



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/14473/2018**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice  
Centre  
On 30 July 2019**

**Decision & Reasons Promulgated  
On 08 August 2019**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**PEARLINA THOMAS  
(ANONYMITY DIRECTION NOT MADE)\_**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Hoare

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a female citizen of Jamaica who was born on 31 March 1955, appealed against a decision of the Secretary of State dated 3 July 2018 to refuse her application to remain in the United Kingdom. The First-tier Tribunal in a decision promulgated on 13 May 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

Immigration History

2. The appellant entered the United Kingdom as a visitor on 29 September 2002. Following the expiry of her visit visa, she took no steps to regularise

her immigration status until she applied unsuccessfully for leave to remain in March 2010. She made a series of further applications, all of which were refused by the Secretary of State. The appellant's natural child, Garrett (date of birth: 18 August 1988), entered the United Kingdom in June 2005. He claims to continue to rely upon the appellant for 'emotional support'. Both parties accept that the appellant divorced a violent husband with whom she had lived in Jamaica. The appellant lives with her brother, Thomas Lawrence in the United Kingdom. Mr Lawrence is blind in one eye and has other health, including mobility, problems for which he receives assistance from the appellant. One of Mr Lawrence's adult sons also lives at the same property.

The Occupational Therapy (OT) report: Ms J Summerfield

3. The judge had before her report from Ms Summerfield, an occupational therapist (the OT report). She also had letters from Mr Lawrence's GP. The judge summarises those letters follows:

There are two letters from the appellant's brother's GP, one dated one Febry 2017, which says he has no vision in his left eye and his sister assist him in daily living and the second dated 1 October 2018 which says he has difficulty walking because of osteoarthritis. There was no medical evidence to support the suggestion that [Mr Lawrence] needed a high level of care or that he was unable to read with his right eye nor was there any evidence that his health would deteriorate as a consequence of having to receive help from a son or a carer provided by the local authority. The available medical evidence does not support the conclusions in the [OT report].

4. The judge was critical of the OT report. The OT had concluded that social services would be able only to provide limited and erratic assistance; Miss Lawrence would not be able to live safely and maintain his stable physical and emotional and mental well-being without the support of his sister; the removal of the appellant from the United Kingdom would leave her 'dislocated and distressed in a territory that is unfamiliar and potentially hostile'; the appellant's removal would constitute 'a deed which would be unjust and unfair and inhumane' (*sic*). At [63-64], the judge accepted the criticisms of the OT report made by the presenting officer. She criticised the failure of the OT to say how long she spent at the appellant's home or whether she met the appellant's brother, although she did, nevertheless, give an opinion of the removal of the appellant upon him. The judge also criticises the willingness of the OT to comment on the appellant's human rights and, more importantly, to offer an opinion regarding the deterioration of Mr Lawrence's health in the event that the appellant is removed. The judge considered that these opinions went 'significantly beyond the remit described in the introduction.' The OT's CV did not indicate that she possessed any legal or medical qualification. The judge concluded that the OT 'does not appear to appreciate that the limits of her role and has not confined herself to commenting on matters for which she is qualified. In consequence, I place limited weight on this document.'

5. The appellant criticises the judge's approach to the OT report. The OT had given valid opinion evidence on matters within her competence and, even if she had strayed into areas on which he was not qualified to comment, the judge should have attached appropriate weight to those parts of evidence which lay within her competence rather than discounting the entire report. There is some force in that submission. However, having read the report in detail, I am satisfied that, by straying into areas outside her professional competence, the OT has diminished the overall evidential value of her report. This is because the report gives the impression that the author, by commenting on medical matters and on human rights law and by her use of somewhat florid language, is straining to advocate the appellant's case rather than to comment clinically and objectively on the care needs of Mr Lawrence. Secondly, the judge has considered the OT report in some detail and has quoted at length from her analysis of Mr Lawrence's care needs; it cannot be said that the judge has ignored the entirety of the report. Thirdly, referring to [65] quoted above, I believe it was open to the judge to limit her reliance upon the OT report having found that the medical evidence did not support the OT's conclusions. Whilst the judge should perhaps have not limited the weight which he gave to the whole report, she was entitled to voice the criticisms of the report and to incorporate those criticisms into her overall analysis of the evidence. So far as the treatment of the OT report is concerned, I do not find that the judge has erred in law.

Integration in Jamaica: *Kamara* [2016] EWCA Civ 813 not applied.

6. The appellant also asserts that the judge has failed properly to assess the ability of the appellant to reintegrate into Jamaican society. She relies on *Kamara* at [14]:

The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.

7. Other than asserting the judge had made a material misdirection in law, the grounds completely fail to explain how the judge has failed to apply this case. The judge refers to *Kamara* at [24] in her discussion of the appellant's representative's submissions. The representative submitted that the appellant has no close relatives in Jamaica and had a history of abuse from her violent husband. She had no home and no support in Jamaica having lived in the United Kingdom since 2002. The judge turned again to the question of integration in her conclusions at [68]. She noted that the appellant in *Kamara* had been only been six years old when she left Sierra Leone. By contrast, the appellant was 47 years old when she left Jamaica. The judge did not accept the appellant's evidence that she had no remaining ties of family in Jamaica; that was a finding clearly available to her on the evidence. The judge did not accept that the appellant's violent husband would represent a significant obstacle to her return or a

threat to her in Jamaica in the future; again, these were findings plainly available on the evidence. The judge's analysis of the appellant's reintegration in Jamaica is, in my opinion, legally sound and supported by cogent reasons. She has applied the relevant case law appropriately. The grounds of appeal, by contrast, amount to no more than an assertion, unsupported by detailed reasoning, that the judge has, in some unspecified way, made a mistake.

The judge's conclusions: the care needs of Mr Lawrence

8. The appellant relied on the case of *MS (Malaysia)* [2019] EWCA Civ 580 in particular at [42]:

The availability of state-funded medical and social care will, in many cases, make it hard for those who provide care for their elderly relatives to bring themselves within the Regulation. The availability of state care is not, however, to be treated as a trump card in every case, irrespective of the nature and quality of the dependency on the carer which is relied on. Just as the availability of an EU citizen parent to be a carer of a minor child does not render unnecessary an enquiry into the nature of the dependency of the child on her non-EU parent (see *Chavez-Vilchez*), the availability of state care does not avoid the need to enquire into the actual dependency of the EU citizen on her adult carer. The availability of alternative care is a relevant, but not always decisive factor.

9. At [79-80], the judge sought to distinguish the circumstances in the present appeal from those in *MS*. Having regard to all the evidence, she found that the care needs of Mr Lawrence had not been demonstrated to be extensive and that the OT report supported the conclusion that assistive aids and visits from carers could meet Mr Lawrence's care needs adequately. She noted the comments of the Court of Appeal in *MS* that the availability of alternative care from social services may not be 'decisive' but she also took account of the fact that Mr Lawrence's adult son (who did not give evidence before the First-tier Tribunal) would continue to live with his father 'and could meet many of his needs such as assisting with cooking and washing' activities which the OT had considered it unsafe for Mr Lawrence to attempt unaided. She rejected, legitimately in my view, the OT's opinion that, save for the care which she provided, there existed any exceptional level of emotional dependency between Mr Lawrence and the appellant. Read as a whole, I do not find, as the appellant asserts, that the judge has failed to follow the guidance provided in *MS* or any other relevant jurisprudence. Rather, the judge has reached findings which were available to her on the evidence. I find that the appellant has failed to establish that the First-tier Tribunal erred in law.
10. In the circumstances, the appeal is dismissed

**Notice of Decision**

This appeal is dismissed.

Signed

Date 30 July 2019

Upper Tribunal Judge Lane