Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/31748/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 13 July 2015	**On 24 July 2015**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

WAYNIAN SALMON
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms F. Iqbal of Wainright & Cummins LLP
For the Respondent: Miss A. Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Jamaica whose date of birth is 21 August 1994. She appealed against the respondent's decision dated 27 November 2013 to refuse leave to remain on human rights grounds and to remove her from the UK under section 10 of the Immigration and Asylum Act 1999.

2. First-tier Tribunal Judge J.D.L. Edwards dismissed the appeal in a decision promulgated on 13 February 2015. The First-tier Tribunal granted permission to appeal to the Upper Tribunal on 16 April 2015. In a decision dated 11 June 2015 the

Upper Tribunal found that the First-tier decision contained material errors of law and the decision was set aside. The matter now comes before the Upper Tribunal to remake the decision.

Decision and reasons

Factual circumstances

3. There is no dispute between the parties in regard to the factual circumstances of this appeal.

4. The appellant is a 20 year old woman who has lived in the UK for nearly 8 years. She was born in Jamaica but moved to Antigua with her parents when she was around 2 years old. She subsequently spent further time in Jamaica with her grandmother but returned to her parents in Antigua. She was largely brought up in Antigua and spent no more than about 5 years of her life in Jamaica.

5. The appellant says that her father began to sexually abuse her when she was around 6 years old. She told her mother about the abuse a couple of years after it began but she did not believe her. As a result the appellant has a difficult and distant relationship with her mother. In 2004 the family returned to Jamaica and in 2006 her parents separated. The appellant's father took custody of the children. The appellant says that she was subjected to physical violence by her step-mother. During this time she had no contact with her mother.

6. On 04 August 2007 their father brought the appellant and her sister to the UK. The appellant entered the UK with entry clearance that was valid until 18 July 2009. It is not clear from the evidence on what basis she was granted entry but it is said that her step-mother sponsored the application. I find that it is reasonable to infer that she may have been granted entry as a dependent child if her father had remarried. The appellant was 12 years old on arrival in the UK.

7. Unfortunately her difficult childhood continued in the UK. She continued to suffer abuse from her father and step-mother. In December 2008, when the appellant was only 14 years old, her stepmother asked them all to leave the house. Her father made informal fostering arrangements for the appellant and her sister with his relatives. When her visa expired her father did nothing to regularise her status. When her father's relatives refused to continue to support her social services became involved. They contacted the appellant's mother in Jamaica who made arrangements with a relative of hers, Michael Rumble, to foster the appellant and her sister. The appellant says that she continues to have a good relationship with Mr Rumble and he has written a letter in support of the appeal.

8. In late 2010 the appellant's sister was asked to leave the house because of problems between her and Mr Rumble's wife. The appellant went with her sister. Then there was a further period of instability when they stayed with various friends. At this stage the appellant was still only 16 years old. In 2011 they returned to live with their

father in London but the appellant says that her father attempted to abuse her again. In April 2011 they went to stay with their foster mother's niece.

9. At around the same time the appellant began a relationship with Ochike Woolcock. They met at Kids Company, a charity that provides support to vulnerable children. Mr Woolcock is a Jamaican citizen who was also brought to the UK as a child. He says that he has lived in the UK for the last 13 years. He says that he was granted Discretionary Leave to Remain in 2014 in light of his family life with his 5 year old son who is a British citizen. Although they did not live together they were in a relationship until very recently but have now decided to split. Their daughter was born on 28 April 2013 and is now 2 years old. Mr Woolcock used to have almost daily contact with their daughter but since the relationship ended he has regular contact with the child at the weekends. Both his children know each other and spend time with one another. Mr Woolcock provides the appellant with child support of around £200 a month and says that he would be willing to continue that support if the appellant had to return to Jamaica. He would also try to stay in contact with his daughter but would only be able to afford to visit about once a year.

10. As a result of the appellant's chaotic family situation she was eventually taken into the care of social services in July 2011. Since then she has been supported by a social worker and a key worker who has developed a close and supportive relationship with her. She is assisted in all areas of her life including housing, financial support, advice on parenting and any other aspect of her life where she might need support. Her key worker, Sonia Crutchley, says that her role is to assist the appellant to become an independent adult. She is allocated 10 hours a week to assist the appellant but in reality she speaks to the appellant nearly every day and is available to help her at any time. Ms Crutchley works for a company that is sub-contracted by social services to provide support. Although she is not a trained social worker she works closely with the social worker who is allocated to the case.

11. Ms Crutchley gave her evidence in an open and considered way. Although it seems clear that she has developed a close relationship with the appellant outside her usual work commitments I am satisfied that she sought to give her opinion in a professional and objective way. She has worked closely with the appellant since 2011 and is in a good position to comment on her particular vulnerabilities. As such I give weight to her evidence.

12. Ms Crutchley told me that she thought the appellant was capable of finding work and that it would be a good ting for her to be in employment. With the level of support that she is currently given there were no real concerns about the appellant's ability to look after her daughter. However, she had concerns about the appellant returning to Jamaica. She didn't think she would cope very well if she had to return because she did not have any family or support network there. Unemployment was rife and she wondered how the appellant might cope with the stress of returning to a country where she had no support and would have to care for her daughter alone. She considered that the appellant was stable up to a point but had recommended that she seeks professional counselling to help her deal with the emotional turmoil she

still suffers as a result of her past experiences. She was concerned that if the appellant found it difficult to cope in Jamaica that this might also have a negative impact on her child. Ms Crutchley pointed out that even if the appellant was able to find work in Jamaica that was only one aspect of her life. It would still be the case that she would have no network of friends or relatives to provide her with support.

13. The appellant says that she has only spent a limited period of time in Jamaica as a child. She no longer has any family members there. Her grandmother passed away in July 2014. As far as she is aware her mother has now migrated to the USA. The appellant says that she has bad memories of Jamaica because of the abuse she suffered there as a child. The country is violent and there is widespread abuse of women and girls. She says that she was very young when she left Jamaica and would not know how to support herself there. Unemployment is high and she does not know whether she would be able to care for her daughter. She would have no one to turn to for support or guidance. Her daughter would not be able to have regular contact with her father. The appellant says that she thinks that she would be able to find work in the UK if she was permitted to do so. She would want to work in order to support her daughter. It is also possible that she may continue in education and she has produced some evidence to show that she has made enquiries about relevant courses. She has developed a network of close friends and some relatives in the UK who provide her with continuing support.

14. It is accepted that the appellant does not meet the private or family life requirements of the immigration rules. Although the appellant has lived in the UK for a significant part of her young life she has not spent at least half of her life living continuously in the UK for the purpose of paragraph 276ADE of the immigration rules. The appeal proceeded solely on arguments relating to the application of Article 8 of the European Convention outside the immigration rules.

Best interests of the child

15. In assessing the best interests of the child I have taken into account the statutory guidance "UKBA Every Child Matters: Change for Children" (November 2009), which gives further detail about the duties owed to children under section 55. In that guidance the UKBA acknowledges the importance of a number of international instruments relating to human rights including the UN Convention on the Rights of the Child (UNCRC). The guidance goes on to confirm: "*The UK Border Agency must fulfil the requirements of these instruments in relation to children whilst exercising its functions as expressed in UK domestic legislation and policies.*" I take into account the fact that the UNCRC sets out rights including a child's right to survival and development, the right to know and be cared for by his or her parents, the right not to be separated from parents and the enjoyment of the highest attainable standards of living, health and education without discrimination. The UNCRC also recognises the common responsibility of both parents for the upbringing and development of a child.

16. I have also taken into account the decisions in *ZH (Tanzania) v SSHD* [2011] UKSC 4, *Zoumbas v SSHD* [2013] UKSC 74 and *EV (Philippines) and others v SSHD* [2014] EWCA Civ 874. The best interests of the child are a primary consideration in this case but may be outweighed by the cumulative effect of other matters that weigh in the public interest. I take into account that the younger the child the more important the involvement of a parent is likely to be: see *Berrehab v Netherlands* (1988) 11 EHRR 322. It is in the best interests of a child to be brought up by both parents unless it is contrary to his best interests to see one or other of his parents: see also *E-A (Article 8 – best interests of child) Nigeria* [2011] UKUT 00315.

17. The appellant's daughter was born in the UK and knows no other life. However, she is not a British citizen and is liable to removal with her mother. She is only 2 years old and is not at an age where she has established any ties to the UK outside her family. Her life is likely to revolve around close family members such as her mother, father and other family members in the UK. However, the effect of removing the child with her mother would be to deprive her of the regular contact that she currently enjoys with her father. Such a young child requires physical and emotional nurturing from both parents that could not be replicated through distant communication by telephone or other modern methods of communication.

18. Although there appear to be no concerns about the appellant's parenting abilities this might largely be as a result of the support network that has built up around her in the UK. While the appellant appears to be relatively stable I accept that she is likely to be a vulnerable person as a result of her past experiences. There is some question mark over how she would cope if she is removed to a country with far more difficult socio-economic conditions and in circumstances where she would have no similar support network. The Country of Origin Information Report (COIR) on Jamaica (2013) contained in the appellant's bundle states that legal protections for women are poorly enforced and that violence and discrimination against women remains widespread [22.23]. Amnesty International reported that women and girls in inner-city communities were particularly exposed to gang violence including sexual coercion [22.25 & 22.33]. The US State Department Report stated that social and cultural norms perpetuated violence against women [22.26]. The appellant has already been the victim of sexual abuse and in light of this evidence I find that she is likely to be vulnerable to further exploitation as a lone woman. The stress caused to the appellant if she is returned to such a vulnerable situation is also likely to impact on her child in a negative way and it is at least possible that it might also impact on the appellant's ability to protect her daughter from similar exploitation.

19. For these reasons I conclude that it is in the best interests of the appellant's daughter to remain with her mother in the UK. In the UK her mother can continue to benefit from the network of support that enables her to care for the child without any concerns for her welfare. In the UK she could continue to have regular contact with her father and other family members, which she would not have if she was removed to Jamaica with her mother.

Article 8 (private and family life)

20. Article 8 of the European Convention on Human Rights protects the right to private and family life. However, it is not an absolute right. The state is able to lawfully interfere with an appellant's private and family life as long as it is pursuing a legitimate aim and it is necessary and proportionate in all the circumstances of the case. The starting point is the basic principle that a state has the right to control the entry and residence of people within its borders. There is a strong public interest in maintaining an effective system of immigration control. This is done through the immigration rules and policies, which set out the requirements for leave to enter or remain in the UK. The immigration rules and policies are the main guide to what decisions are likely to be considered reasonable and proportionate. It is still possible for cases that fall outside those requirements to engage the operation of Article 8 but only if there are compelling circumstances that are not sufficiently recognised under the immigration rules: see *Huang v SSHD* [2007] UKHL 11, *Patel & Others v SSHD* [2013] UKSC 72, *R (on the application of MM & Others) v SSHD* [2014] EWCA Civ 985 and *SS (Congo) v SSHD* [2015] EWCA Civ 387.

21. The appellant has lived in the UK for a significant period of her life during which time she made the transition from her difficult childhood into adulthood. The evidence shows that during that time she has slowly been able to establish a more stable life of her own with the support of social services as well as other friends and family members in the UK. Although her relationship with the father of her child has now ended they continue to work together as parents. Her daughter has regular contact with her father and her half-brother. In these circumstances I accept that the appellant's length of residence and other ties to the UK show that removal is likely to interfere with her right to private and family life in a sufficiently grave way as to engage the operation of Article 8 of the European Convention (questions (i) & (ii) of Lord Bingham's five stage approach in *Razgar v SSHD* [2004] INLR 349)

22. The appellant does not meet the requirements of the immigration rules and the normal course of action would be to require her to leave the UK. While the maintenance of effective immigration control is an important factor the balancing exercise under Article 8 is a complicated one and must take into account a number of different factors balancing the public interest against the specific circumstances of each individual. In this case the immigration rules relating to private and family life set out requirements in very specific categories but do not make adequate provision for a holistic assessment of the situation as it relates to a number of people who are likely to be affected by the decision.

23. In assessing what weight to place on the public interest, where relevant, the Tribunal must take into account section 117B (general) and 117C (deportation) of the Nationality, Immigration and Asylum Act 2002 ("NIAA 2002"), which outlines a number of factors that the Tribunal must consider when assessing whether an interference with a person's right to respect for private and family life is justified and proportionate.

24. The maintenance of immigration control is in the public interest and I give this significant weight. However, some other matters that might weigh in the public interest under section 117B do not have any significant weight in this case. The appellant speaks English and is well integrated into life in the UK. At the moment she is not working but this is only because she has no permission to do so. She is willing and able to work and the evidence indicates that there is no reason why she would not be able to support herself and contribute to society in a positive way without becoming a burden on the taxpayer.

25. The appellant has lived in the UK for nearly 8 years, which is the longest time she has lived in any country. For the last 6 years she remained without leave. This would normally be a matter that would be given significant weight in the public interest. A private life established at a time when a person is in the UK unlawfully or when their immigration status is precarious would not usually be given weight. But in this case I take into account the fact that the appellant entered the UK as a young child. She was dependent upon her father to regularise her immigration status, which he failed to do. It is through no fault of her own that the appellant ended up remaining without leave. It was only after a chaotic period in her young life that she came into the care of social services who assisted her to make an application to regularise her status. In such circumstances I find that weight can be placed on the private life established by the appellant and that the public interest should not be given as much weight as it might have been if the appellant had been an adult who was responsible for her own actions.

26. I find that there are a number of compelling aspects to this case including the appellant's young age on arrival as well as her background of abuse, which is likely to render her more vulnerable to further exploitation if she is returned to Jamaica as a lone woman without a network of support. The most compelling aspect is her family situation. I have already found that it is in the best interests of the child to remain in the UK where she would benefit from nurture and care from both parents. To remove the child with her mother would separate her from the kind of contact such a young child needs with her father. He is no longer in a relationship with her mother, and even if he was, he has another child in the UK with whom he also has a close relationship.

27. The maintenance of immigration control must be given significant weight but the best interests of the child are a primary consideration albeit not an overriding consideration. Nevertheless there would need to be a number of countervailing factors to outweigh the child's best interests. Although the appellant has a period of overstaying it was through no fault of her own because she was a child at the time. Apart from the fact that the appellant has no leave to remain there are no other factors at the more serious end of the scale such as fraud, deception or criminal convictions that might give more significant weight to the public interest in removal.

28. The task of weighing all the circumstances of a particular case is always difficult and complex. Having carefully weighed up the facts of this case I find that there is very little evidence before me to show that there is a pressing social need to remove this

particular appellant. In this case the basic guidance given by the House of Lords in *Huang v SSHD* [2007] UKHL 11 has been of assistance:

> "… the main importance of the case law is in illuminating the core value which article 8 exists to protect. This is not, perhaps, hard to recognise. Human beings are social animals. They depend on others. Their family, or extended family, is the group on which many people most heavily depend, socially, emotionally and often financially. There comes a point at which, for some, prolonged and unavoidable separation from this group seriously inhibits their ability to live full and fulfilling lives. Matters such as the age, health and vulnerability of the applicant, the closeness and previous history of the family, the applicant's dependence on the financial and emotional support of the family, the prevailing cultural tradition and conditions in the country of origin and many other factors may all be relevant."

29. After a difficult and abusive start the appellant has stabilised her life and has begun to establish a positive path for herself with the support of social services as well as a network of friends and family members in the UK. The evidence suggests that if she continues on this path she is in a position to begin work, continue her education and is likely to be able to make a positive contribution to society. She has established a strong private and family life here with her child who continues to have regular contact with her father. Without the same network of support in Jamaica the appellant is likely to be rendered quite vulnerable, which could also have implications for the welfare of her child. Even if she was able to find work in Jamaica to support herself that is not the only aspect of her private life. She would be socially isolated and be separated from the only network of friends and family that she knows. I find that there are a number of aspects to this case that cumulate to create compelling circumstances that are not adequately dealt with under the immigration rules. These include the appellant's length of residence, her young age on arrival, her background of abuse and the best interests of her child.

30. After having weighed all the circumstances of the case I have concluded that the removal of the appellant would prejudice her right to private and family life in a sufficiently serious way to amount to a breach of her fundamental rights under Article 8. For these reasons I find that removal in consequence of the decision would amount to a disproportionate interference with the appellant's rights under Article 8 of the European Convention (points (iv) & (v) of Lord Bingham's five stage approach in *Razgar*).

DECISION

I re-make the decision and ALLOW the appeal

Signed  Date 23 July 2015

Upper Tribunal Judge Canavan