



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

Appeal Number: IA/32698/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 18th September 2017**

**Decision & Reasons Promulgated
On 20th September 2017**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**DL
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Gaisford, Counsel instructed on behalf of the Appellant
For the Respondent: Mr Singh, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Jamaica.

**Direction Regarding Anonymity - Rule 13 of the Tribunal
Procedure (First-tier Tribunal) (Immigration and Asylum Chamber)
Rules 2014**

2. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. The factual background relates to medical health issues. No report of these proceedings shall directly or indirectly identify her or any member of her 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.
3. The Appellant, with permission, appeals against the decision of the First-tier Tribunal, who in a determination promulgated on 9th January 2017 dismissed her claim for leave to remain on Article 8 grounds.
4. The Appellant's immigration history is set out within the determination at paragraphs [2]-[6] and in the decision letter issued by the Secretary of State. It can be summarised briefly as follows. The Appellant arrived in the United Kingdom on a visit visa in 2000 and subsequently applied for further leave to remain. The application was refused and her appeal against that decision was refused by an adjudicator in a determination promulgated on 6 August 2002. The Appellant did not leave the United Kingdom and in 2008 applied for permission to marry her British citizen partner. Such a certificate was issued and she married her spouse in 2009. The Appellant was told that the marriage would not give her a right to reside in the United Kingdom and a further application for leave was made in 2012. This was refused and a further application was submitted in August 2014. It appears that other applications were also refused including an application for judicial review (see determination at paragraphs 16 and 17). Following this an application was made which was considered on the basis of her rights under Article 8, both inside and outside of the rules. The decision letter is dated 2 October 2015 and was the decision under challenge before the First-tier Tribunal.
5. The basis of the Appellant's Article 8 claim is summarised and recorded in the decision of the First-tier Tribunal at paragraph [8] which is also referred to in the reasons for refusal letter however it is right to observe that the medical evidence that formed the essential core of her claim had not been before the Secretary of State and thus the decision letter did not deal with that aspect of her Article 8 claim.
6. The Appellant exercised her right to appeal that decision and the appeal came before the First-tier Tribunal on the 24th November 2016.
7. It is recorded in the determination at paragraph [22] that as a result of the medical evidence the Appellant would not be giving oral evidence but two witnesses were called on her behalf, including her spouse. The judge set out the findings of fact and analysis of the issues at paragraphs [14] to [37]. The judge began by considering the refusal of permission in the judicial review application (paragraph 17 and 18). As to EX1(b), the judge considered the evidence of her partner at paragraph 21 and considered the supporting evidence including the medical report at paragraphs 22 to 29. The judge concluded that the evidence did not show a person suffering from a major depressive disorder and that the reasons set out at

paragraphs 30 - 32 there were no insurmountable obstacles “for her reintegration into Jamaican life”. Thus the judge found the Appellant could not meet the requirements of Appendix FM. Similarly, the judge found that there were no very significant obstacles to her integration (paragraph 34) and that there were no compelling reasons to demonstrate that a grant of leave outside of the rules was required. The judge did not accept there was evidence of any threats to her (paragraph 36). The judge also rejected a claim made on Article 3 on medical health grounds medical health at paragraph 37.

8. The Appellant sought permission to appeal that decision and the grounds are set out in the papers dated 23rd January 2017. Permission was granted by Judge Ford on 24 July 2017.
9. There are 6 grounds which relate to the findings of fact made in the light of the evidence that was before the Tribunal and contained in the documentary evidence and the oral evidence.
10. At the hearing before this Tribunal Mr Gaisford, who did not represent the Appellant in the First-tier Tribunal, relied upon the grounds that were before the Tribunal. He relied upon the grounds as pleaded taking the Tribunal through those grounds by reference to the determination and where necessary by reference to the evidence contained in the bundle. In doing so he identified the areas in the findings of fact which were not considered in the light of the evidence that was before the Tribunal.
11. Mr Singh had the opportunity of discussing the grounds with Mr Gaisford. He accepted that the core part of her claim as to the effect of her medical health upon the relevant issues had not been properly considered by the Tribunal and also the issue relating to threats made and that they went to the core of the claim thus it materially affected the decision and was an error of law. The determination should be set aside.
12. In the light of that concession made by Mr Singh that there is a material error of law in the determination of the First-tier Tribunal, it is the case that both parties agree that the determination cannot stand and must be set aside.
13. The judge’s consideration of the medical evidence begins at paragraphs 22 - 29. That consideration is challenged in a number of respects in the grounds as outlined in the grant of permission. At paragraph 23, the judge found that it was not clear on what basis the diagnosis of suffering from a major depressive order has been reached and makes reference to some parts of the factual history. However, the report sets out in a number of paragraphs the evidence upon which that diagnosis was based upon which included the Appellant’s presentation at interview (paragraph 31 onwards), the symptoms paragraphs 42 - 59 and her physical symptoms (paragraph 61 - 64), anxiety (65) and traits (67 - 70). This led to the conclusion of the expert at paragraph 131 (page 17).

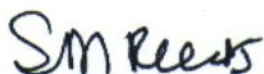
14. The report also sets out her history and background and whilst the author of the report is a psychologist, her experience and expertise were set out at pages 2 and 4 alongside the use of the diagnostic criteria in reaching the conclusions. Whilst the judge did not expressly say so, it appears from the assessment of the report that the judge did not consider the report should be afforded any weight but that it was approached with "caution" (paragraph 28). This was based on the findings set out at paragraphs 23 – 29. In particular that the medical notes did not relate to any depression (24) and (25) that she had not had any medication. However, there was such evidence (pages 275, 286 and 288 in the medical notes and that she been prescribed previously medication at page 286. There is no dispute between the parties that the type of medication referred to is used in the treatment of depression. The notes also refer to other mental health difficulties other than depression albeit historically. As to counselling, this was in fact referred to at page 288 although again it is historic in nature as it is recorded in 2009. Whilst the notes are not easy to read, there is also reference to the Appellant's history in the report at paragraph 118. Both parties submit that those factual errors are such to undermine the overall conclusions and assessment of the report.
15. As regards other evidence, the letters from the church and other letters were submitted to provide evidence of general good character and was not to demonstrate any mental health presentation. Mr Gaisford also relies upon oral evidence given by her husband concerning her presentation and mental health difficulties. Whilst the judge made reference to her ability to run a business (paragraph 29) which in my judgement was open to her to place in the balance of the evidence, it was required to be considered in the light of the medical report at paragraph 36 and 96.
16. Ground 4 related to the findings made paragraph 36 of the nature of threats. However as the grounds set out there was some evidence in support of the factual claim made (page 13) and in any event the relevance of the fear of threat (even if factually unsubstantiated) was a matter referred to in the medical report at paragraph 96.
17. In the light of the above matters, I am satisfied that the central submissions made on behalf of the Appellant to which I have made reference to which concerns the core issue relating to the Appellant's mental health and her factual circumstances in the UK and her home country are made out. Thus I am satisfied for the reasons given by both advocates, that the central issue relating to the Appellant's mental health and the effect upon the core issues regarding insurmountable obstacles, and very significant obstacles and in general return to her home country, either alone or with her spouse, was not considered in the light of all of the evidence which included the surrounding supporting evidence and, in the light of the evidence that had been given. It thereby rendered the findings of fact and analysis of the core issues to be flawed. Thus the decision cannot stand and will be set aside. Both parties submitted that in the circumstances none of the findings could be preserved.

18. As to the remaking of the decision, both advocates submitted that the correct course to adopt in a case of this nature would be for the appeal to be remitted to the First-tier Tribunal. I gave time for Mr Gaisford to consider this further and he responded by email confirming that this was the way in which the case should be reconsidered. In the light of those submissions, I am satisfied that this is the correct course to take and therefore I set aside the decision of the First-tier Tribunal and it will be remitted to the First-tier Tribunal to hear afresh. It may require an updated medical reports and for witness evidence but it is not necessary for me to make any onward directions as this can be clarified by the Appellant's solicitors.

Decision:

The decision of the First-tier Tribunal involved the making of an error on point of law; the decision is set aside and remitted to the FTT.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. The direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed
Upper Tribunal Judge Reeds

Date: 19/9/2017