



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

Appeal Number: HU/09053/2019

THE IMMIGRATION ACTS

Heard at Birmingham

On 22 November 2019

**Decision & Reasons
Promulgated**

On 27 November 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DAVE SYLVESTER BRANN

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr Mills, Senior Home Office Presenting Officer

For the Respondent: Ms Shaw, instructed by TMC solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born on 14 April 1974 and is a citizen of Antigua and Barbuda. The appellant appealed to the First-tier Tribunal against a

decision of the Secretary of State dated 7 May 2019 refusing his human rights claim following the making of a deportation order under Section 32(5) of the Borders Act 2007. The First-tier Tribunal, in a decision promulgated on 15 August 2019, allowed the appeal on Article 8 ECHR grounds.

2. At the initial hearing at Birmingham on 22 November 2019, both parties agreed that the judge had erred in law by finding that the appellant met the requirements of paragraph 399A of HC 395 (as amended). Although he made no specific finding in respect of paragraph 399A(a), the judge found that the appellant met the requirements of the paragraph. That finding was wrong because, in the light of *SC (Jamaica)* EWCA Civ 2112 [69], the appellant had not lived 'most of his life' in the United Kingdom because he had not lived here for more than half of his life.
3. The judge's error led to him to find at [17] that, because the requirement in the rules was met, there was no need for him specifically to consider very compelling circumstances which might entitle the appellant to leave under Article 8 outside the rules. Had he been aware that the appellant did not meet the requirements of paragraph 399A, then it seems very likely that the judge would have proceeded to address the issue of very compelling circumstances. I notified the representatives in court that I considered this to be an unusual case of an 'incomplete,' as opposed to a flawed, decision and that the best course of action was for the Upper Tribunal to set aside the decision, preserve all the findings, save for that in respect of paragraph 399A and return the appeal to First-tier Tribunal Judge D S Borsada for him to consider the appeal on the basis of very compelling circumstances only. Both parties may adduce further evidence provided copies of any documentary evidence, including witness statements, are sent to the other party and filed at the Upper Tribunal no less than 10 clear days prior to the First-tier Tribunal hearing.

Notice of Decision

The decision of the First-tier Tribunal is set aside. All of the findings of fact are preserved save for the finding that the appellant meets the requirements of paragraph 399A of HC 395 (as amended). The appeal is returned to **First-tier Tribunal Judge Borsada** for him to remake the decision following a hearing.

Signed

Date 22 November 2019

Upper Tribunal Judge Lane