



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

Appeal Number: HU/14793/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 16th July 2021**

**Decision & Reasons Promulgated
On 29th July 2021**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between:

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**KEVIN ANTHONY HEARNE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr D Clarke, Home Office Presenting Officer

For the Respondent: In person

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State, I shall refer to the parties as in the First-tier Tribunal. The appellant is a national of Jamaica born on 29 July 1975. His appeal against the decision to refuse his application for indefinite leave to remain and his human rights claim was allowed by First-tier Tribunal Judge Samimi for the reasons given in her decision promulgated on 16 February 2021.
2. The grounds submit the judge failed to consider the appellant's failure to meet the suitability requirements, failed to explain the exceptional and

compelling circumstances warranting the exercise of discretion in the appellant's favour and failed to properly conduct the balancing exercise having erred in finding that the appellant satisfied the immigration rules. Permission to appeal was granted by Upper Tribunal Judge Kekic on all grounds on 23 April 2021.

3. Mr Clarke submitted that there was no challenge to the judge's finding that section 117B(6) of the 2002 Act applied and therefore the errors identified in the grounds were not material. He conceded the appeal should be dismissed.
4. I find the judge erred in law in finding that the appellant satisfied the immigration rules. The appellant could not satisfy the suitability requirements given his conviction for possession of heroin in July 2006 for which he was sentenced to three years' imprisonment. The appellant's immigration history demonstrated he did not have 10 years continuous lawful residence.
5. However, given the appellant had a genuine and subsisting relationship with his British citizen children and the unchallenged finding that it would not be reasonable for them to leave the UK, the errors identified in the grounds were not material to the decision to allow the appeal on human rights grounds.
6. I conclude there was no material error of law in the decision to allow the appeal on human rights grounds. The respondent's appeal is dismissed.

Notice of Decision

Appeal dismissed

J Frances

Signed
Upper Tribunal Judge Frances

Date: 16 July 2021