Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07531/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1 October 2018	**On 22 October 2018**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MISS JANICE HALDAIN MORRISON
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Coleman, Counsel, instructed by Mordi & Co Solicitors
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Jamaica, has permission to challenge the decision of Judge S Aziz of the First-tier Tribunal (FtT) dismissing her appeal against the decision made by the respondent on 21 June 2017 refusing her application for leave to remain on family and private life grounds.

2. The appellant's principal ground contends that the judge acted in a procedurally unfair fashion in his conduct of the hearing by 'stepping into

the ring' (to use the phrase referred to by the judge who granted permission) by cross-examining the appellant and therefore adopting the position of one of the parties (the respondent). As part of this same contention the written grounds take issue with the judge's description of the appellant's Counsel, who is said to have put to the appellant that her account of events did not make sense. The grounds aver "[t]his inevitably creates the impression that the FtTJ might have hijacked the Appellant's Counsel's examination-in-chief".

3. In submissions before me Mr Coleman accepted that the loose language used by the author of the appellant's grounds was unacceptable and that he had already made that clear (and would do so again) to those instructing him. I pointed as an example to the author's reference to "[e]ven a dullard upon reading the FtTJ determination …". I do not think it would be right to count these defects in the grounds against either Mr Coleman or the appellant, but I reiterate that the author of these grounds may find if such language is used again that he or she is reported for conduct unbecoming a legal representative.

4. There was an initial discussion regarding what documents I should look at in order to have a fuller picture of what transpired in the proceedings before the judge. I explained to the parties that when I checked the Tribunal file I found the judge's own Record of Proceedings illegible. Mr Coleman said that even though the appellant had made an application to produce Counsel's Notes, he was content to rely on the Notes provided by Mr Bramble made by the Presenting Officer. This recorded as follows:

"

HO Reference M1683904

Re: Janice Haldain Date of Birth: 25 February 1971
Nationality: Jamaica
Morrison

To: SAT

Present:
IJ Aziz
Representative Ms A Hussain (C), Mordi & Co Solicitors
Appellant
Lesley Singh SCW (AQA)

FLOAT CASE

Time given combined with lunch 12.30 – 14.00

A not the biological parent of the British child. Consideration falls outside the rules. A claims to be the daily carer of the child.

IJ had no HOB, PO provided a copy. PO no AB, R provided.
No witnesses in attendance and witness statements in the AB unsigned.

Preliminary issues:
Document check. 2012 application basis (PO not in possession of file). R conceded A cannot meet rules.

Hearing:
A made 2012 application (referred to in current RFRL 39) on the basis of a family life gained from cohabiting with her aunt and uncle. In contradiction, the application subject to appeal was on the basis A was the carer of a British Citizen child, who she had lived with from the age of 2 (circa 2007/2008). She left that accommodation in 2015 (WS different addresses).
A maintained this was true whilst simultaneously that she moved out of her uncle's property in 2012 when he moved to London, later correcting this to 2008 to fit with her current claim. She made allegations of gross misconduct regarding her legal representatives of the 2012 application in that they omitted mentioning her relationship with the BC child, and this only came to light with the instruction of a new lawyer in 2013/2014.

The BC child and er grandmother (WS in AB) were not in attendance and their statements were unsigned. A stated that her friend Juliet was visiting her unwell mother so did not come to the hearing. Allegedly she knew the basis of A's claim. The child is in Canada. Juliet's WS states her daughter, the child's mother, lives in Canada. A denied that the child was visiting her mother in Canada stating the mother had gone to Jamaica so the two missed each other. The IJ interrupted PO line of questioning to ask questions already intended. A could not answer who had taken the child to Canada despite stating that she was essentially fully responsible for the child's upbringing. She stated it was a friend of Juliet's but did not know their name, only that A had seen their face.

A stated if she returns to JAM no one could care for the child like she does.

A is not working at the moment, last employment coincided with student leave. She did not intend to return to JAM. She raised problems on returning that the IJ stated she had not raised before (DV previous bf, raised in 2016).
A has distant family in JAM. She undertakes volunteering roles in the UK and goes to church. She has distant family in UK. A states she could not relocate to JAM because she has been away for too long and is unfamiliar with the country, she does not wish to leave the child, and prefers UK.

> Overall the appellant did not come across as a credible witness and had no corroborative evidence in support of her claim".

I am grateful to the submissions I heard from Mr Coleman and Mr Bramble on this issue and indeed the other grounds to which I shall come to shortly.

5. I consider that the appellant's principal ground falls well short of establishing procedural unfairness on the part of the judge. It is clear from the judge's own analysis, read together with the PO Note, that the judge's interventions arose at a stage in the respondent's cross-examination when the appellant was being asked to explain how it could be that the child, T, came to be visiting Canada where her mother had been said to live. (The appellant's case had been that in 2005 the child's mother had disconnected herself from the child when she was 2 years old and handed her over to her maternal grandmother, JE, that the appellant was living with JE and that both of them began caring for T together). Viewed in this context, this part of the appellant's oral testimony represented her main opportunity to explain an alleged inconsistency. The judge's interventions are consistent with an attempt to ensure the appellant understood the significance of the issue and had proper opportunity to respond. They are thus consistent with the judge's own portrayal of them as being to "assist" the appellant (see paragraph 64). There is no suggestion that the appellant was put off responding with the evidence she wished to give and gave or that the judge misrecorded it. It is true that the PO Note states that "[t]he IJ interrupted PO line of questioning to ask questions already intended", but that simply confirms that the questions the PO would have asked were the same as those of the judge. The appellant was represented and Counsel at the hearing raised no objections to the judge's interventions either at the time or in submissions.

6. The issue regarding the visit of T to Canada arose at the hearing when the appellant was asked why JE had not attended to support her claim to be a potential carer of T. The appellant said JE was unwell and that T was on a visit to Canada and T had travelled to Canada with a friend. Asked the name of this friend the appellant did not know. The appellant had then said T's mother was in Jamaica. It was put to the appellant that that was not what JE said in her witness statement. Against this background I consider what was said by the judge at paragraphs 69–74 to be wholly within the range of reasonable responses. At 69–74 the judge said;

> "69. *Unaware of the identity of the responsible adult who has taken T to Canada:* Both in her statement and in her oral evidence, the appellant made clear that even though she is not the biological parent of T and she does not have any legal guardianship over her, that she is, for all intents and purposes, the child's parent (along with her friend JE).

70. If that is indeed the case, then it is nothing short of staggering that she did not know the identity of the individual who has taken T on holiday to Canada. All the appellant could say was that the individual was a friend of JE's and that she recognised the person's face.

71. I am afraid that this aspect of her evidence demonstrated very clearly to the Tribunal that she is not someone who is exercising parental responsibility over T. It is simply not credible that she could claim to be acting as the child's parent since T's biological mother abandoned her at a very young age and be unaware of the identity of the adult who has taken her child to Canada. On the contrary, her level of ignorance on this issue is actually a very good indicator of the fact that she is not exercising parental responsibility over the child.

72. *Why has T gone to Canada:* I am also not persuaded that the appellant was being candid with the Tribunal as to why T has gone to Canada. Her evidence was that she had gone to visit her godparents. She had also initially stated T's biological mother lived in Jamaica.

73. When it was put to her that in JE's unsigned statement, she had indicated at paragraph 5 that the child's mother was living in Canada, the witness was again left stalling for an answer to explain the contradiction. She eventually stated that there had been a misunderstanding. T's biological mother does live in Canada. It was simply that she was currently in Jamaica on holiday. I am afraid that I find this to be yet another example of an untruth.

74. I also find merit in Ms Ramsey's observation that it does not seem credible that T's biological mother would leave Canada at the same time that T was visiting the country. I do not find that the appellant has given the Tribunal a truthful account of why T is currently in Canada and whom she is visiting. I am not persuaded that she has lost all ties with her biological mother".

7. As regards the issue taken in the grounds with the judge's statement that the appellant's Counsel had put to the appellant that her account (as to why she had not mentioned looking after T in her 2012 application) "did not make sense", I fail to see that the judge's assessment of the appellant's account was significantly affected by what the appellant's Counsel had or had not put to her regarding this. In the absence of any note produced by the Counsel who represented or anything said about this in the PO Note (which Mr Coleman was content to rely on), I consider it more likely than not that Counsel was simply giving the appellant an extra opportunity to explain the glaring contradiction in her testimony. That is a

commonplace technique used by Counsel in cases up and down the land where the evidence is contested.

8. It must not be underestimated how material was the appellant's failure to provide an adequate explanation for why she had not mentioned T in her 2012 application. On the one hand, she had put in an application in 2012 based on family life she had established living with her uncle and aunt. On the other hand, she was now saying to the judge that in 2012 she was not living with her uncle and aunt (see paragraphs 33 and 34) but with JE and that both of them were caring for T together (see paragraph 27). The appellant's attempted explanations at the hearing included a claim that she had informed her solicitors in 2012 that she was caring for T; however, given that she produced no evidence to support that the judge rightly rejected it.

9. I mentioned earlier that the appellant raised other grounds. They were not amplified by Mr Coleman but for completeness I find that there was nothing wrong with the judge finding at paragraph 76 that the appellant had falsely claimed that she exercised parental responsibility. It does not matter that the respondent had not alleged this in her reasons for refusal, since the appellant's oral evidence afforded sufficient evidential basis for such a conclusion.

10. The grounds also contend that the judge erred in treating the appellant's failure to show she had mentioned T in her 2012 application as "the sole basis of her adverse credibility findings". The simple answer to this contention is that the judge did not treat it as her sole basis: at paragraphs 55–59 the judge noted concerns about the documentary evidence. At paragraphs 69–74 the judge addressed concerns regarding the appellant's evidence about T's visit to Canada. At paragraph 75 the judge notes concerns about the fact that the appellant's evidence indicated that she had not been living with T for the past three years. At paragraph 76 the judge noted that "[t]he above adverse findings lead me to an overall conclusion that the appellant has essentially manufactured a human rights claim …".

11. The grounds also contend that it was not open to the judge to come to the conclusion that the appellant would not face very significant obstacles to integration in Jamaica. In this respect, the grounds amount to a mere disagreement with the judge's finding to the contrary. The judge gave sound reasons at paragraph 80 for concluding that the appellant did not meet paragraph 276ADE(1) of the Rules. The claim in the grounds that the judge failed to make a proper proportionality assessment is also devoid of merit.

12. For the above reasons I conclude that the judge did not materially err in law and that accordingly his decision to dismiss the appellant's appeal must stand.

13. No anonymity direction is made.

Signed Date: 16 October 2018

Dr H H Storey
Judge of the Upper Tribunal