Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/20817/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23rd August 2019	**On 6th September 2019**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

IAN JOSEPH MCFARLANE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Unigwe (instructed by Huka & Co Solicitors)
For the Respondent: Mr S Walker (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a judgment of First-tier Tribunal Judge NMK Lawrence promulgated on 16th May 2019 following a hearing at Hatton Cross on 30th April 2019.

2. The Appellant is a Jamaican national, born in 1980, who entered the UK initially in February 2000 as a visitor and then was successful in obtaining leave as a student on two occasions until February 2004. Thereafter, he made numerous unsuccessful applications culminating in the one leading to the appeal before Judge Lawrence. That decision was to refuse an application to remain on the basis that he was the carer or a British

national. The application was refused in November 2016 initially but then, following further submissions, there was a further Decision made on 28th September 2018, again refusing the application and that formed the basis of the appeal.

3. The appeal before the First-tier Tribunal proceeded on two bases, firstly that he was the sole carer of his British national Sponsor who has a number of health issues. The judge dealt with that, noting the support plan that was in place and that there was additional assistance supplied by Social Services. He dismissed that part of the claim on the basis, as he says at paragraph 14, that in addition to the Appellant, the Sponsor's daughters could provide care but additionally the position is that the UK Social Services have a legal obligation to provide the Sponsor with care and the judge had not been provided with any evidence that it had fallen short. Accordingly, he found the balance to be favour of immigration control and that the Sponsor's right to respect for her moral and physical integrity would not be violated should the Appellant return to Jamaica.

4. The grounds challenging that Decision assert that the judge erred in failing to take proper account of the evidence regarding the amount of care provided by the Appellant and not by Social Services and the grave affect it would have on the Sponsor if he were removed to Jamaica.

5. However, the Upper Tribunal in the case of Ayinde and Thinjom (Carers – Regulation 15A – Zambrano) [2015] UKUT 00560 IAC dealt this point. I provided a copy to Mr Unigwe. The headnote of that case states at paragraph (ii) that:

> "The provisions of Regulation 15A of the Immigration (European Economic Area) Regulations 2006, as amended, apply when the effect of removal of the carer of a British citizen renders the British citizen no longer able to reside in the United Kingdom or in another EEA state. This requires the carer to establish as a fact that the British citizen will be forced to leave the territory of the Union".

Before me Mr Unigwe confirmed they were not seeking to suggest that the Sponsor would leave the UK if the Appellant left. Judge Jordan, in Ayinde and Thinjom, went further than in the headnote at paragraphs 58 and 59 where he said that:

> "If the claim is based on the British citizen being forced to leave the Union, the likelihood of this occurring has to be assessed by reference to the benefits the Union citizen is receiving in the UK and will be entitled to receive were the appellant to leave. Hence, if the British citizen is in receipt of free healthcare, subsidised accommodation (or an allowance to assist in the payment of rent) and State benefits, pensions and fringe benefits in the form of concessions available to the elderly, there will be a significant evidential hurdle in attempting to make out a case that the British citizen will, as a matter of fact, leave the United Kingdom. In reality, if these benefits are not available in the country to which he claims he will be forced to travel

> by reason of the refusal of a grant of a derivative residence card to his carer, the likelihood of his doing so is likely to be remote. Hence the Tribunal will also have to compare the conditions that a British citizen will meet on being forced to settle elsewhere when assessing whether he is being forced to leave the United Kingdom. The greater the disparity, the less likely it will be that the British citizen will in fact leave the United Kingdom. A bare assertion that the British citizen will be forced to leave the United Kingdom is unlikely to be sufficient; all the more so if this has been his only home for many years".

As I have already indicated it is not being suggested that the Sponsor in this case would in fact leave, which means that the Appellant cannot succeed on the basis of a derivative right of residence. Judge Jordan goes on to say at paragraph 59 that:

> "Whilst these appeals were put on the basis that the British citizen has a right to human dignity which is inviolable and must be respected and protected, (the violation of which acts as the spur to his claim to be at risk of a forced departure from the United Kingdom), some care must be taken before reaching such a conclusion. It is not enough that the British citizen would prefer that his carer is permitted leave to remain in the United Kingdom. There is nothing intrinsically lacking in human dignity in being offered the professional help of care workers or being placed into residential accommodation with a sliding-scale of support ranging from a home adapted to the individual's needs, through to accommodation with a warden, through to a residential home; through to full nursing care. It would be plainly incorrect to say that it is a violation of an individual's rights to human dignity to be placed into care or to receive help from professional healthcare workers".

That therefore is an answer to the argument put forward that the judge erred in rejecting the claim for a derivative residence card.

6. The other ground of appeal is a criticism of the judge's dealing with the claim under paragraph 276ADE. It is said that the judge has not taken proper account of the evidence that the Appellant had left Jamaica twenty years ago; that he has no home in Jamaica; no social support; employment prospects are low and he would therefore face very significant obstacles in integrating in Jamaica. The judge referred to that evidence at paragraph 15 of his Decision and then at paragraphs 20 and 21 dealt with it. He notes that the Appellant is almost 40 years of age and has no medical impediments preventing his integration in Jamaica. He says that he has acquired qualifications in the UK and, although he did have certificates, they are currently with the Secretary of State but the judge found he could obtain duplicates. He had not in fact made any attempt to do so. The judge found that on the evidence that he had the Appellant was unlikely to face destitution in Jamaica and that this Appellant has the same chance of making a living in Jamaica as any other Jamaican of his age and that the Appellant had therefore not demonstrated that he was likely to face

destitution on his return. On the evidence before the judge those were findings clearly open to him.

7. It was argued in front of me that proper account ought to have been taken for the length of time the Appellant has been in the United Kingdom and the private life he has established here. However, as is clear from what I said at the top of this judgment, most of the time the Appellant has been in the United Kingdom he has had no leave and therefore little weight should be given to the private life that he has established.

Notice of Decision

8. For all these reasons, even if the judge may have given imperfect reasons, the error is not material because on the evidence there is no way this Appellant could have succeeded in the light of the Upper Tribunal's case of Ayinde and Thinjom and on the basis of Section 117B of the 2002 Act. Accordingly, the appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed Date 30 August 2019

Upper Tribunal Judge Martin

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 30 August 2019

Upper Tribunal Judge Martin