



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/00084/2017

THE IMMIGRATION ACTS

Heard at Field House
On 9 May 2018

Decision & Reasons Promulgated
On 23 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

JALEESA [R]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Ashraf, Counsel

For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, who is a national of Jamaica, appeals from the decision of the First-tier Tribunal (Judge SJ Clarke, sitting at Taylor House on 6 April 2017) dismissing her appeal against the decision of the respondent to refuse to grant her leave to remain on human rights grounds. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the appellant requires anonymity for these proceedings in the Upper Tribunal.

The Reasons for the Grant of Permission to Appeal

2. On 21 February 2018 Upper Tribunal Judge Frances granted permission to appeal for the following reasons: *"It is arguable that the Judge erred in law in his assessment of very significant obstacles to re-integration in his assessment of proportionality. The grounds are arguable."*

The Appellant's Material History

3. The appellant was born in Jamaica on 2 September 1996. She has a younger brother, [T], who was born in Jamaica on 6 November 1999. On 17 August 2011 the appellant, aged nearly 15, together with her brother [T], then aged 11, entered the United Kingdom to visit their mother, [SL]. Ms [L] had previously entered the UK when both her children were small.
4. On 23 January 2012 the appellant applied for leave to remain on human rights grounds. This application was refused on 1 February 2013. On 19 February 2013 the appellant lodged an appeal, which was dismissed by the First-tier Tribunal on 6 August 2013. This followed a hearing at Hatton Cross, where the appellant and her younger brother were legally represented, and the Judge received oral evidence from them as well as from their mother.
5. On 16 August 2013 the appeal rights of the appellant and her younger brother were exhausted.
6. On 3 April 2014 the appellant made a further application for leave to remain on family and private life grounds. This was refused on 20 June 2014. On 23 June 2014 the appellant was served with RED.001 and RED.003 notices.
7. On 1 July 2015 the appellant made a third application for leave to remain on the grounds that there would be very significant obstacles to her integration in Jamaica if she were required to leave the UK or, in the alternative, her removal from the UK would amount to a disproportionate and therefore unlawful interference with her right to family life that she enjoyed in the UK with her mother, brother [T] and her two British half-siblings.
8. The respondent issued a refusal of that application on 4 August 2015, certifying that her human rights claim was clearly unfounded. The appellant subsequently applied for a judicial review of that decision, resulting in a consent order dated 23 November 2016. This resulted in a further, appealable, decision of 9 December 2016.

The Hearing Before, and the Decision of, the First-tier Tribunal

9. Both parties were legally represented before Judge Clarke. The Judge received oral evidence from the appellant and her mother. The Judge's findings of fact and conclusions were set out at paragraphs [6] to [17] of his subsequent decision. He lamented the fact that the Tribunal decision of 2013 was not available *"because there may be findings of fact which have an impact upon this decision"*.

10. On the issue of whether the appellant qualified for leave to remain under Rule 276ADE(1)(vi), the Judge held at paragraph [10] that he was approaching the case on the basis that the grandmother had no interest in the appellant, and her mother had said she was not in contact with her. However, the appellant's mother was still in contact with her own brother, who was not physically abusive to the appellant, and who could provide some degree of support to the appellant. Further, the appellant had a father who was in Jamaica, and she could ask him for some assistance to get settled. The appellant also said she had cousins who were in the same class at school as her, "*and they are also part of a network*". The appellant's mother was a regular visitor to Jamaica, and she could also assist in settling the appellant in Jamaica.
11. At paragraph [11], the Judge held that the appellant had tried to commit suicide in the past, but there was no psychiatric report or suggestion currently by her that she would commit suicide if returned to Jamaica, and Mr Ashraf confirmed that Article 3 ECHR was not being relied upon.
12. The Judge reached the following conclusion at paragraph [12]: "*The appellant has a supportive mother both emotionally and financially, and she has her family members living in Jamaica and she lived there as a child before coming to the UK. I conclude that she has not shown that there are very significant obstacles to her integration to Jamaica.*"
13. At paragraphs [13]-[17], the Judge gave his reasons for finding that the appellant's removal to Jamaica would be proportionate, notwithstanding the fact that she had established family life with her British citizen mother and her half-sisters, and also with her brother [T] who had recently been granted leave to remain.

The Hearing in the Upper Tribunal

14. At the outset of the hearing in the Upper Tribunal, Ms Willocks-Briscoe produced a copy of the 2013 determination which she asked to be admitted into evidence pursuant to Rule 15(2)(a). She had already provided a copy to Mr Ashraf. I agreed that it should be admitted into evidence, but that it was not necessary that I should see it before I had heard argument on the error of law challenge.
15. Mr Ashraf developed the arguments advanced in the grounds of appeal. In reply, Ms Willocks-Briscoe submitted that there was no error of law in the Judge's decision. The Judge had given adequate reasons for finding against the appellant under the Rules and also in an Article 8 claim outside the Rules.

Discussion

16. In **South Bucks District Council v Porter (2) [2004] UKHL 33** Lord Brown said at [26]:

"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of

the issues falling for decision. *The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn* (My emphasis). The reasons need only refer to the main issues in the dispute, not to every material consideration."

17. Ground 1 is that the Judge made irrational findings of fact in paragraph [10] with regard to the assistance that would be available to the appellant from her uncle and father.
18. With regard to the appellant's father, it is not disputed that it was open to the Judge to find that her father was in Jamaica. It is pleaded that there was no evidence before the Judge that the appellant was currently in contact with him. However, as it was not part of the appellant's evidence that she was estranged from her father, it was open to the Judge to infer that she was in contact with him, or at least that she could renew contact with him in the event of her return to Jamaica.
19. With regard to the uncle, it is pleaded that the finding of support from him was perverse in the light of various passages in the witness statement evidence of the appellant, her brother [T], and her mother. It is pleaded that no issue was taken by the Judge as to the reliability of any of this evidence.
20. It is correct that the Judge did not make any adverse credibility findings in respect of the account given by the appellant of her claimed experiences in Jamaica. However, he reasonably understood the thrust of the appellant's evidence as being that her younger brother, [T], had been the sole recipient of physical abuse at the hands of her maternal uncle. Since the appellant's mother had maintained contact with her brother, and he had not been physically abusive to the appellant - as distinct from him being physically abusive to her younger brother - it was not perverse for the Judge to infer that the maternal uncle could provide some degree of support to the appellant. As submitted by Ms Willocks-Briscoe, the Judge was not finding that the appellant could, or should, return to live in the household of her uncle. Indeed, it was clear that this was not what was contemplated by the Judge, as he expressly stated earlier in paragraph [10] that he was approaching the case on the basis that the maternal grandmother has no interest in the appellant - and she lived in the same household as the uncle.
21. The pleader of the grounds of appeal, who was not Mr Ashraf, did not take issue with the Judge's finding that the appellant's cousins in Jamaica were a potential source of support, save to observe that their economic situation and willingness to assist the appellant was "*wholly unclear*". For the avoidance of doubt, I consider that it was open to the Judge to find that the appellant's cousins in Jamaica were a potential source of support.
22. Ground 2 was that the Judge erred in failing to consider the medical evidence from Dr Alison Davison, a GP, dated 28 February 2017. She said that the appellant was suffering from severe ulcerative colitis and severe anaemia, and that she had ongoing

low mood and anxiety relating to her immigration status. The ongoing stress of the situation was detrimental to her current health. She was awaiting a mental health assessment in the community and a follow-up at the Inflammatory Bowel Disease Clinic.

23. I do not consider that the Judge erred in law in not referring to this piece of evidence, as it was not suggested that the medical evidence disclosed a current suicide risk. It was also not suggested that appropriate medical treatment for the conditions identified by the GP would not be available to the appellant in Jamaica.
24. In conclusion, the Judge gave adequate reasons for finding that there would not be very significant obstacles to the appellant's reintegration into Jamaica.
25. Ground 3 is that the Judge erred in his assessment of proportionality. Having reviewed the Judge's reasons, I am wholly unpersuaded that there is any merit whatsoever in this ground of appeal. When considering the claim outside the Rules, the Judge looked at the appellant's case, as he says at paragraph [6], "*at its highest*". He accepted that the appellant enjoyed family life with her British citizen mother, her half-sisters and her younger brother. He found that the removal of the appellant would have a great impact upon her siblings, and in particular [T], who had seen her as a mother-figure when they were in Jamaica. He took into account that the British citizen children did not have their birth-father around, and that the appellant was "*an adult figure*" in their lives.
26. The Judge did not draw an adverse inference against the appellant for not regularising her status earlier, given that she was a minor when she first came here. He recognised that she was not the person who had made the decision not to return, but to overstay. He also accepted that the appellant - "*according to her case*" - had had a harsh time in Jamaica.
27. On the other side of the equation, he took into account that there had been a delay of over a year before the appellant had made the application which was the subject of the appeal before him. She had familiarity with the culture in Jamaica, and she had various family members there, and her mother had visited Jamaica frequently after an initial failure to visit her and [T] for the first four years. The appellant had aspirations to further her education, which was something she could achieve in Jamaica.
28. In short, it was clearly open to the Judge to find that the proposed interference was proportionate.
29. The Judge did not have the benefit of the Tribunal determination of 2013 when assessing the evidence. But it is not suggested by Mr Ashraf that the appellant was in retrospect a victim of procedural unfairness on account of the Judge not taking the findings of fact made by the Tribunal in the 2013 determination as his starting point. On the contrary, it was to her advantage that the Judge did not have sight of it, as the previous Judge did not find the appellant or her mother credible in their account of past mistreatment in Jamaica.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

Signed

Date 18 May 2018

Judge Monson
Deputy Upper Tribunal Judge