



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

Appeal Number: HU/05340/2020

**THE IMMIGRATION ACTS**

**Heard at Field House, London**

**Decision & Reasons  
Promulgated**

**On 21 October 2021**

**On 16 November 2021**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**-and-**

**MISS DOROTHY DONNA DAVIS**

Respondent

**Representation:**

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer

For the Respondent: Ms F Allen, Counsel instructed by AJA Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State. For ease of reference, I refer to the parties as they were before the First-tier Tribunal. The Respondent appeals against the decision of First-tier Tribunal Judge Jepson promulgated on 6 April 2021 ("the Decision"). By the Decision, the Judge allowed the Appellant's appeal against the Respondent's decision dated 19 March 2020, refusing the Appellant's human rights claim founded on Article 8 ECHR. In broad terms, the Appellant's claim is based on her lengthy residence in the UK since December 2001 and therefore her private life and her family life with her adult children and their minor children who are in the UK.

2. The Judge found that the Appellant enjoys a family life with her grandchildren in particular due to the “larger role” which she plays in their life as their father is not involved in their upbringing. Although he accepted that the Appellant’s return to Jamaica might be “difficult due to the passage of time”, he did not accept that there were very significant obstacles to her integration in that country. She has adult children also living there. The Judge accepted that the Appellant has integrated in the UK where she has provided “positive assistance to a number of people both within and outside of the family unit”. Nevertheless, when all the factors representing interference with the Appellant’s family and private life were taken together, the Judge was “just about persuaded this is an exceptional case”. He therefore allowed the appeal on Article 8 ECHR outside the Immigration Rules (“the Rules”).
3. The Respondent’s grounds in summary are that the Judge failed to have regard to the public interest, in particular the factors in section 117B Nationality, Immigration and Asylum Act 2002 (“Section 117B”). It is said that the Judge failed to have regard to Section 117B either in substance or in form. It was also said that the Appellant’s relationship with her grandchildren had been “inflated” at [42] of the Decision. The Respondent contends that there was “no reason” for this appeal to be allowed having regard also to what is said by the Judge about the lack of very significant obstacles to the Appellant’s return to Jamaica.
4. Permission to appeal was granted by First-tier Tribunal Judge Ford on 17 May 2021 in the following terms so far as relevant:
  - “... 2. It is arguable that the Tribunal erred in the Article 8 assessment in that no weight was given to s117B factors and the holistic proportionality assessment was not done.
  3. The Tribunal appears to have concluded that there is a parental relationship between the Appellant and her grandchildren although that is not stated clearly. There as a finding that the decision was unduly harsh. There was also a finding that there were exceptional circumstances in the case, but this was not made in the context of a holistic proportionality assessment.
  4. The grounds are arguable. There is an arguable material error of law.”
5. The appeal came before me to determine whether the Decision contains an error of law and, if I so conclude, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so.
6. At the outset of the hearing, Mr Walker indicated that he felt unable to support the grounds of appeal and wished to withdraw them. He submitted that there was no error of law in the Decision and that I should therefore uphold it. He drew my attention to [39] to [42] of the Decision which he said provided sufficient reasons for allowing the appeal. I accept that the Judge has explained why he allowed the appeal and has given reasons for his conclusion. I turn to explain briefly why I accept Mr Walker’s concession and provide a few observations about the Judge’s approach but for which an

appeal might not have been brought at all (or may not have been granted permission to appeal).

7. The Judge has set out in considerable detail at [6] and [7] of the Decision, those legal provisions which he considers to be of relevance. Those include Section 117B which the Respondent argued in her grounds had not been considered. I rather suspect however that these paragraphs may have been lifted from another case as they include some references which are clearly not relevant (for example to section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004) and others which have only tangential relevance to this case (for example some of the general provisions in Appendix FM to the Rules - "Appendix FM").
8. The Judge has set out the entirety of GEN 3.1 to 3.3 of Appendix FM under the heading of "Exceptional Circumstances". I accept that GEN.3.2(2) and GEN.3.3 are applicable to this case in content. However, by considering the claim outside the Rules through the lens of whether there are "Exceptional Circumstances" at [39] to [42], the Judge has on the face of the Decision considered only whether the circumstances might fall within that rubric rather than carrying out the sort of balancing assessment of interference versus public interest which is advocated by the Supreme Court in Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60 in order to achieve that result. Put another way, the issue outside the Rules was not whether the circumstances were such as to put the case into an exceptional category but whether the interference as there set out outweighed the public interest. It is a perceived deficiency in that analysis which has led the Respondent to appeal the Decision and Judge Ford to grant permission to appeal.
9. I would not have found any error of law in relation to the Judge's assessment of the relationship between the Appellant and her grandchildren on the facts of this case. He was entitled to accept that family life exists, particularly where, as here, the grandchildren have no father figure in their lives. The fact that the Appellant would be able to integrate in Jamaica without very significant difficulties is of course relevant as the Judge recognised. The Judge correctly applied the Rules in that regard. Equally, however, the Judge was entitled to have regard to the lengthy residence of the Appellant in the UK. Although she had not spent twenty years here as at the date of her application, she has completed nearly twenty years here now and at the time of the Decision. There is of course no near miss principle. Nonetheless, her period of residence and the private life she has built up in that time including her contribution to society here are relevant factors.
10. The main complaint made by the Respondent is the asserted failure to balance the interference against the public interest. I have pointed out why that argument was put forward on a plain reading of [39] to [42] of the Decision considered in isolation. However, the Decision has to be read as a whole. The Judge noted at [25] of the Decision the need to maintain effective immigration control. The Judge recognised there and at [31] of the

Decision the relevance of the Appellant's presence in the UK being precarious or unlawful (in fact largely unlawful). The thrust of the Judge's conclusion however focusses on the position of the children. The Judge properly recognised the weight to be given to their best interests ([32]). Read as a whole, therefore, I am satisfied that the Judge did not err in law in reaching the conclusion he did. Whilst the outcome might be seen by some as generous, the issue is whether the Decision contains an error of law. I am satisfied that Mr Walker was correct to make the concession he did.

## **CONCLUSION**

11. For the foregoing reasons, and accepting the Respondent's concession, I am satisfied that there is no error of law in the Decision. I therefore uphold the Decision with the result that the Appellant's appeal remains allowed.

## **DECISION**

**The Decision of First-tier Tribunal Judge Jepson promulgated on 6 April 2021 does not involve the making of an error on a point of law. I therefore uphold the Decision.**

Signed: L K Smith

**Upper Tribunal Judge Smith**

Dated: 21 October 2021