



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

Appeal Number: IA/01673/2012

THE IMMIGRATION ACTS

Heard at Field House

On 11th September 2013

**Determination
Promulgated**

On 22nd October 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

MAYUTA LEONORA BARNES

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Osadebe of Zuriel Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Jamaica, born on 23rd May 1945. She arrived in the UK on 16th March 2010 with six months' leave to remain as a visitor. She applied for settlement three months later on 1st June 2010 as a

dependent relative. Her application was refused and subsequent appeals dismissed and she became appeal rights exhausted on 10th June 2011.

2. She made a second application for settlement on 4th July 2011 which was again refused. She appealed to the First-tier Tribunal and in a determination promulgated on 28th February 2012 Immigration Judge Majid dismissed her appeal. The Appellant applied for leave to appeal to the Upper Tribunal. Permission was granted on 21st March 2012 and, on 26th April 2012, Upper Tribunal Judge Craig set aside the decision.
3. The matter then came before Deputy Upper Tribunal Judge Chana on 7th June 2012 and she again dismissed the appeal. The Appellant sought permission from the Upper Tribunal to appeal to the Court of Appeal and permission was granted on 3rd October 2012 by Senior Immigration Judge Chalkley.
4. The Respondent agreed with the Appellant that it was arguable that there was a material error of law in the determination of Deputy Upper Tribunal Judge Chana and the parties agreed to the matter being remitted for an appeal hearing.
5. By consent, on 1st July 2013, the Court of Appeal allowed the appeal to the extent that it be remitted to the Upper Tribunal to be heard by a differently constituted Upper Tribunal. Thus the matter came before me.

The Issues

6. This application was refused under paragraph 319 with reference to paragraphs 317(iii) and (v) of HC 395. The Secretary of State was not satisfied that the Appellant was financially wholly or mainly dependent on the relative present and settled in the UK. Nor was she satisfied that she had no other close relatives in her own country to whom she could turn to for financial support.
7. At the commencement of the hearing Mr Tarlow confirmed that he would not be arguing that the Appellant was not financially wholly or mainly dependent on her son Fabian in the UK. Accordingly the sole issue for determination would be whether she had family in Jamaica who could support her, and Article 8 issues.

The Evidence

8. The Appellant gave oral evidence. She confirmed that the contents of her witness statement were true. She is a widow and used to sell fabrics in her local market until she suffered a stroke as a result of high blood pressure from 2002 when she became dependent on her son Fabian Barnes. He sent money to her through the Jamaican National Money Transfer System and she had no other source of support. She said that she had another son, Calvin Morgan, who lives in Jamaica. He is a butcher by profession. In her statement she said that he was unwell and only able to work twice a week and has five children to maintain with his wife.

9. In her oral evidence she said that she was not really in touch with Calvin Morgan but then said that she last spoke to Fabian the other night and she talked to him. She said that he used to work but repeated twice that he was now not working at all. When asked how he survived she said that his wife worked.
10. The Appellant said that she had another child in America who did not support her at all because she was not employed and she hardly heard from her. She also had a son, Benton Morgan ,but she last saw him in 2005. He had two children, one, Elvis, who is now 20 and who used to live with her before she came to the United Kingdom. She was not sure where Elvis was now but he might be with his mother in Kingston. She was asked about other relatives. She said that she had an elderly mother in Jamaica and a sister who took care of her. The sister was not married but she had two children of her own. She said that her sister had never worked. When asked how she survived financially she said that she earned money from sewing now and then.
11. The Appellant was asked about her accommodation in Jamaica. She said that she used to have a house which she had a life interest in but a large tree fell on it and damaged it.
12. She said that she came to the UK in 2010 for the christening of her granddaughter Rachel Barnes and whilst she was here her grandson Joshua Barnes was born. She has a strong bond with her grandchildren and the thought of separation from them is unbearable. She would have nowhere to live and nowhere to go back to if she returned to Jamaica. She suffers from high blood pressure, arthritis, high cholesterol and has had a nervous breakdown. Her removal would have a devastating effect on her family life in the UK and her son, daughter-in-law and grandchildren would be severely affected. She cannot live by herself or on her own in Jamaica because of her frailty and illness.
13. Fabian Barnes also gave evidence. He confirmed that he had supported his mother since 2002. He said that his brother Calvin worked two days a week doing butchering but could not afford to give her money nor to offer her accommodation because he had a two bed roomed house and five children. When asked whether he had regular contact with his brother he said it depended what was meant, but then agreed that he had spoken to him four days ago.
14. Fabian Barnes was asked about whether the Appellant had any other relatives in Jamaica. He said that her mother lived there but she was feeble and helpless. He could not think of any others, only distant relatives. It was then put to him that she had a sister there and he agreed.
15. Fabian Barnes said that his mother's house was damaged beyond repair and not liveable in. She could not live with his brother Calvin because he

had five children. He accepted that two were of working age but did not think that any of them were actually working.

16. His wife Sasha Lee Barnes also gave evidence. She said that the family could not cope without the Appellant. She was a vital part of the family and like a mother to her. She was the anchor. She was also asked whether the Appellant had any other relatives in Jamaica and she said that there were none to her knowledge. However when it was put to her she agreed that there might be a sister and she thought that some of Calvin's children could be of working age.

Submissions

17. Mr Tarlow asked me to find that the Appellant and her family had not been truthful in giving evidence. He asked me not to accept that the family were destitute in Jamaica as claimed. When the Appellant came to the UK as a visitor on her application, she said that she had a total monthly income of 18,000 Jamaican dollars she received money from her children in Jamaica and in the UK.
18. Mr Tarlow submitted that even if the Appellant's house had been damaged, that was no bar to her return and even if damaged beyond repair, the land would still be valuable. He said that no evidence had been produced other than the oral evidence of the witnesses to confirm the family's circumstances in Jamaica. He accepted that she preferred to live in the UK but she had been here for a relatively short period of time, since 2010, and her removal was proportionate.
19. Mr Osadebe submitted that the Appellant had given clear evidence which had not been embellished. She was a frail old lady and had said as much as she could remember. She had been to the UK before and had returned twice but now enjoyed family life with her son and daughter-in-law and her grandchildren. She was on medication and her health would be in jeopardy if she were to return.
20. He said that the Appellant had nothing to return to in Jamaica, had nowhere to live and there was no one to look after her. She was financially dependent on her son in the UK and there were no other close relatives in Jamaica who were able and willing to care for her. Calvin could not support himself and his five children and there was no evidence that they were working.
21. He relied on the case of Beoku-Betts and submitted that there would be a direct impact on other family members by her removal including her daughter-in-law and her grandchildren. He relied on the Respondent's IDIs and asked that the appeal be allowed under the Rules and with respect to Article 8.

Findings and Conclusions

22. I find that the Appellant has close relatives in Jamaica to whom she could turn to for financial support.
23. The evidence in relation to her family there was discrepant. The Appellant herself said that her son Calvin was not working. Fabian Barnes said that he worked two days a week at butchering. Sasha Lee Barnes was sure that he was not working. The Appellant said that she was not really in touch with Calvin but it then transpired that the family had spoken to him a couple of days ago on the phone.
24. The Appellant said that Calvin could not support himself and his family but then admitted that his wife worked. Fabian Barnes was evasive when asked whether he was in regular contact with his brother, saying that it depended on what you call regular.
25. Initially none of the family mentioned the fact that the Appellant has a sister in Jamaica. The Appellant said that she had never worked but then said that she earned money from sewing. Fabian could not think of any relatives in Jamaica except for his old grandmother until it was put to him that he had an aunt there.
26. In fact the Appellant also has a son Benton Morgan in Jamaica although she said that she was not in contact with him. I do not believe her. Benton has two children, one of whom, Elvis, was living with her before she came to the UK.
27. In the light of the contradictory evidence given today, I conclude that there are indeed a number of relatives who would be able to support the Appellant on return and that her statement in the Visit Visa Application Form that she was supported by relatives both in the UK and in Jamaica is, on the balance of probabilities, true.
28. I do not accept that the Appellant would have no home to return to. As the reasons for refusal letter commented, her claim that her house was destroyed by Hurricane Dean in Jamaica in November 2010 was not raised in her two unsuccessful appeals which were both heard after November 2010. She has a life interest in that house and could return to it.
29. I accept that she enjoys family life in the UK with Fabian Barnes, his wife and two children. She has been financially dependent on him at least since her arrival here in 2010.
30. Removal would be an interference with her family life but would be lawful because she has no other basis of stay in the UK and in pursuit of a legitimate aim. It would also be proportionate.
31. The Secretary of State has a significant public interest in deterring applications of this nature. The Appellant arrived in the UK as a visitor in March 2010 and within three months had made an application as a dependent relative. Whilst I have no doubt that she has a close bond with her grandchildren in the UK, she also has grandchildren in Jamaica and

there is no barrier to her UK family visiting her there. I accept, although there is no medical evidence, that she suffers from high blood pressure and is on medication, but there is no reason why she could not obtain the relevant medicine in Jamaica. She says that she sometimes does not remember to take it but she has other relatives in Jamaica who could remind her. Clearly her family, including her grandchildren, in the UK will miss her, but they can visit and their interests do not outweigh those of the Respondent.

32. With respect to the IDIs, Mr Osadebe produced a document dated October 2004 which states that where an applicant is over the age of 65 detailed enquiries will not be necessary. However he also provided a document dated July 2011 which states that the applicant must demonstrate that he/she has no other close relatives to turn to in his own country. If there is a relative in the applicant's own country who is able and willing to support him, then it would not be unreasonable to expect him to turn to that relative for support even if the sponsor in the UK is financially in a better position to do so. There is nothing therefore in the IDIs which assists this Appellant.

Decision

33. The original judge erred in law and the decision has been set aside. It is remade as follows. The Appellant 's appeal is dismissed with respect to the Immigration Rules and on Article 8 grounds.

Signed

Date 3rd October 2013

Upper Tribunal Judge Taylor