Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08673/2015

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 29 September 2015	**On 9 October 2017**

Before

UPPER TRIBUNAL JUDGE LANE

Between

ROSE [S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Chohan, instructed by Citadel Immigration Lawyers
For the Respondent: Mr Singh, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Rose [S], was born on [ ] 1966 and is a female citizen of Jamaica. She entered the United Kingdom in January 2001 as a visitor. She was subsequently granted leave to remain as a student until August

2002 and successfully applied for an extension of that student leave which terminated in September 2004. She made no further attempt to regularise her immigration status until April 2010 when she applied for indefinite leave to remain on compassionate grounds. That application was refused by a decision dated 19 August 2010. She made a human rights application on 15 May 2013 which was refused on 3 June 2013. She made a further human rights application in September 2015 which was refused on 7 October 2015. She appealed against that decision to the First-tier Tribunal (Judge Asjad) which, in a decision promulgated on 6 January 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant seeks to remain in the United Kingdom on the basis of her relationship with her family. She has no contact with her mother who lives in the United Kingdom but she claims to have a relevant with her adult children, Kenisha (who has leave to remain until 2020) and Carlington (who has indefinite leave to remain). Carlington has a child (K) who suffers from a heart condition. The appellant also helps to look after another grandchild (M) who is the child of her daughter, Kenisha.

3. Judge Asjad found [12] that the appellant did not qualify under HC 395 for leave to remain; she could not satisfy the requirements of paragraph 276ADE(vi) as she could not prove that there were very significant obstacles to her reintegration in Jamaica. Before the Upper Tribunal, that finding has not been challenged. The appeal, therefore, concerns only the judge's findings in respect of Article 8 ECHR outside the Immigration Rules.

4. Granting permission, Judge Gibb summarised the grounds as comprising a complaint that the judge had erred in (1) not considering the best interests of the appellant's grandchildren in the UK at all, and (2) not considering their best interests as a primary consideration.

5. The parties accept that the appellant enjoys family life in the United Kingdom. In his grant of permission, Judge Gibb considered that it was arguable the judge had failed to give consideration as to how the grandchildren would be affected if the appellant were to be removed to Jamaica. There was no suggestion that the grandchildren, or indeed the appellant's children, will follow her to Jamaica. Both grandchildren are British citizens. Judge Gibb considered that it was arguable that the judge had concentrated unduly upon the appellant's immigration history "treating it as of overwhelming weight throughout" in failing to have proper regard to the best interests of the children as a primary factor. In addition, Judge Gibb considered that, in the light of *Agyarko* [2017] UKSC 11 and that judgment's "re-statement of the importance of delay" it was arguable that the appellant, who had not "gone to ground", had been put at a disadvantage by the failure of the Secretary of State to remove her.

6. Judge Asjad's findings appear at [9] *et seq*. The judge concentrated upon the child care which the appellant was able to provide to the

grandchildren. Her approach in this respect was without legal error, given that the evidence which was put on behalf of the appellant also concentrated on her ability to offer child care. The judge found that the present arrangement is a "*status quo* that suits them all". The appellant's daughter, when asked in cross-examination how she intended to arrange child care in the absence of the appellant, stated that she had not considered the matter because her mother was "just there".

7. Having read the decision of the judge very carefully, I find that she has not erred in law such that her decision falls to be set aside. I have reached that finding for the following reasons. First, she has properly applied the provisions of Section 117D of the 2002 Act (as amended). She has concluded that the only public interest consideration in favour of the appellant was the fact that she speaks English. Secondly, the judge was right to take into account the fact that the appellant's immigration status had (to put it mildly) been precarious at the time when she formed her relationships in this country with her family members. Precariousness as a consideration is not confined to private life (as provided for in the 2002 Act) but may also be a relevant consideration in family life: see *Rajendran* [2016] UKUT 138 (IAC).

8. Thirdly, it is entirely implicit in the judge's decision that the children's best interests should be to remain with their respective parents in the United Kingdom. There has been no suggestion that the children should follow the appellant to Jamaica. It is also clear from the judge's analysis that, whilst the grandchildren would no doubt prefer the appellant to remain living with them in the United Kingdom, her family members do not rely on her to the extent that her removal would lead to any member of the family suffering hardship was available to her on the facts. As the judge characterises it, the *status quo* is one which "suits them all". There was no need for the judge to state explicitly that there is a bond of love and affection between this appellant and her family members, including her grandchildren; that was axiomatic. Equally, there does not appear to have been any evidence (notwithstanding the grandchild's medical condition) which would suggest that the children would suffer significantly if their grandmother were removed. Indeed, had the evidence indicated the contrary, then the judge's decision would have been arguably perverse. Perversity was explicitly rejected by Judge Gibb when he granted permission [3] although Mr Chohan, who appeared for the appellant before the Upper Tribunal, submitted that the decision was perverse. I disagree. On the basis of the evidence which was before the First-tier Tribunal, the outcome was available to the judge. Any vitiating error, therefore, must lie in the method and analysis of the judge. Whilst I acknowledge that the judge has [19] dealt "first and foremost" with Section 117B(1) of the 2002 Act (public interest considerations), as I have stated earlier, the case was not argued on the basis that the best interests of the children required the presence of the appellant over and above the need to maintain existing emotional ties and convenient child care arrangements. The judge could have said more, perhaps, regarding the best interests of the children and I am satisfied that she has considered those interests before moving on to

deal with public interest concerned with the appellant's removal. In any event, the best interests of the children were both fairly obvious and uncontroversial in this instance. In the circumstances, for the judge to move briskly to a consideration of the public interest was not, in my opinion, an error of law.

9. The remaining question is whether the judge has given excessive weight to the public interest in this case. I find that she has not. Clearly, the judge was very concerned that the appellant had simply defied UK immigration provisions over a number of years. The public interest concerned with the removal of such an individual is likely to be considerable. Further, I do not consider any delay on the part of the Secretary of State to be a significant factor; the appellant had known for years that she needed to leave the United Kingdom because she had no regular status here. As the judge records, the arrangements for child care had been formed at a time when every adult family member was aware that the appellant's status was precarious. Looking at the statutory provisions, the judge was right to say that only the appellant's ability to speak English weighed in her favour.

10. I find that the judge's decision was not perverse on the evidence. I find that the judge has not significantly erred in law in her approach to or analysis of the appeal under Article 8 ECHR. She has reached findings which were open to her and she has given cogent reasons for reaching those findings. I do not find that the judge has given, on the facts of the case, excessive weight to the public interest. I find that she has properly taken into account the best interests of the children, M and K. The appeal is dismissed.

Notice of Decision

11. This appeal is dismissed.

No anonymity direction is made.

Signed Date 5 October 2017

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 5 October 2017

Upper Tribunal Judge Lane