Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/05746/2015
AA/05749/2015
AA/05751/2015

THE IMMIGRATION ACTS

Heard at Field House	**Determination & Reasons Promulgated**
On 14 March 2018	**On 12 April 2018**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

DANIAH [C] (FIRST APPELLANT)
[A C] (SECOND APPELLANT)
[S C] (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr T Gaisford, instructed by Sriharans Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Grenada. She appealed to the First-tier Tribunal against a decision of 13 March 2015 of the Secretary of State refusing asylum and refusing a human rights claim.
2. She claimed to be at risk on return to Grenada from her ex-partner, who is the father of her elder child, AC, who was born on [ ] 2004.

3. The appellant had come to the United Kingdom in July 2010 and had an affair with a man while here and became pregnant with her younger daughter SC, who was born on [ ] 2011. They had returned to Grenada in late 2010 or early 2011. When her partner learned that the child was not his, she said that he became violent and threatened her and the younger child and as a consequence she left the house in November 2011 and returned to the United Kingdom on 15 December 2011 and has stayed here thereafter. She and the two children, who came to the United Kingdom with her, lived with the appellant's mother and the appellant's half-sister.

4. An appeal against the Secretary of State's decision was originally heard in the First-tier Tribunal in September 2015. The judge dismissed the asylum appeal and the human rights appeal. I shall need to return to some of the findings in that decision subsequently. That appeal was challenged, in relation to the human rights issues only, and a Deputy Judge of the Upper Tribunal found that the judge had erred with regard to the Article 8 evaluation and ordered that the appeal fell to be reheard de novo before the First-tier Tribunal.

5. The subsequent decision of the First-tier Tribunal, promulgated on 11 December 2017, is the appeal with which we are concerned today. To avoid repetition, it may be more helpful if, rather than setting out the judge's findings, I refer to the challenge to the decision and will then refer to the particular parts of it with which issue is taken. In brief, the judge bore in mind the findings of the first judge and did not accept that the appeal could succeed under or outside the Immigration Rules.

6. There are nine grounds of challenge to that decision. The first of these is that the judge erred on the misconceived basis that he was bound by the previous findings of the First-tier Tribunal, which he took as the starting point for assessing the appellant's claim. Reliance was placed on the fact that the Deputy Upper Tribunal Judge, who found an error of law in the early decision, remitted the case for a de novo hearing. In the ground and in Mr Gaisford's submissions it was argued that the claim that the appellant suffered domestic violence has always been maintained. He referred to the first settled grounds of appeal against the 2015 decision of the First-tier Tribunal, where reference was made at paragraph 29 to the connection between the second appellant's anxiety and the domestic violence she witnessed in Grenada. It was argued that the judge had failed to give proper consideration to the fact of the first appellant suffering domestic violence, the fact of the second appellant witnessing the abused and having been caused anxiety by it. The judge then lawfully relied on the First-tier Tribunal's adverse credibility findings, which it was argued had contaminated his approach to the appellant's evidence as a whole.

7. If one turns to the First-tier Judge's decision, it is clear from paragraph 19 that the judge did not accept the appellant's claim that her partner had abused her, having discovered the second child was not his. The judge found that that relationship had broken down before the appellant came to the United Kingdom in 2010. The grounds of challenge to that decision do not in my view challenge the conclusion that the appellant's claim to have been the victim of domestic violence lacked credibility. The closest they come to it is the point made at paragraph 28 disagreeing with the judge's conclusion that the second appellant's learning difficulty had been caused by her witnessing domestic violence as such, but it was a consequence of her anxiety and enhanced emotional needs. There was also reference at paragraph 29 to the connection between the second appellant's anxiety and the domestic violence she witnessed in Grenada as being relevant to the proportionality of removal. Nor does one see any challenge to those findings in the decision of the Deputy Upper Tribunal Judge who found the error of law. The concerns of the judge were that there was no finding by the judge in 2015 concerning whether or not family life existed, there was no assessment of the impact of removal on the appellant's mother and her minor sibling and proportionality had not been assessed in light of the impact on the entire family unit. There had been no evaluation of the best interests of the first appellant's minor sibling.

8. As a consequence, I do not agree that the judge erred at paragraph 29 when concluding that he was bound by the findings of the judge in 2015. It was clear that the conclusions in respect of the asylum claim had not been challenged in the appeal to the Upper Tribunal and he was entitled and indeed required to consider that they had been preserved. The starting point was therefore that the appellant had failed to prove, even on the lower standard, that she had been a victim of domestic violence.

9. The judge also noted the letter from the special needs teacher of 15 September 2015 referring to the second appellant having anxiety based on seeing domestic violence in the home situation when she was 4. The judge commented that the child would have been 4 in 2008 or 2009, whereas the appellant's allegations over domestic violence only started after the birth of the second child, which would have been well after the second appellant was 4. He commented that even if the implied evidence of the child was accepted it did not corroborate the mother's account. It is unclear why he found it necessary as a consequence of paragraph 43 to say that if the oldest child witnessed domestic violence previously it was long in the past and the mother did not need to return to the relationship, in light of his clear adopting of the 2015 decision on the lack of credibility of the claim and the perfectly sound point he made at paragraph 32 about the discrepancy and dates. I should say that I do not consider that discrepancy can properly be explained, as suggested by Ms Gaisford on the basis that it failed to take into account the special educational needs of the first appellant. There is no evidence to show that the learning difficulties she has experienced were such as to make her evidence reliable on this point. Accordingly, I see no error of law as identified in

ground 1. It is clear that there was no challenge to the decision of the judge in 2015 that the appellant's claim to have suffered domestic violence lacked credibility, and the judge properly went on to adopt the findings of the First-tier Judge in 2015 in that regard.

10. Essentially the same comments can be made with regard to ground 2 where it is argued that the judge failed to make a finding in respect of whether the second appellant had witnessed domestic violence. It is true, and as I have noted above, that there is the final sentence of paragraph 43, but I think that has to be read in light of the judge's endorsement of the earlier adverse credibility findings of the judge in 2015 and the discrepancy noted at paragraph 24 as regards dates.

11. Ground 3 contends that the judge made a perverse or irrational finding in respect of the evidence from the school in saying at paragraph 32 that either the school had not been asked to provide any evidence specifically for the hearing or the evidence they had produced had not been favourable enough to be served. The judge however then went on to note the letter from the special educational needs teacher of 15 September 2015, to which I have already referred. He also referred to having copies of school reports which show that the children were doing better, but that was all. I consider in the circumstances that no error of law in this regard has been identified.

12. Ground 4 is concerned with what the judge said at paragraph 45 about the weight to be attached to the children's private life in the context of the decision of the Upper Tribunal in Azimi-Moayed [2013] UKUT 00197 (IAC). The judge noted in the context of that case that neither child had been in the United Kingdom for more than seven years, still less seven years of what I would describe as the formative years, in that case, being the years from the age of 4.

13. It was argued that in Azimi-Moayed it was said that whilst past and present policies have identified seven years as the relevant period, what amounts to lengthy residence was not clear-cut and therefore the point quoted by the judge did not exclude the possibility or even probability that a child who had lived just short of six years at the time of the hearing had developed ties it would be inappropriate to disrupt.

14. I do not see any error of law in this regard. It was relevant to note what had been said in Azimi-Moayed, and the judge clearly considered the weight to be attached to the children's private life in that context, and the findings in that regard were properly open to him.

15. Ground 5 contends that the judge erred in respect of the first appellant's mother in saying that she had arrived in the United Kingdom in 2010 on a visit visa and overstayed and the only reason she was granted leave to remain was that she had a child in the United Kingdom by a British man, which meant her own child was British. The comments on this was that

the family had shown a long-term willingness to work around and evade UK immigration control.

16. In fact it seems to be common ground that the appellant's mother arrived in the United Kingdom in 2004 in the immediate aftermath of the hurricane that devastated Grenada, and the judge therefore clearly erred. It is argued that the materiality of this error is relevant to the comment about working around and evasion of immigration control, and also to the findings at paragraph 38 that the appellant had not shown it was in the best interests of the children to stay living in the same house as their grandmother and their aunt. When looking at the grandmother's immigration history it was said she could not be said to be an unequivocally good influence on the children. I agree that there is an error here and I accept also that there is a relevance to the proportionality evaluation: that is a matter to which I shall return.

17. Ground 6 concerns the contention that the judge overlooked or ignored material evidence in respect of the relationship between the appellant's aunt (A, who is aged 16) and her mother and the appellants. The judge referred to other supporting letters but did not specifically refer to the letter written by A where she explains how she had benefited from being in the United Kingdom and the problems she would experience on return, photographs of family members together, and also a letter from the appellant's aunt, who refers to the closeness of her daughter and the appellants.

18. I am not persuaded that there is any materiality to the points made here. The letter from A at page 33 of the bundle does not in fact contain a reference to her aunt other than a reference to leaving half her family and friends, the photographs may take matters a little further, and the statement by the first appellant's aunt about her and how her daughter sees the relationship with the appellants, is again not a matter which relates to the relationship with the first appellant's half-sister in any event.

19. Ground 7 contends that there is an error of law in the finding that there was no family life between the appellants and the first appellant's sister and mother. The judge referred to a lack of evidence which he considered to be reliable and detailed, including a letter or specific evidence from the school or the special needs teachers and the very real doubts he had as to the integrity of the appellant and her mother as witnesses. He accepted that if they had lived as a family unit there was a chance that they were closer than might ordinarily be the case but that that was the same as him being satisfied that the family life was at a qualitatively different level to the norm, as required under Kugathas. He went on to say that this put him in some difficulty in trying to establish what the best interests of the children were.

20. I think that the challenge here is well made. It is clear that for over six years the appellants have been living in the same household as the first

appellant's mother and her half-sister. Certainly, there is detailed evidence from the half-sister at page 32 of the closeness between them and the impact on her if they are removed. In the independent social worker's report there is detail as to the closeness of the relationship, in particular between the children. A spoke about her relationship not only with her sister but with her aunt as well. There is further evidence from the half-sister set out there also. In my view the judge erred in law in concluding that there was not family life in this case, it was not a finding that was open to him in light of the evidence in particular of the closeness between the group of people and the fact they had been living together in the same household for six years. I accept also the point made by Mr Gaisford that this impacts on the findings of the best interests of the children and also on the proportionality evaluation. I also consider that the comment about there being very real doubts as to the appellant's mother's integrity was not a point that was well taken by the judge.

21. I shall deal briefly with the further two grounds. Ground 8 concerns failure to give consideration to the best interests of the first appellant's aunt's daughter, whose mother had provided a statement and in respect of whom her best interests required to be considered. I agree that the judge erred in this regard, but if it had not been for the previous ground I would have concluded I think in the end that it lacked materiality. Likewise, I do not consider it was a material procedural error as contended in ground 9 that the judge failed to make specific reference to the content of the skeleton argument.

22. In conclusion therefore, the key issue in my view, which involves a material error of law in this case, is that identified in ground 7 with regard to the finding as to family life. There I think the judge erred, and as a consequence as was argued by Mr Gaisford, I consider that the matter will have to go back to the First-tier Tribunal in the circumstances for a full rehearing on the Article 8 issues in this case. But I think that rehearing will have to be circumscribed by what I have had to say about grounds 1 and 2 in this case. There was no challenge to the credibility findings of the judge in 2015, and it is therefore not open to argument that the first appellant was the victim of domestic violence. To that extent therefore the appeal is allowed, and it will have to be reheard again at Hatton Cross before a different judge.

No anonymity direction is made.

Signed Date 9 April 2018

Upper Tribunal Judge Allen