



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)**

APPEAL NUMBER: IA/20809/2015

THE IMMIGRATION ACTS

**Heard at: Field House
On: 14 August 2017**

**Decision and Reasons Promulgated
On: 21 August 2017**

Before

Deputy Upper Tribunal Judge Mailer

Between

[A B]

ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr N O'Brien, counsel (instructed by Dotcom Solicitors)

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.
2. The appellant is a national of Jamaica, born on [] 1982. She appeals with permission against the decision of the First-tier Tribunal Judge who dismissed her appeal against the decision of the respondent to refuse her application for leave to remain on the basis of family and private life.
3. In granting permission to appeal, First-tier Tribunal Judge Ford stated that it was arguable that the Tribunal '... erred in its assessment of the best interests of the

children and consequently the assessment of the reasonableness in expecting the child to leave the UK'. Further, the Tribunal failed to take into account the difficulties and the medical problems of the younger child in relation to paragraph 276ADE (1)(vi). The child suffers from sickle cell anaemia.

4. Mr O'Brien, who also represented the appellant before the First-tier Tribunal, submitted that the appellant herself had been in the UK for nearly 16 years. She had two children, both of whom were born in the UK. The elder child had lived here for over seven years and was accordingly a "qualifying child" under the 2002 Act.
5. The younger child was suffering from sickle cell anaemia and had been under the care of a consultant paediatrician since birth. In 2016 she had been admitted to hospital on several occasions with symptoms related to her illness.
6. Her consultant paediatrician stated that there might be a lack of appropriate facilities in Jamaica such as access to complex antimicrobial therapy, safe blood components and paediatric intensive care. He stated that it would be in the best interests of the child for her to remain here.
7. The younger child also had a speech impediment which affected her ability to communicate and make herself understood. She has been given support with her speech and language. The school understood her medical needs and related difficulties. There was a dearth of specialist staff in the institutions delivering services for children with disabilities including a shortage of speech therapists. In addition, such persons encounter discrimination and access to schools which include at primary level – COR, 15 January 2013, 23.36.
8. Mr O'Brien submitted that the Judge's vague acknowledgement that the child's condition required to be monitored and that she may require a blood transfusion did not make it clear that she had fully considered and carefully weighed the very specific information provided by Dr Wilkey.
9. The Judge stated at [29] that whilst the medical facilities may not be as good as in the UK, she was satisfied that medical treatment for the younger child is available as is speech and language development support. However, she did not in fact consider all the available evidence including that provided by the respondent's own COIR document and Dr Wilkey's opinion.
10. It was insufficient to state at [41] that the children were protected by being in the care of their mother with whom they had lived all their lives. The younger child's removal would deprive her of the opportunity to enjoy the services of the UK's public health and education services. She was a child who had lived in the UK for her entire life and was suffering from significant conditions. This affected her welfare and development which would continue into the foreseeable future.
11. He submitted that the Judge acknowledged that "significant weight" was to be given to the fact that the elder child had been in the UK for seven years and that "strong reasons" are required to justify removal in those circumstances [39].

However, there is nothing in the determination to indicate that she had acted on this acknowledgement. No strong reasons are identified.

12. Nor did the Judge consider the knock on effect of the younger child's condition on her elder brother. The Judge took an unduly narrow approach to the question of the best interests of the children, simply stating that their interests are protected by being in the care of their mother with whom they had lived all their lives.
13. Mr O'Brien submitted that in effect, the Judge's findings read like a simple proportionality assessment appropriate and applicable to an adult, but which did not properly deal with the assessment of the children's best interests in the circumstances. Accordingly the Article 8 assessment was flawed.
14. The older child is a qualifying child. There has been no proper assessment of whether it is reasonable to expect him to leave as per MA (Pakistan) [2016] EWCA Civ 705 at [102]. The respondent's policy is set out in MA and requires that strong reasons be used for refusing leave to a child who satisfies the seven year residence requirement [46].
15. On behalf of the respondent Mr Tarlow submitted that the Judge did take into account of the circumstances of the child. The Judge has done enough. Although dealing with the matters briefly, she dealt with the child's medical condition [27] as well as problems at school.
16. She found that medical treatment is available for children and in particular the younger child and that the appellant was likely to be supported financially by family and friends from the UK and close family members in Jamaica. The Judge was accordingly entitled to be satisfied that there would not be very significant obstacles to her re-integration into Jamaica under paragraph 276ADE(1)(vi).

Assessment

17. The younger child suffers from sickle cell anaemia and has been under the care of a consultant paediatrician since her birth on 18 November 2011. Dr Wilkey considered her disease to be severe. She will need close monitoring and follow ups which may not be provided in Jamaica. She is likely to need a blood transfusion and transcranial Doppler monitoring to assess a stroke risk. There are other consequences which could follow including organ damage.
18. She had been admitted to hospital on several occasions with symptoms relating to her illness. In particular, Dr Wilkey stated that there may be a lack of appropriate facilities in Jamaica so it would be in her best interests to be permitted to remain here.
19. The child also has a speech impediment which has affected her ability to communicate and make herself understood. Her school has a good understanding of her difficulties and her strengths. She has a speech and language therapist. The school will understand her medical needs and related difficulties. Her schooling has enabled her to develop communication and other social skills.

20. There is force in Mr O'Brien's submission that the Judge's approach to the issues relating to the complex health and educational needs of the child was a general assessment of whether removal was proportionate. However, the child's health and education problems and needs constituted a significant part of any assessment relating to reasonableness.
21. The impact of the decision to remove also potentially affected her elder brother who himself has been here for over seven years. His circumstances are also required to be taken into account in deciding whether it is reasonable to expect him to leave.
22. In assessing the best interests of the younger child the Judge did not properly grapple with the problems relating to the specialised nature of her treatment in the UK and its availability in Jamaica; nor were her educational needs properly factored. The child's health and education needs raised specific and important questions which needed to be addressed.
23. I accordingly find that the decision of the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision.
24. The parties were agreed that in the circumstances the case should be remitted to the First-tier Tribunal for a fresh decision. I find in the circumstances that it is appropriate to remit the case.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal (Hatton Cross) for a fresh decision to be made before another Judge.

Anonymity direction made.

Deputy Upper Tribunal Judge Mailer

Signed

Date 20 August 2017