



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

Appeal Number: HU/07325/2016

THE IMMIGRATION ACTS

**Heard at Stoke
On July 14 2017**

**Decision & Reasons
Promulgated
On 17 July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR JERMAINE TREVOR BARTON
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Bates, Senior Home Office Presenting Officer
For the Respondent: Miss Rutherford, Counsel (Direct Access)

DECISION AND REASONS

1. The respondent in these proceedings was the appellant before the First-tier Tribunal. From hereon I have referred to the parties as they were in the First-tier Tribunal so that, for example, reference to the respondent is a reference to the Secretary of State for the Home Department.

2. I do not make an anonymity direction under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
3. The appellant is a Jamaican national. On July 28, 1997 the appellant entered the United Kingdom. On December 23, 2015 he applied to remain on the basis of his relationship with his un-married partner. The respondent refused this application on February 26, 2016
4. The appellant lodged grounds of appeal against that decision on March 10, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of the First-tier Tribunal Bell (hereinafter called "the Judge") on November 23, 2016 and in a decision promulgated on December 14, 2016 the Judge allowed the appeal under the Immigration Rules.
5. The respondent appealed this decision on December 22, 2016. Permission to appeal was given by Judge of the First-tier Tribunal Gillespie on May 17, 2017.
6. The matter came before me on the above date. The appellant was present.
7. Miss Rutherford accepted that there was an error in law because the Judge did not have the power to allow the appeal under the Rules as this was a decision taken post April 6, 2015 and it did not fall within any of the exception set out in the transitional provisions.
8. In the circumstances I agreed that I would remake the decision under article 8 ECHR as this was the only power available to me.
9. Mr Bates advised that the appellant had now been here for twenty years and were he to submit a fresh application he would satisfy paragraph 276ADE(vi) HC 395. He took a pragmatic view that there were no countervailing circumstances that would make removal proportionate and in the circumstances he invited me to allow the appeal under article 8 ECHR based on his twenty years residence in this country.
10. Miss Rutherford had no submissions to make and invited me to allow the appeal.

FINDINGS

11. Having already found an error I indicated to the parties that I would remake the decision under article 8 ECHR.
12. I am grateful to Mr Bates for his pragmatic approach. Judge of the First-tier Tribunal Gillespie had pointed out the Judge had not addressed the issue of the appellant's relationship with a British national but based on the fact he would meet the requirements of paragraph 276ADE HC 395 if he were to submit an application today I am satisfied that the appellant had demonstrated private life and that removal would interfere with that.

Based on the period of time he had been here and the fact there are no countervailing circumstances I find that requiring him to return to a country he has been absent from for twenty years would be disproportionate having regard to the private life he has created here. Whilst I acknowledge that he formed this private life whilst here unlawfully the fact remains he would now satisfy the Immigration Rules and that together with Mr Bate's approach are my reasons for allowing this appeal

NOTICE OF DECISION

13. 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 that decision.
14. I remake the decision and allow the appeal under article 8 ECHR.

Signed

Date 14.07.2017

Deputy Upper Tribunal Judge Alis

**FEE AWARD
TO THE RESPONDENT**

Although I have allowed this appeal I have allowed based on changed circumstances so I make no fee award.

Signed

Date 14.07.2017

Deputy Upper Tribunal Judge Alis