



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/10202/2019 (P)

THE IMMIGRATION ACTS

**Decided under rule 34
On 6 August 2020**

**Decision & Reasons Promulgated
On 18 August 2020**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

**CHARMAINE DELGADA O'CONNOR
(ANONYMITY ORDER NOT MADE)**

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Jamaica. She entered the United Kingdom, as a visitor on 20 March 2002 and has not had any leave to remain in the United Kingdom since 20 September 2002. She made a human-rights claim on 20 December 2018, which was refused on 28 May 2019. She appealed against this decision and her appeal was dismissed by First-tier Tribunal Judge Anthony in a decision promulgated on 9 September 2019.
2. She appealed against this decision and First-tier Tribunal Judge Simpson granted her permission to appeal to the Upper Tribunal on 10 February 2020.

3. An error of law hearing was set down for 23 April 2020 but this hearing was vacated due to the Covid-19 pandemic. Upper Tribunal Judge Canavan made further directions on 22 April 2020, having come to the view that it would be appropriate to determine whether there had been an error of law on the papers.
4. The Appellant's solicitors filed a response to the directions and further submissions prepared by counsel on 30 April 2020. He submitted that it would be appropriate for there to be an oral hearing as opposed to a paper hearing. He also submitted that "there may well be questions of factual clarification, and indeed questions as to the weight to be given to the alleged legal errors in the decision of the First-tier Tribunal, which would require oral amplification and indeed debate".
5. However, on 5 May 2020 the Respondent wrote to the Upper Tribunal and the Appellant's solicitors stating that she only opposed the Appellant's appeal in part and accepted that First-tier Tribunal Judge Anthony's decision contained a material error of law on a limited basis. She also stated that a re-hearing would be appropriate.
6. I have taken into account the submissions made by counsel in relation to the need for an oral error of law hearing. However, these were made before the acceptance by the Respondent that there were material errors of law in First-tier Tribunal Judge Anthony's decision. It was also the case that both parties accepted that the errors of law necessitated the appeal being re-heard. Therefore, and in accordance with the overwhelming objectives of the Tribunal Procedure (Upper Tribunal) Rules 2008, as amended, I have decided that it was in the interests of justice to have a paper error of law hearing. The parties are in agreement as to the error made by First-tier Tribunal Judge Anthony in relation to whether the Appellant's was entitled to leave to remain outside the Immigration Rules on human rights grounds. As a consequence, setting the matter down for a remote error of law hearing would merely delay the proper resolution of the Appellant's appeal which should be in the First-tier Tribunal.

ERROR OF LAW DECISION

7. In the Appellant's grounds of appeal, counsel submitted that First-tier Tribunal Judge Anthony had not considered whether the Appellant could succeed outside the Immigration Rules in any particularity or detail. The Respondent did not attempt to contend that this was not the case.

8. Her findings of fact in paragraphs 7 to 24 of her decision dealt with the Appellant's entitlement to leave under paragraph 276ADE(1)(vi) of the Immigration Rules. She then purported to address the Appellant's rights under Article 8 of the European Convention on Human Rights in paragraphs 25 to 30 of her decision. When doing so she applied section 117B of the Nationality, Immigration and Asylum Act but failed to refer to a significant amount of evidence relating to her work in the community and with her church to the benefit of individuals and the community as a whole in any detail. In addition, her only brief mention of this evidence was in paragraph 20 of her decision, when she was considering whether the Appellant was entitled to leave to remain within the Immigration Rules.
9. First-tier Tribunal Judge Anthony also failed to take into account relevant case law relating to the weight to be given to an Appellant's contribution to a local community, such as UE (Nigeria) v Secretary of State for the Home Department [2010] EWCA Civ 975 and Thakrar (Cart JR; Art 8: value to the community) [2018] UKUT 00336 (IAC).
10. Therefore, I find that First-tier Tribunal Judge Anthony's decision did contain material errors of law.

DECISION

- (1) The Appellant's appeal is allowed
- (2) First-tier Tribunal Judge Anthony's decision is set aside.
- (3) The appeal is remitted to the First-tier Tribunal to be heard *de novo* by a First-tier Tribunal Judge other than First-tier Tribunal Judges Anthony or Simpson.

Nadine Finch

Signed
Upper Tribunal Judge Finch

Date 6 August 2020