father. He referred me to the Jamaican Independence Act 1962, sections 2 & 8, and told me the appellant was a citizen of the UK & colonies (CUKC), and that the appellant retained [her] status at the time the Jamaican independence. He argued that paragraphs [21] [22] and [23] of the decision are tainted by material errors of law because the appellant's nationality and her entitlement to a certificate of the right of abode is not dependent on the British Nationality Act 1981. He asked me to allow the appeal and substitute a decision in favour of the appellant.

7. Ms Johnstone, for the respondent, relied on the reasons for refusal letter and noted that not all directions made when permission to appeal was granted on 1 December 2014 have been followed. She argued that the appellant's father did not retain CUKC simply because he continued to live in the UK after Jamaican independence. She told me that the conclusions drawn by the Judge are well within the range of conclusions open to the Judge on the evidence placed before him, and that the decision does not contain an error of law material or otherwise. She urged me to dismiss the appeal.

Analysis

8. There is no dispute about the facts in this case. The appellant was born in Jamaica in 1955 and so was a citizen of the UK and colonies at birth. The appellant's father came to the UK in 1958 travelling on a British Jamaican passport, and then remained in the UK. The appellant's father was registered as a British citizen in December 1988. In 1962 CUKC's became Jamaican citizens because of the operation of section 2(2) of the Jamaican independence act 1962.

9. The fulcrum of this case is consideration of [22] & [23] of the decision. It is there that the Judge found that the appellant and her father lost their status as British subjects and became Jamaican nationals because of the operation of the Jamaican Independence Act 1962. At [22] the Judge found that neither the appellant, nor her father, nor her grandfather were born in the UK and therefore none of them had a right of abode under the 1971 act.

10. The second ground of appeal argues that the appellant's father enjoyed a right of abode in terms of section 2(1)(c) of the Immigration Act 1971. Taken at its highest that argument does not assist the appellant because it still leaves the question of whether or not her father had become a Jamaican national in 1962. The 1971 Act could not create a right of abode for the appellant, so that the central finding at [22] is correct in law.

11. Counsel [for] the appellant helpfully produced an extract from Fransman's British Nationality Law. At pages 639 & 640 the author considers who became Jamaican nationals as a result of the 1962 Act and the automatic loss of CUKC status. The general rule is set out in Fransman at page 639 and in section 2(2) of the 1962 act. Jamaican citizenship was conferred upon persons who prior to independence have become CUKC by birth in the colony. The general rule set out in the 1962 act is that CUKC's on 6 August 1962 became citizens of Jamaica &, on the same date, ceased to be a CUKC.

12. The determinative issue in this case is the appellant's father's status in 1962. The fact that the appellant's father became a British citizen in 1988 is irrelevant. The evidence before the Judge indicates that in 1962 the appellant's father was in the UK as a CUKC. The appellant's father may never have returned to Jamaica, but he did not fall within the exceptions set out in section 2 or section 8 of the 1962 act. The weight of evidence before the First-tier led the Judge to the conclusion that in 1962 the appellant's father became a Jamaican national.

13. Having considered the relevant statutory provisions the Judge summarises his findings at [24] and [25]. In essence, the Judge found that because the appellant does not establish that her father had a right of abode between 1962 and 1988 the appellant cannot succeed. That is a finding which was open to the Judge to make. The grounds of appeal arguing that the Judge has misinterpreted the law.

14. Despite the fact that clear directions were made on 1 December 2014 the appellant chooses not to produce annotated copies of the relevant legislation; the appellant chooses not to produce evidence to demonstrate whether or not the appellant's father became registered as a British citizen in 1988 as a result of the length of his residence in the UK. As a result, I have the evidence which was placed before the First-tier Tribunal only. Having carefully considered the evidence and submissions I come to the conclusion that the grounds of appeal amount to little more than a disagreement with the facts as the Judge found them to be. I find that there is no error in the fact-finding process, and there is no substance in the arguments advanced in the grounds of appeal that the Judge misdirected himself in law.

15. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

16. The Judge carefully considered each strand of evidence placed before him. He carefully records the submissions that were made and then, after correctly directing himself in law, makes reasoned findings of fact before reaching conclusions which were manifestly open to him to reach.

17. I find that the Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

18. No errors of law have been established. The Judge's decision stands.

DECISION

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

Signed

Date 22 January 2016

Deputy Upper Tribunal Judge Doyle