



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/06826/2018

THE IMMIGRATION ACTS

Heard at Field House  
On 18<sup>th</sup> October 2018

Decision & Reasons Promulgated  
On 16<sup>th</sup> November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JOAN ALLET BURKE WALKER  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr T Lindsay, Home Office Presenting Officer  
For the Respondent: Mr M West, Counsel instructed by Thomas Andrew & Daodu Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of Judge Shore to allow the appeal of Joan Allet Burke Walker against refusal of her private and family life claim with a view to obtaining leave to remain in the United Kingdom.
2. I shall refer to the parties as they were before the First-tier Tribunal; that is to say, to the Secretary of State as the Respondent and to Joan Walker as the Appellant.
3. The Appellant came to the United Kingdom in 2002. She is currently living with her daughter and her daughter's child. Her claim was based on both private and family life. Her private life claim was based on her assertion that she no longer had social,

cultural or family ties to Jamaica due to the length of time that had elapsed since she last lived there. Her family life claim was based very much on the fact that her daughter relies upon her to take care of her granddaughter. At the relevant time, the Appellant's granddaughter was a baby. The financial position of the Appellant's daughter was that she had an army pension, together with state benefits that were intended to assist her in financially supporting her baby daughter.

4. The judge found that neither the Appellant nor her daughter were credible witnesses, each of them having given evidence at the hearing. That is stated in unqualified terms in the first sentence of paragraph 51 of the decision, to which I shall return.
5. At paragraph 56 the judge made the following findings of fact:
  1. The Appellant has established a family life with her daughter and granddaughter;
  2. she assists with the care of her daughter and granddaughter;
  3. she has not met the standard of proof required to show that she has no family or friends in Jamaica as she and the Sponsor were not credible witnesses;
  4. she has not met the required standard of proof to show that she has no property or assets in Jamaica;
  5. she has not shown the required standard of proof that she has lost ties with Jamaican culture;
  6. she has exaggerated the effect of her medical conditions; and
  7. she has a close and loving relationship with her daughter and her granddaughter.
6. Based on those findings, the judge went on to conduct an assessment of the Appellant's position under Article 8. Having repeated his findings of fact at paragraph 65 (as set out above) the judge continued as follows at paragraph 67 -
  66. I find that to refuse the Appellant leave to remain would amount to an interference by the Respondent with the exercise of her right to respect for her private and family life of such gravity to engage the operation of Article 8. Such interference may have consequences of such gravity as to potentially engage the operation of Article 8 because of the effect on her, her daughter and her granddaughter. I find that such interference is in accordance with the law. Such interference is not necessary in a democratic society in the interests of the economic wellbeing of the United Kingdom, as I have made a finding the Appellant would not be a burden on taxpayers.
  67. Such interference in this case is not proportionate to the legitimate public end that the Respondent was seeking to achieve. The balance that I undertook was the public interest in denial of leave to remain to which I have given substantial weight; the overstaying of the Appellant; and the fact that her private life has mostly been established when her immigration status was precarious. Against

this, I have considered the extent of the private life established by the Appellant and the effect on her and her daughter and granddaughter of the decision to refuse leave to remain. I find the balance tilts in favour of the Claimant in making this decision. I considered the best interests of the Appellant's granddaughter under Section 55 and consider that her best interests are served by her grandmother remaining in the United Kingdom to contribute to her care. I find that the decision appealed against would cause the United Kingdom to be in breach of its obligations under Article 8 of the ECHR because the Appellant has shown exceptional circumstances as set out in my findings above and refusal would result in unjustifiably harsh consequences for the Appellant such that refusal of her application would not be proportionate.

7. The Grounds of Appeal by the Secretary of State can be summarised as follows:
1. The judge failed to explain why he found that there was family life between the Appellant and her adult daughter given the findings concerning their complete lack of credibility.
  2. Having acknowledged that the Appellant could not meet the private life requirements of paragraph 276ADE, the judge nevertheless proceeded to carry out a proportionality assessment on the basis of his finding (as criticised in ground 1, above) that she had established family life. The judge moreover refers to the Appellant having shown "exceptional circumstances", but it is not at all clear from the decision what those circumstances are said to be.
8. The difficulty I have with the judge's decision stems from the fact that it is based upon mixed credibility findings that are not fully explained. It is of course possible for a judge to accept parts of a witness' evidence whilst rejecting others. But it is a difficult exercise, and one that needs to be carefully reasoned. At paragraph 51, the judge unequivocally stated that the Appellant and Sponsor were not credible witnesses -

I found the Appellant and Sponsor were not credible witnesses. Their evidence was very self-serving and varied depending on the point they wished to make. For example, the Appellant stressed that she had multiple health issues when it suited her to emphasise the difficulty she would have with her health if removed, but then said that she was the sole carer of an 18-month-old baby. I find that both cannot have been accurate. Indeed, they weren't, as the evidence then emerged that the Appellant and Sponsor shared care of the child and the household chores in direct contradiction of the written evidence. [Emphasis added]

It would thus seem to follow from these findings that nothing that either the Appellant or her daughter had told the judge about the level of care that the Appellant provided for her granddaughter could be relied upon as a basis for making positive findings in that regard. Certainly, this is the logic that appears to lie behind the negative credibility findings at sub-paragraphs 3 to 6 of paragraph 56 of the decision (see paragraph 5, above). What the judge did not explain however was why, given the contradictory and mutually exclusive accounts the appellant had given as to her role in caring for her granddaughter, he nevertheless accepted that she provided valuable assistance in that regard.

9. Given the adverse credibility findings that the judge had made in respect of the Appellant and her daughter, the basis upon which he found 'family life' to have been established is also far from clear. As between the Appellant and her adult daughter, it was of course necessary for the Appellant to adduce credible evidence of dependency that was over and above the normal emotional ties that typically exist between adult family members. One possibility was that the appellant could establish financial dependency upon her daughter. However, at no point (other than possibly by way of implication at the end of paragraph 66) does the judge make a specific finding that the Appellant is financially dependent on her daughter. The other possibility was that the Appellant's daughter was dependent upon her to care for her infant child. However, as explained in the previous paragraph, the judge's reasoning in this regard is highly unsatisfactory. Moreover, the judge appeared to acknowledge the difficulty faced by the Appellant in establishing the existence of family life, based as it was upon her own discredited evidence: "I find that the Appellant, despite the unreliability of her evidence, has established family life" [Emphasis added]. Unfortunately, the judge did not explain the basis upon which he was able to find that family life had been established notwithstanding the unreliability of the evidence relied upon to support this claim. Furthermore, the judge did not identify the "exceptional circumstances" to which he referred at paragraph 67 and upon which he relied for consideration of the Appellant's claim outside the Immigration Rules. I have thus concluded that the two grounds raised by the Secretary of State are made out and that the judge made an error of law on both counts.
10. With great skill and tenacity, Mr West sought to persuade me that these errors of law were not material to the outcome of the appeal, which he argued was in any event inevitable. I disagree. The outcome of the appeal plainly turned upon particular findings of fact that I have found wanting from the judge's decision.
11. Mr Lindsay, on the other hand, invited me to preserve the judge's adverse credibility findings and to set aside only the positive findings that the judge had made in relation to family life. That seems to me to be inconsistent with the very reasons that I have given for finding that the judge has made a material error of law. It would have the effect of forcing any future decisionmaker to either reject the claim in its entirety or to undertake the complicated task of making mixed credibility findings. It therefore seems to me that the only sensible course would be to start again, thus allowing a judge (a) to accept or reject the appellant's evidence in its entirety, or (b) (subject to giving good and sufficient reasons for doing so) to accept parts of her evidence whilst rejecting others. I have therefore decided to remit the appeal to the First-tier Tribunal, to be reheard afresh at Taylor House by any judge other than Judge Shore.

### **Notice of Decision**

1. The appeal is allowed.
2. The decision of the First-tier Tribunal is set aside.

3. The appeal is remitted to the First-tier Tribunal to be heard afresh (no findings of fact preserved) by any judge at Taylor House other than Judge Shore.

Signed

Date: 29<sup>th</sup> October 2018

Deputy Upper Tribunal Judge Kelly