



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/06322/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 29th October 2018**

**Determination Promulgated
On 1st November 2018**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

B W

(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Jaquiss, of Counsel, instructed by Wimbledon Solicitors

For the Respondent: Mr J McGill, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Jamaica born in 1953. She arrived in the UK in 2002 as a visitor. She applied to extend her leave to remain as a student, which was granted from March 2003 to March 2005. She then overstayed and in February 2006 applied to extend her leave to remain outside of the Immigration Rules. This application was refused, and she appealed. Her appeal was allowed in a decision promulgated in June 2009. She was then granted a period of discretionary leave to remain from February 2010 to February 2013. In January 2013 the appellant applied to extend her leave to remain outside of the Immigration Rules,

this was refused in December 2013. She again appealed, and the appeal was allowed leading to her being granted at further period of discretionary leave to remain from 16th September 2014 until 16th September 2017. On 12th September 2017 the appellant applied to extend her leave to remain based on her private life ties with the UK. This was refused on 5th March 2018. Her appeal against this decision was dismissed by First-tier Tribunal Judge GC Solly in a determination promulgated on the 23rd July 2018.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Swaney on 13th September 2018 on the basis that it was arguable that the First-tier judge had erred in law in failing to consider the impact of her mental health problems on her credibility and on her ability to access treatment and reintegrate herself if returned to Jamaica. Judge Swaney also extended time and admitted the application.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

4. The grounds of appeal contend that the First-tier Tribunal failed to weigh relevant matters in the appellant's favour including: that she was the full time carer for her father between 2005 and 2015 when he passed away, which had been seen by previous First-tier Tribunal judges as a factor which had saved public services a lot of time and money; her 16.5 year period of residence in the UK and the fact that it was acknowledged in the past by previous First-tier Tribunals it would be a disproportionate interference with her Article 8 ECHR rights to remove her; her mental health – the First-tier Tribunal accepted that the appellant had suffered a psychotic episode; and the fact that she speaks English which should have been seen as a positive factor not just a neutral one.
5. Ms Jaquiss submitted that she relied upon the grounds but that the decision was also wrong in asserting at paragraph 48 that there was only one factor in the appellant's favour in the current appeal, which was that remaining in the UK enabled her to visit her father's grave, and that all other factors were against her. Her private life ties and past contribution to her father's care and past family life ties ought equally to be in her favour. She accepted that there was no evidence of lack of treatment in Jamaica for the appellant's medical issues before the First-tier Tribunal.
6. The Rule 24 notice of the respondent contends that the First-tier Tribunal considered the appellant's mental health problems but found that as she has children and other family in Jamaica she would not face very significant obstacles to integration if returned there. There was no evidence or argument that she would not be able to access adequate mental health treatment in Jamaica. The grounds are said simply to be a disagreement with the outcome of the appeal.

Conclusions – Error of Law

7. The First-tier Tribunal correctly starts the decision-making in this appeal with the two previous decisions relating to this appellant. It is noted that both previous appeals were successful as the appellant was caring for her father who suffered from schizophrenia, and because of the family life relationship between the appellant and her elderly British citizen father. It is then noted that her father sadly passed away in March 2015.
8. The decision of the First-tier Tribunal is based on the following facts. The appellant has private life within the UK which includes two cousins and a particular friend; and the fact that she has a number of physical health conditions and had some mental health issues from 2015 for which she is provided with medical treatment. It is noted however that no evidence was produced to show that she could not access appropriate health care in Jamaica; and that she had family including children in Jamaica with whom she says she currently has no contact. The First-tier Tribunal finds that the appellant could locate these family members in Jamaica however and seek their assistance with reintegrating. Consideration is also given to the fact that the appellant visits her father's grave in the UK and her church attendance. It is found that she speaks good English but is currently not working and therefore not financially independent. I find that all material matters were considered by the First-tier Tribunal, and there is no error in overlooking a material issue. It was not an error for the First-tier Tribunal not to balance the appellant's no longer existing family life relationship with her deceased father or her past contribution to his care as the decision was to be made on the facts at the date of hearing.
9. I find that it was rationally open to the First-tier Tribunal to conclude that the appellant would not have very significant obstacles to integration, and thus that the appellant was not able to meet the requirements of the private life Immigration Rules at paragraph 276ADE(1)(vi). This is particularly the case given the findings that the appellant has a number of relatives in Jamaica including four children whom it is found that she could locate; given that she has a number of managed health problems but there is no evidence these could not be treated in Jamaica; and given that she would be able to find a church to attend in Jamaica as she does in the UK.
10. It was also rationally open to the First-tier Tribunal to find that the appellant's removal was not disproportionate to her private life ties to the UK in all of the circumstances. This is particularly the case as it was correctly noted that little weight could be given to her private life ties with the UK as these had all been formed whilst she had been unlawfully and precariously present, applying s.117B(4) and (5) of the Nationality, Immigration and Asylum Act 2002; there was no evidence she could not receive appropriate medical treatment in Jamaica; and as she is not financially self-sufficient, which is a factor which weighs against her under s.117B(3) of the 2002 Act. It was not an error of law

not to weigh in her favour her ability in English, rather than treat this as a neutral factor, see AM (s.117B) Malawi [2015] UKUT 260.

11. Whilst it was an overstatement at paragraph 48 for the First-tier Tribunal to say that there was only one factor in favour of her remaining in the UK I do not find this to be a material error as the little weight that could be given to the appellant's private life ties formed over the 16.5 years of her residence in the UK and her ability to visit her father's grave were rationally found not to outweigh the fact that she did not meet the requirements of the private life Immigration Rules and so her removal was in the public interest of maintaining immigration control and the fact that she was not financially independent.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. I do not set aside the decision of the First-tier Tribunal dismissing the appeal which is therefore upheld.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I make this order in light of the appellant's vulnerable mental health.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

29th October 2018