Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/10358/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18 February 2019	**On 6 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

MISS AMOY AMARA GRANT
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Soloman of Counsel, instructed by Aschfords Law
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against a decision of Judge of the First-tier Tribunal Mill who, in a determination promulgated on 21 November 2018 dismissed her appeal against a decision of the Secretary of State made in March 2016 to refuse her leave to remain as the carer of her aunt.

2. The appellant entered Britain on 8 January 2015 as a family visitor and thereafter overstayed. She made the application for leave to remain on 19 June 2015, which was refused on 8 October that year. A further application was made on 21 December 2015 and she appeals against refusal of that application.

3. The appellant applied on the basis that she was the carer of her aunt, Ms Imogen East who is a citizen of Jamaica, who was born in December 1943. The judge noted that Ms Grant had a number of health problems but commented that the primary source of evidence in relation to the medical problems was rather poor as there were no up-to-date reports of any treating clinicians and that the very brief letter from her general practitioner was dated 3 August 2004. There was no evidence to state that Ms East required day-to-day care and there was no occupational therapy assessment which appeared to have been carried out which would indicate the extent of care which was required on a day-to-day basis.

4. The judge noted a psychological report from a Dr Benjamin Piper based on an assessment made on 20 February 2018 and an independent social work report but stated that they were based on snapshot evaluations of the facts and circumstances of Ms East and it did not appear that the authors had had any access to medical records. The judge pointed out that even if Ms East required significant care there were a number of other family members in Britain who could provide this. Ms East has three daughters in Britain who all live in the same geographical area of South East London and the judge stated that it was clear that they, along with a number of other individuals, were able to support and care for their mother at all times. The judge noted that the claim was based around the fact that the significant numbers of other family members were unable to devote time to Ms East and that that was what the appellant was now doing. The judge considered that there were nothing beyond normal emotional ties that are commonly seen between adults and extended family members. The appellant had only lived with her aunt for five months after arrival in Britain before making the original application which was rejected and when she reapplied the application was refused. The judge referred to the public interest requiring firm immigration control and stated that there were no factors which outweighed the public interest in the context of the appeal and the matters which he had taken into account.

5. The judge noted that the appellant was, at the time of hearing, pregnant with an estimated due date of 23 January and that the child had significant health complications. The judge considered that the appellant would have a significant commitment to caring for the child and therefore she would not, in any event, always be available to meet the needs of Ms East.

6. There had been an application for an adjournment at the beginning of the appeal on the basis that Ms East had travelled to Jamaica a few days prior to the appeal on what was asserted was urgent business which appeared to relate to property matters in Jamaica. The judge was told that Ms East would return within the following week.

7. The judge found the explanation surprising. There appeared to be urgency and as the appeal was based upon the apparent ill-health of the appellant's aunt, both psychologically and physically, it did raise issues about the extent of the state of her ill-health. There was no documentation submitted to establish the apparent urgent reasons for the appellant's aunt's travel to Jamaica given her undoubted knowledge that

the appeal was set down to be heard in the very week that she was absent from the United Kingdom. The judge concluded that there was nothing unfair about proceeding with the hearing, noting that there was a written witness statement from the appellant's aunt. The judge also took into account that there had already been two adjournments of the appeal, one in September 2017 and the other in April 2018, both of which had been made on the application of the appellant. The judge therefore had refused the application.

8. The lengthy grounds of appeal first stated that the judge was wrong to adjourn the appeal, firstly because Ms East was abroad and secondly to allow the respondent to consider giving consent to new matters raised in the appeal: the appellant's relationship with a British citizen partner and her pregnancy. Secondly, it was argued that the judge had failed to give adequate account of material considerations by not engaging with the oral submissions at the hearing and the detailed skeleton argument and that he had failed to direct himself with regard to the burden and standard of proof. It was suggested that the judge had applied too high a standard of proof by stating that he was not convinced there were any compelling reasons to justify an Article 8 assessment. Moreover, it was argued that the judge had erred in his consideration of the rights of the appellant under Article 8 outside the Rules; that he should have noted that the appellant's aunt was British and considered the further evidence, including the written evidence, which was before him. It was stated that the judge should have taken into account the issue of a blue badge to Ms East and that the judge was wrong to conclude that she did not require day-to-day care. It was stated that the judge was wrong to give little weight to the reports from the psychologist and the social worker. It was stated that the judge had erred in his appraisal of the daughter's statements and that he should have considered the appeal with reference to the new matters raised: given that the Secretary of State was not represented at the appeal and therefore could not give his consent to the new matter which had arisen, the judge should have considered that it was implicit that consent was granted. It was also argued that the judge should have taken into account that the appellant, if allowed to work, would assist in the economic wellbeing of the country and had failed to recognise that the term "little weight" in part 5 of the 2002 Act did not entail an absolute rigid measurement or concept. Finally, it was argued that the judge had erred in stating that Ms East was Jamaican.

9. At the hearing of the appeal before me Mr Soloman relied on the grounds of appeal asserting that the appellant was in a committed relationship with her partner, albeit that they did not live together nor had the relationship continued for two years and moreover that the judge should not have adjourned the appeal.

10. I consider that there is no error of law in the determination of the judge. I consider that the judge was fully entitled to refuse to adjourn the appeal. It is surprising that Ms East left the country for a short break when the appeal, which had been adjourned on two previous occasions had been listed for hearing. The judge was entitled to consider that Ms East could

have delayed her trip and there is no evidence to show that she could not have done so. He was entitled to take into account the fact that the appeal had been adjourned on two occasions before this hearing. The Immigration Procedure Rules (Rule 2) make it clear that an overriding objective is to ensure that appeals are properly determined effectively and speedily and moreover that there is an obligation on the parties to further that overriding objective by cooperating with the Tribunal. I consider that in these circumstances the appellant should have ensured that those whom she wished to be witnesses at the appeal attended and the fact that she did not so shows a lack of cooperation. Moreover, in any event, the judge was fully entitled to take into account the evidence before him when concluding that there was sufficient evidence to determine the appeal.

11. The assertion that the judge had not taken adequate account of material considerations by engaging with the oral submissions at the hearing in the detailed skeleton argument is unsubstantiated. There is nothing to show there was an argument put forward which could have led to any different conclusion.

12. The assertion that the judge applied the wrong standard of proof in paragraph 19 by stating that he was "not convinced" is a complaint which is taken entirely out of context, what the judge said was:- "I am not convinced in this case there is any compelling reason to justify an Article 8 assessment, but in order to determine all relevant issues I proceed to do so." It is clear therefore that he did go on to make the Article 8 assessment and that he was not referring to the burden of proof when he made that comment. It was disingenuous for the drafter of the grounds of appeal to suggest that that was the case. Moreover, the grounds of appeal which assert that the judge has stated that there required to be something compelling to assess the appellant's Article 8 rights outside the Rules is again taking that comment out of context. The reality is that the judge did consider the Article 8 rights of the appellant properly and thoroughly.

13. I do not consider that the issue of the nationality of the appellant's great aunt is relevant given that she is resident here and there is no question of her not being entitled to do so.

14. The judge did properly assess the evidence put before her and indeed the detailed statements. I have considered the statements of Jasmine Smith, Shantel East, Neslin Newell and of Asher Burnett, the grandson of Ms East, as well as the statements of Ms East and the appellant. The reality is that the judge was correct to indicate that while Ms East's daughters lead busy lives there is nothing to show why they could not give the care and assistance to their mother which could surely be expected of children who live nearby. Moreover, the judge was correct in his analysis of the reports and his conclusion, that there was nothing in those to show that Ms East required the permanent care of this appellant or indeed permanent care of any sort was clearly open to him. It is clear that Ms East has medical problems and suffers from psychological difficulties primarily related, it appears, to a burglary at her home when she was absent from the house,

but there is nothing to indicate that she could not live on her own let alone anything to indicate that her children, nine in all, could not assist. I note that the social worker's report refers to a son, Colin, and comments that he is not assisting but gives no reason why he should not. Moreover, I consider that the judge was entitled to find there was nothing beyond normal emotional ties. It is not the case that the appellant lived with her aunt from her entry into Britain until the present time. I would add that the fact that a "blue badge" had been issued to Ms East does not indicate that she needs permanent support. I note the statement of the appellant's father but he does not appear to have any strong relationship with her such there are any ties beyond the usual ties between a parent and an adult child.

15. The grounds refer to the issue of financial support but that is not really a relevant factor in this case. The fact that the appellant is not dependent on the state does not mean that she would be entitled to remain, as indeed the fact that she could work here is not a factor of any weight in an Article 8 assessment. The judge was entitled, moreover, to consider that little weight should be placed on the private life of the appellant built up at a time when she did not have leave to remain in Britain. In all these respects I consider that the judge made no error of law in his assessment.

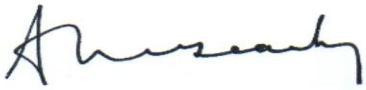
16. The grounds of appeal assert that the judge erred by not considering the fact that the appellant was pregnant at the date of hearing – she has now given birth - and she has a claimed partner here who gave evidence. Consent from the Secretary of State was required for that to be taken into consideration and the fact that there was no representative for the Secretary of State at the hearing does not mean that consent was implicitly given. Indeed, the reality is the matter of the appellant's relationship with her claimed partner, and indeed the birth of their child, is a matter which should be considered in a fresh claim. It is of note that the child, who was born in January this year, has not yet been assessed as requiring an operation on his heart although it appears that that is likely. But in any event, there is nothing to indicate the strength of the relationship between the appellant and her claimed partner. Although her partner, Dean Richards, states that he is committed to both the appellant and their child, he does not live with the appellant and the child and there is no indication of his support for them in the papers. It is asserted that he is British and therefore the child would be British but that is not clear from his statement. I consider that this issue is a fresh matter which, should the appellant wish, should be put to the Secretary of State. As it is, the judge was fully entitled not to deal with that issue which was obviously not before the Secretary of State when the decision was made and I endorse the judge's comment in the last sentence of his determination that he would urge consideration of that issue by the respondent prior to the removal of the appellant.

17. As it stands however, there is no error of law in the determination of the judge in the First-tier Tribunal and his decision must therefore stand.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed:  Date: 1 March 2019

Deputy Upper Tribunal Judge McGeachy