



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/11458/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 3 April 2018

Decision & Reasons Promulgated  
On 25 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

VERONICA ELOUISE HINES GORDON  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Kumi of Counsel instructed by Templeton Legal Services  
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Widdup promulgated on 12 June 2017 dismissing the Appellant's appeal against a decision of the Respondent dated 13 April 2016 to refuse a human rights claim made by way of an application for leave to remain in the United Kingdom.
2. The Appellant is a citizen of Jamaica born on 11 March 1951. She entered the United Kingdom on 13 June 2002 as a visitor with leave valid until 12 December 2002. On 13 November 2002 she applied for leave to remain as a student, which was granted until 30 September 2003. Thereafter she made successful applications for successive periods of leave as a student up until 30 April 2009. On 28 May 2009 the Appellant

made an application as a Tier 4 (General) Migrant. On 16 July 2009 the application was refused with no right of appeal.

3. On 31 July 2009 the Appellant made a human rights based application which was refused on 31 March 2011 with no right of appeal. Indeed, an attempt to lodge an appeal with the IAC was struck out for want of jurisdiction.
4. On 10 April 2013 the Appellant made an application for a residence card on the basis of a claimed derived right of residence. The application was refused on 24 January 2014.
5. On 18 January 2016 the Appellant was served with notice as an overstayer. On 3 February 2016 the Appellant made further representations by way of Statement of Additional Grounds which were in due course considered by the Respondent leading to the decision of 13 April 2016 to refuse leave to remain which constitutes the 'human rights decision' that is the subject of these proceedings.
6. The application in 2013 for a derivative residence card was made on the basis of an assertion that the Appellant was the primary carer of two British citizens, TF (date of birth September 1999), and SF (date of birth September 2003). The Appellant is the great-aunt of the girls: the Appellant's sister's daughter - i.e. the Appellant's niece - was the girls' mother. The girls' mother, SLF, was diagnosed with cancer and died from her disease on 3 May 2008. It is said that the Appellant had begun to undertake a caring role in respect of the girls during the end stage of their mother's illness, and had continued to act as a joint primary carer with the girls' father, Mr AM. However, it was noted that at the time of the application in 2013 the Appellant did not reside with the girls. For this and other reasons it was concluded that the girls would not be required to leave the UK or the EEA in the event of the Appellant's removal, and so the application was refused.
7. Nonetheless, the Appellant's relationship with the girls was taken forward into the subsequent representations made on her behalf.
8. In the premises, it is helpful to have regard to the supporting evidence relevant to a consideration of the nature and extent of the Appellant's relationship with the TF and SF. Included in the materials in the Respondent's bundle before the First-tier Tribunal were:
  - (i) A letter dated 1 June 2011 from Mr AM in which it was stated that the Appellant "*has been a good grand aunt, hard working, helpful and reliable and has a close bond with the children*".

(ii) A statement by the Appellant dated 13 July 2011 referring to the Appellant's relationship and contact with the girls. However, the statement also referred to providing help to the Appellant's sister, Mrs RF: "*F is currently suffering from severe form of osteoarthritis and cannot walk as a result. She recently had a major operation and has limited mobility. I also help her with her condition and she is now depending me to assist her with her daily life due to her current situation*".

(iii) The Statement of Additional Grounds dated 3 February 2016 additionally referred to a caring role in respect of an aging uncle: "*the applicant has also taken on a vital role in the care of her uncle, Hubert Vassell, whose age and medical condition have deteriorated over recent years*".

(iv) In the circumstances of undertaking caring roles in respect of a sister and an uncle, it is not immediately or readily apparent that the Appellant was in a position to provide anything more than incidental care and support to the girls.

(v) The Appellant's representatives' covering letter of 9 April 2013 asserts that the Appellant became a mother figure for her deceased niece's children and continues to play a vital role in their upbringing.

(vi) Supporting letters from the girls - which are undated but appear to relate to representations in or about mid 2011 - refer to the Appellant's role as "*looking after us since mommy died*". By way of example it is said "*She does my hair for me when it needs it*". It is also said that she "*cooks sometimes and cleans up*". The hope is expressed that the Appellant will be allowed to live in England.

(vii) These letters do not suggest a constant presence. It is to be recalled that the EEA application was refused in part because the Appellant was not living at the same address as the girls.

(viii) In this context letters of support sent under cover of a letter dated 21 March 2016 acknowledge that the Appellant does not reside with the children.

(ix) The latter letters include a letter from Mr AM dated 12 March 2016 in which he describes the Appellant as having been "*a very helpful grand aunt with the upbringing of the girls and has developed a good relationship with the children*". A letter from SF says that the Appellant "*has been very supportive*" adding "*She comes over to visit us and bring things for us*". A letter from TF dated 12 March 2016 also refers to her relationship with the Appellant who she describes as a "*grand aunt*" who "*has been helping us over the past few years since my mum died*".

(x) It may be observed that both of Mr AM's letters refer to the Appellant as a 'good grand-aunt', but neither refers to an assumption of a quasi-parental role.

9. The Respondent considered all of these matters in making the decision of 13 April 2016: see the 'reasons for refusal' letter ('RFRL') of that date. The RFRL notes that the

Appellant had not raised anything that would lead the Respondent to believe that she had a partner or any dependent children under the age of 18, and accordingly rejects the Appellant's case under the Immigration Rules in respect of family life. Consideration is then given to private life: this includes what had been said about the Appellant's relationship with various members of her family. However, the RFRL concludes that the Appellant did not qualify under paragraph 276ADE of the Immigration Rules. The RFRL then sets out consideration of exceptional circumstances, and in this context specific regard is had to the nature of the relationship with the girls: see RFRL at paragraph 22 *et seq.*.

10. The Respondent noted that the evidence suggested that the Appellant had been "*a very helpful grand aunt*" (paragraph 24), but also noted that she did not reside with the girls and it was not accepted that she was their primary carer (paragraph 26). It was also noted at paragraph 27 that the Respondent considered that the Appellant had "*failed to demonstrate that you are responsible for the day-to-day care of your niece's children*". In those circumstances, and for all of the other reasons given in the RFRL, the Respondent determined that the Appellant's human rights claim should be refused.
11. The Appellant appealed to the IAC.
12. The appeal was dismissed for reasons set out in the decision of Judge Widdup.
13. The Appellant applied for permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Boyes on 9 January 2018 on a limited basis:
 

*"It is arguable that the Judge has confused parental responsibility with sole responsibility and thus the ground is arguable as an error of law.  
The conclusion reached in relation to S.117 is sound in law and logic. The Article 8 assessment was fair and balanced.  
Permission to appeal is granted on ground 1 only."*
14. Implicitly underlying the grant of permission to appeal is the proposition that the consequence of the contended error is that the Judge will have erred in the proportionality balance with particular reference to section 117B(6) of the Nationality, Immigration and Asylum Act 2002.
15. By way of context to a consideration of the Appellant's challenge to the decision of the First-tier Tribunal, I note that the proceedings before the First-tier Tribunal were initially adjourned because Mr AM was unable to attend the hearing having travelled to Bali to attend a funeral: see paragraphs 7-9 of Judge Widdup's Decision. The Judge dealing with the initial hearing listed on 18 May 2017 "*accepted that Mr AM's*

*evidence could be material*" (paragraph 9). (Written representations in support of an adjournment had characterised Mr AM as the Appellant's 'primary witness'.) The appeal was relisted for 5 June 2017 accordingly.

16. On 31 May 2017 a further adjournment request was made: it was said that Mr AM could again not attend the scheduled hearing; having returned to the UK, he had left on 26 May 2017 to travel to Jamaica and was not due to return until 9 June 2017. The adjournment request was refused because no good reason had been shown for Mr AM's inability to attend. The appeal was listed as planned.
17. At the hearing on 5 June 2017 there was no further application for an adjournment: the Appellant's representative indicated that he was content to proceed without Mr AM's attendance.
18. It was also the case that the girls did not attend; further letters were presented from them. The letters, dated 4 June 2017, are on file and are similar to the letters dated 12 March 2016 that had previously been filed in the Appellant's bundle. The letters are also similar in content to the earlier letters to which I have already referred. SF again refers to the Appellant as having "*been very supportive during these past few years*", and it is said "*She looks after and takes care of us*". TF says in similar terms that her great-aunt "*has been very supportive to me when I was young, especially after mum died in 2008*", before going on to say "*She tries her best to look after me and my younger sister. She brings us things and gives us emotional support. She comes by my house and checks up on us from time to time*".
19. The appeal proceeded without any 'live' evidence from the father of the girls, and without any live evidence from the girls. (Although both girls were still minors, the older was approaching her 18<sup>th</sup> birthday.)
20. The Appellant gave evidence before the Tribunal as did her sister, Mrs F.
21. The Judge has set out the evidence that was before him, both documentary and oral, in some detail and with some cogency: paragraph 13 *et seq.*. The Judge then sets out 'Conclusions' from paragraph 38.
22. The Judge records that it was asserted by the Appellant in her evidence that she played the most important part in the children's upbringing: "*The Appellant's case is that she has a parental relationship with the children. In her oral evidence she said that of all the family in the UK she plays the most important part*" (paragraph 66). The Judge

rejected this claim at paragraph 69 pursuant to reasons given at paragraphs 67 and 68:

*“I do accept that the Appellant has an important role in the children’s upbringing but I reject her claim that it is the most important. I say that with the evidence about the significant role played by their grandmother, Mrs F, in mind.”*

23. The Judge sets out his reasons for rejecting the Appellant’s evidence in this regard with considerable clarity at paragraph 68. The reasons go beyond the reference to Ms F’s role referenced at paragraph 69. The Judge noted an absence of detail in the Appellant’s description of her role in the children’s upbringing (paragraph 68(i)), in contrast to the evidence of Mrs F – which the Judge found credible – as to her, Mrs F’s, role which was more extensive than the Appellant’s (paragraph 68(vi), and see also paragraph 28).
24. The Judge also identifies that it emerged during the course of Mrs F’s evidence that the children’s father had a live-in partner, Ava, who had in fact been residing with the girls and their father for some two years. The Judge – entirely sustainably – found that *“The presence of Ava at the family home means that there is no need for someone else to live in their home while their father is abroad”* (paragraph 68(iv)). He also found that the Appellant’s *“credibility and the reliability of her evidence was damaged by her omission to mention the presence of Ava in the family home”* (paragraph 68(iii)).
25. The submission that the Judge confused parental responsibility with sole responsibility is grounded on the Judge’s finding that the Appellant’s role was not *“the most important”*.
26. I do not accept that the Judge’s finding in this regard is evidence of a confusion as to the relevant issue. In my judgement it is manifestly clear that the Judge made this finding because he was addressing the evidence of the Appellant. It was a finding on the Appellant’s own assertion as to the nature of her role.
27. It is also manifestly clear that the Judge properly addressed the question of parental responsibility and sustainably reached a finding unfavourable to the Appellant. This underscores the absence of any confusion.
28. The Judge plainly had in mind the case of **R (on the application of RK) v Secretary of State for the Home Department (s.117B(6); “parental relationship”)** IJR [2016] UKUT 00031 (IAC). It is cited at paragraph 57, and further referenced at paragraphs 70 and 71 (albeit mistyped as ‘RJ’).

29. It is helpful to recall what is said in **RK** at paragraph 43:

*"I agree with Mr Mandalia's formulation that, in effect, an individual must 'step into the shoes of a parent' in order to establish a 'parental relationship'. If the role they play, whether as a relative or friend of the family, is as a caring relative or friend but not so as to take on the role of a parent then it cannot be said that they have a 'parental relationship' with the child. It is perhaps obvious to state that 'carers' are not per se 'parents'. A child may have carers who do not step into the shoes of their parents but look after the child for specific periods of time (for example whilst the parents are at work) or even longer term (for example where the parents are travelling abroad for a holiday or family visit). Those carers may be professionally employed; they may be relatives; or they may be friends. In all those cases, it may properly be said that there is an element of dependency between the child and his or her carers. However, that alone would not, in my judgment, give rise to a 'parental relationship'."*

30. Mr Kumi has also directed my attention to the case of **TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049**. Although **TD** case is concerned with sole responsibility, it is relevant herein insofar as it provides something of a steer as to what is contemplated by the notion of 'responsibility' in respect of a child under the immigration legislation and rules. Drawing upon Court of Appeal authorities cited within the body of the decision, paragraph 27 is in the following terms:

*"What is apparent from both the judgments is the need to establish 'responsibility' for the child's upbringing in the sense of decision-making, control and obligation towards the child which must lie exclusively with the parent. Financial support, even exclusive financial support, will not necessarily mean that the person providing it has 'sole responsibility' for the child. It is a factor but no more than that."*

31. I note that **TD** was not expressly referred to by the Upper Tribunal in the case of **RK**, but nonetheless it seems to me that insofar as **TD** deals with questions of 'responsibility' - even if it thereafter addresses the meaning of 'sole responsibility' - it is instructive. In any event I can see nothing inconsistent as to what is said with regard to responsibility in **TD** and what is said in the case of **RK** in respect of 'parental relationship'. 'Stepping into the shoes of a parent' denotes exercising a degree of decision making and control in respect of the direction of a child's life. This is akin to assuming 'responsibility' - although this must be considered as distinct from the legal concept of 'parental responsibility': see paragraph 42 of **TD**.

32. There was no reliable evidence before the First-tier Tribunal to sustain a conclusion that the Appellant had 'stepped into the shoes of a parent' of the two girls. The Appellant had essentially made an assertion as to the significance of her role, which was not backed up with any detail suggesting that she had any function in guiding or shaping their lives, as opposed to offering care from time-to-time such as shopping, cooking, and doing their hair. Nor was her assertion backed up by any supporting testimony; rather it was undermined by the available evidence. The

Appellant's case was not helped by the fact that her evidence did not come up to proof in respect of the extent to which she claimed she played an important part in the girls' lives.

33. Nor was the Appellant's case helped by the complete absence of an 'on-point' witness statement from the father of the girls. Although there were letters on file from the father written at various stages in the Appellant's immigration history, those letters do not go beyond acknowledging that the Appellant had a supportive role as a great-aunt. There is absolutely nothing in those letters to suggest that Mr AM was making decisions in respect of the children after discussion with the Appellant, or was otherwise allowing the Appellant to make such decisions herself, or jointly with him, or jointly with any other persons.
34. I have noted above that the First-tier Tribunal Judge acknowledged that the Appellant had an important role in the children's upbringing. However, in my judgement it was entirely sustainable that the Judge concluded that the relationship was not a parental relationship. I am also clear that the Judge in so concluding had not become confused with the concept of 'sole responsibility'. The Judge's references to **RK** make this evident, as does the unequivocal finding at paragraph 71 - "*I do not find that the Appellant's relationship is a parental relationship*" - and the concomitant finding that section 117B(6) is of no relevance (paragraph 72).

### **Notice of Decision**

35. The Decision of the First-tier Tribunal contains no error of law and accordingly stands.
36. The Appellant's appeal remains dismissed.
37. No anonymity direction is sought or made.

*The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.*

Signed:

Date: **23 May 2018**

**Deputy Upper Tribunal Judge I A Lewis**