Upper Tribunal

(Immigration and Asylum Chamber) **Appeal Number: IA/27291/2014**

IA/27297/2014

IA/27300/2014

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly	**Decision & Reasons Promulgated**
On 4 March 2016	**On 31 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

NICHOLAS RAYMOND LEWIS

SINEON SONJA SAUNDERS

PATRICK JUNIOR WOOLMINGTON

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Aslam on behalf of Manchester Associates

For the Respondent: Mr A McVitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

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. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
3. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Pacey promulgated on 22 December 2014 which allowed the Appellants' appeals against the decision of the Respondent to remove the Appellant from the UK following the decision to refuse the Appellants' claim for leave to remain on the basis of their family and private life.

Background

4. The Appellants are three brothers with the same mother but different fathers. They were born on 22.5.90, 3.10.93 and 14.8.95 respectively so they are now 24, 21 and 19 years old. They are all nationals of Jamaica.
5. The Appellants came to the UK with visit visas on 12 December 2007 when they were respectively 17, 14 and 12 years old. They came to see their mother who was settled in the UK married to a British citizen. They made applications on 12 April 2007 for indefinite leave to remain based on their dependency on their mother and these were rejected. Fresh applications were made on 11 May 2007 but refused on 23 July 2007. Appeals were made against the refusals on 3 October 2007 and on 6 November 2007 they became appeal rights exhausted.
6. On 11 May 2014 the Appellants applied for leave to remain on the basis of their family and private life. On 10 June 2014 the Secretary of State refused the applications by reference to Appendix FM and paragraph 276ADE(1). The refusal letters gave a number of reasons:

   (a) The Appellants could not meet the requirements of Appendix FM.

   (b) The only provision of paragraph 276ADE(1) that might reasonably apply was subsection (vi) but the Appellants could not meet the test that they had 'no ties' to Jamaica given that they were brought up there, had spent the majority of their life there, they have family there in that they have their grandmother and aunt there

and their mother could support them from the UK until they re-established themselves.

(c) There were no other circumstances that warranted a grant of leave outside the Rules.

The Judge's Decision

7. The Appellants appealed to the First-tier Tribunal. First-tier Tribunal Judge Pacey ("the Judge") allowed the appeal against the Respondent's decision by reference to paragraph 276ADE (1) of the Immigration Rules. The Judge found:
   (a) The three Appellants and their mother were credible witnesses.
   (b) The relevant case law was Ogundimu [2013] UKUT 00060 in which guidance was given in respect of the concept of 'ties' and the requirement for a rounded assessment of the circumstances.
   (c) They had significant private life established in the UK given the length of time they had been here.
   (d) They had only intermittent contact with their grandmother.
   (e) There was no evidence to suggest they were in contact with an uncle who may or may not be living there.
   (f) They have severed all meaningful links with Jamaica.
   (g) Given the cultural, educational and social links they had in the UK they would be strangers in Jamaica.
   (h) The fact that they were Jamaican nationals, speak the language and had a grandmother there were not determinative.
   (i) The second and third Appellants had undergone all of their secondary education in the UK.
   (j) They had spent the majority or some of their teenage years in the UK.
   (k) There was no evidence that they had friends in Jamaica or exposure to the current cultural norms there and their meaningful ties were minimal.

8. Grounds of appeal were lodged arguing that the Judge had applied the wrong test under paragraph 276ADE(vi) in that he should have applied the test if 'very significant obstacles' rather than the loss of ties; thee assessment of them having no ties was flawed as they had spent their formative ties in Jamaica; in asserting

there was no evidence the Appellants were in contact with their uncle or anyone else there the Judge had shifted the burden of proof from the Appellants.

9. On 18 May 2015 Upper Tribunal Judge McGeachy gave permission to appeal.

10. At the hearing I heard submissions from Mr McVitie on behalf of the Respondent that :

(a) He would only be pursuing grounds 2 and 3 as he accepted that ground 1 was misconceived: the Judge was correct to apply the version of the Rules that was set out and applied in the refusal letter not the version that came into force after the decision was made

(b) The Judge had referred to Ogundimu but had misapplied it. Factually Ogundimu was very different in that the appeal was allowed against a factual basis in which the Appellant had never been to his country of origin. This case was very different in that the Appellants had spent over half their life in Jamaica and therefore it was perverse to say they had no ties.

(c) Paragraphs 123-125 of Ogundimu give guidance on what should be considered in determining whether an Appellant had no ties.

(d) In relation to the challenge of how the Judge had applied the burden of proof he relied on the grounds of appeal: the Judge erred in saying there was no evidence that there was no contact with the uncle.

11. On behalf of the Respondent Mr Aslam submitted that :

(a) The Appellants came here when they were all under 16.

(b) They were now very well integrated into UK society and the Judge found that they would return to a very different Jamaica.

Legal Framework

12. Both parties relied on Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 60 (IAC) where the Tribunal said that the natural and ordinary meaning of the word ‘ties’ in paragraph 399A of the Immigration Rules (HC194) imports a concept

involving something more than merely remote or abstract links to the country of proposed deportation or removal. It involves there being a connection to life in that country. Consideration of whether a person has 'no ties' to such a country must involve a rounded assessment of all of the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances.

Finding on Material Error

13. Having heard those submissions, I reached the conclusion that the Tribunal made no material errors of law.

14. The three Appellants are brothers whose applications for leave to remain in the UK were based on private life considerations because, in essence, at the time of the decision in June 2014 they had lived in the UK for nearly 7 years and the only relative they had in Jamaica was their 78 year old grandmother as their mother lived in the UK. It has never been in dispute that the Appellants appeals stood or fell together.

15. I am satisfied that the Judge properly directed himself as to the guidance in Ogundimu having heard the evidence of the three Appellants, their mother and a Ms Adler who he found to be credible witnesses (paragraph 18). I am satisfied that the Judge carried out the rounded assessment suggested in Ogundimu at paragraphs 18-20 and was entitled to examine whether the connections that the Appellants had to their country of origin were meaningful and effective given that the court in Ogundimu rejected the suggestion that 'even the most minimal of links to the country of proposed' were enough to constitute 'ties'.

16. The Judge therefore carefully examined all of the relevant circumstances. He was required to take into account not only the length of time the Appellants had been in the UK but that in this case those years were formative years both socially and educationally (paragraph 20). He examined what family members there were in Jamaica who might be able to provide assistance to the Appellants in re-establishing themselves. He found the Appellants and their mother credible and accepted that their grandmother was elderly (in fact she is 78) and in poor health and indeed heard oral evidence that her health problems were such that she was bed bound and unable to lead an independent life. She was cared for by a distant

relative that these Appellants and their mother had never met. The Judge accepted this evidence. The relevance of family in the country of origin is whether they could result in support to an Appellant in the event of his return: in this case the Judge was entitled to conclude that a 78 year old bed bound grandmother would be unable to provide meaningful support to the Appellants. The Judge set out the reasons at paragraph 6 why he did not accept that the Appellants had an aunt in Jamaica and this finding was well reasoned and open to him.

17. The Appellants had asserted that the uncle who had played some part in their upbringing in Jamaica 7 years before was no longer living there and produced a witness statement from him in which it was asserted he lived in the UK. The Judge described the evidence as 'unsatisfactory' and did not accept that the uncle was not living in Jamaica. Therefore I do not accept that the Judge misapplied the burden of proof in relation to this issue given that finding but it clear from reading the decision as a whole that the Judge accepted that any relationship that the Appellants might have had with this uncle did not amount to a meaningful one that would constitute ties for the purpose of the Rule.

18. The Judge also heard evidence from a Ms Adler about the first Appellants engagement with the wider community which is set out in her witness statement at page 105 and he found her to be a credible witness.

19. It might be argued that the conclusion drawn by the Judge given their ages on arrival in the UK was a generous one but I am satisfied that in the light of his careful consideration of the evidence before him based on the relevant guidance in Ogundimu he gave sufficient reasons for finding that the length of the Appellants residence during formative years of their life taken together with the lack of meaningful ties in Jamaica meant they were entitled to succeed under the Rules.

20. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1) : "*Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined,*

those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge."

21. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

22. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

23. **The appeal is dismissed.**

Signed Date 20.3.2016

Deputy Upper Tribunal Judge Birrell