Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02197/2019 (V)

THE IMMIGRATION ACTS

Heard remotely by Skype for Business	**Decision & Reasons Promulgated**
On 5 March 2021	**On 16 March 2021**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MR PAUL DEVONTE THOMAS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Lay, Counsel, instructed by Wilson Solicitors LLP
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

The Appellant appeals with permission against the decision of First-tier Tribunal Judge Reid ("the judge"), promulgated on 31 December 2019, by which she dismissed the Appellant's appeal against the decision of the Respondent, dated 16 January 2019, refusing a human rights claim.

The human rights claim had been based on Article 8 and the assertion that the Appellant had established private and family life in the United Kingdom and that in all the circumstances a removal to Jamaica would be disproportionate. In particular, it was said that the Appellant had established family life with at

least his mother in this country (she had been here since 2002 and had indefinite leave to remain) and his private life had evolved during the course of his residence in this country since the age of 13. His teenage years included a difficult time as a result of which he was placed in foster care. He had been receiving ongoing support by the relevant local authority and their Leaving Care team.

The judge was faced with a difficult situation. Neither the Respondent nor the Appellant were represented at the hearing. The judge heard from the Appellant, his mother, his partner and his key worker, Mr Kevin Martin. Having described the nature of the Appellant's case and directing herself to a number of authorities on Article 8, the judge set out her core findings and conclusions. She found that the Appellant's grandmother, with whom he had lived in Jamaica since his mother left in 2002, had died after his arrival in the United Kingdom. She accepted that the Appellant had been taken into foster care and had been granted limited leave to remain from May 2015 to May 2018. She accepted that he continued to live in supported accommodation and had the assistance of a key worker in respect of learning independent living skills and other matters. The Appellant had not lived with his mother since 2015. The judge accepted that the Appellant had passed a number of GCSEs and was currently studying a Level 3 catering course.

The judge appeared to accept that the Appellant was in a relationship with Miss Mayeye, a British citizen, but in the absence of cohabitation went on to effectively disregard this in respect of the overall Article 8 assessment.

Acknowledging what are described as the "difficulties" in the Appellant's time in the United Kingdom, in particular relating to his relationship with his mother, the judge did accept that there was family life between the two for the purposes of Article 8(1). At paragraph 31 the judge acknowledged the fact that the Appellant was receiving five hours a week help from Mr Martin and that he was "less mature" than other young men of the same age. The judge described the Appellant as not being "truly adult-adult".

In addressing the issue of whether the Appellant could return to Jamaica the judge found that even if contact could be re-established with his father there would be no effective support from that source. There was a finding that some family friends in Jamaica might have been able to offer "some moral support". Taking account of a number of factors, the judge concluded that whilst a return to Jamaica would be "difficult" for the Appellant, it would not meet the threshold of very significant obstacles to (re)integration as set out in paragraph 276ADE(1)(vi) of the Immigration Rules.

In considering Article 8 outside the context of the relevant Rules the judge first dealt with family life. Weighing up relevant matters, she concluded that the Respondent's decision was proportionate with respect to the Appellant's relationship with his mother in the United Kingdom.

In terms of private life the judge took into account the importance of maintaining immigration control and the fact that the Appellant's leave to

remain in the United Kingdom had always been precarious. The fact that the Appellant had been a minor during some of his residence did not of itself render his case "exceptional". The Appellant's reliance on public funds was a relevant factor.

On the Appellant's side of the balance sheet the judge took into account his relationship with his mother and other individuals and acknowledged the "difficult time" experienced by the Appellant as a teenager. Again, the judge concluded that the Respondent's decision was proportionate. The appeal was accordingly dismissed.

The grounds of appeal were drafted by legal representatives who had apparently come on record after the hearing before the judge. These grounds are brief and assert that the judge was wrong to have concluded that the Appellant's status in the United Kingdom was precarious and that she also erred in her consideration of whether there were "exceptional circumstances" in the Article 8 claim as a whole.

Permission to appeal was granted ultimately by Upper Tribunal Judge Kamara on 22 July 2020. Her grant stated that it was "at least arguable that the judge's consideration of the exceptional circumstances in this case was insufficient."

At the remote error of law hearing Mr Lay provided a skeleton argument and focussed his attention on the judge's assessment of all relevant factors outside the context of the Rules. In essence, he submitted as follows. Whilst the judge might have been entitled to place little weight on the private life by virtue of section 117B(5) of the 2002 Act, the same mandatory consideration did not apply to the family life between the Appellant and his mother. The judge had failed to make clear the relevant delineation and had not stated what, if any, weight had been placed on this particular relationship. Further, and more importantly, the judge had failed to assess the relevance of the Appellant being in receipt of ongoing assistance from the local authority Leaving Care team, in particular that provided by Mr Martin. This did not feature in the assessment of factors on the Appellant's side of the balance sheet, with reference to paragraphs 42 and 47 of the decision.

Having heard and considered Mr Lay's argument, Mr Walker conceded that there were material errors in the judge's decision with reference to the issues raised on the Appellant's behalf in the grounds of appeal and as expanded on in oral submissions. He accepted that the judge had failed to undertake a sufficiently complete assessment of all factors going to the question of whether the Respondent's decision struck a fair balance notwithstanding any inability of the Appellant to meet the Rules.

I regard Mr Walker's concession as having been properly made. Whilst the grounds of appeal were relatively limited in scope, Mr Lay's expansion thereon has been legitimately pursued and has identified matters of substance which the judge failed to engage with when setting out her conclusions, particularly in paragraphs 40 to 48.

In light of Mr Walker's concession and my agreement with it I conclude that the judge has materially erred in law and that her decision must be set aside.

In terms of disposal, I have carefully considered whether this matter should be remitted to the First-tier Tribunal or retained in the Upper Tribunal. On an exceptional basis and with reference to paragraph 7.2 of the Practice Statement I have decided that remittal is the appropriate course of action. Relatively extensive fact-finding will be required when this case is looked at again. Further, detailed consideration will need to be given to the nature of the support provided by the local authority and, importantly, the reasons therefor.

It appears (although I have not taken this into account when reaching my error of law decision) that there is additional information from the local authority relating to the Appellant which was not provided to the judge. If it does indeed exist, it will need to be considered in due course.

In addition, further evidence which has been the subject of a Rule 15(2A) application by the Appellant indicates that his partner gave birth to a baby on 15 August 2020. This development clearly constitutes a "new matter" for the purposes of section 85 of the 2002 Act, as recognised by Mr Lay at the hearing. Having canvassed this issue with Mr Walker, he formally gave consent on the Secretary of State's behalf that the new matter could be considered by the First-tier Tribunal on remittal. It will of course be for the Appellant to reduce evidence on, for example, paternity and other relevant matters.

I will not preserve any findings in respect of the remitted hearing. I appreciate that doing so can potentially cause difficulties and both representatives were agreed that this appeal should be reheard afresh.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

No anonymity direction is made.

Directions to the First-tier Tribunal

1) This appeal is remitted to the First-tier Tribunal (Taylor House hearing centre);

2) The remitted appeal shall not be heard by First-tier Tribunal Judge Reid;

3) There are no preserved findings of fact;

4) The Secretary of State has given consent for the matter concerning the birth of a child in 2020 to be considered at the remitted hearing and the First-tier Tribunal shall do so.

Signed H Norton-Taylor Date: 9 March 2021

Upper Tribunal Judge Norton-Taylor