



IAC-CH- CK-V1

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

Appeal Number: IA/24579/2013

THE IMMIGRATION ACTS

Heard at Columbus House, Newport

Determination

On 24th October 2014

Promulgated

On 11th November 2014

Before

UPPER TRIBUNAL JUDGE POOLE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**VERONICA VIOLET THOMPSON
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Irwin Richards, Home Office Presenting Officer

For the Respondent: Ms Catherine Grubb, Counsel

REMITTAL AND REASONS

1. In this decision I will refer to the parties by the style in which they appeared before the First-Tier Tribunal.
2. The appellant is a female citizen of Jamaica, born 30 April 1967. The appellant entered the United Kingdom in November 2000 as a visitor and has remained since despite an application for further leave being refused. The appellant then applied to remain in the United Kingdom as the unmarried partner of a person present and settled in the United

Kingdom. That application was refused in March 2013 and in June 2013 the respondent made a further decision under paragraph 10a of Schedule 2 to the Immigration Act 1971 for administrative removal. The appellant appealed against that decision.

3. The appellant's appeal came before Judge of the First-Tier Tribunal Maciel sitting at Newport on 8 May 2014. The appellant was represented by Ms Grubb and the respondent by a Presenting Officer. An oral hearing was held. The appellant attended and gave evidence. In a determination promulgated on 21 May 2014 the judge dismissed the appellant's appeal under the Immigration Rules, but allowed the appeal under "human rights". It had been conceded on behalf of the appellant that she was not in the United Kingdom legally and could not succeed under the Immigration Rules. By reason of that concession the judge found that the appellant was not eligible for leave to remain under Appendix FM of the Immigration Rules. The judge however went on to consider "paragraph EX" and although it was considered that the appellant was in a genuine and subsisting relationship with a British citizen it was not considered that there were insurmountable obstacles to the couple living in Jamaica. The judge then went on to consider paragraph 276ADE, but made findings on the evidence that the appellant has close family in Jamaica and that her ties to that country have not been severed.
4. As a result findings made by the judge the determination (paragraph 44) records that the "immigration appeal is dismissed".
5. Having thus reached conclusions the judge went on to consider "human rights" from paragraph 30 onwards. In that paragraph the judge considered whether the Immigration Rules provided a complete code and if there were goods grounds to consider Article 8. As the appellant's partner had two children the judge found this to be good reason to consider Article 8 and to allow that aspect of the appeal.
6. The respondent appealed against that decision. The grounds contend a material misdirection of law alleging that the determination contains internal inconsistencies. Whilst considering the Immigration Rules the judge had found no insurmountable obstacles to family life continuing outside the United Kingdom, but that when considering Article 8 the judge had found that the appellant's partner had a career in the United Kingdom, together with family ties which would result in it being unreasonable for him to be required to live in Jamaica. The grounds further contend that the judge failed to have regard to the case of **R (On the application of) Nagre v Secretary of State for the Home Department [2013] EWHC 720 (Admin)**. It is also alleged that the judge failed to properly deal with the evidence reaching a conclusion that it would be disproportionate for the appellant to have to leave the United Kingdom to secure entry clearance, when the evidence of the partner was that he did not think it would be a problem for the appellant to return to Jamaica to apply for entry clearance and return.
7. The application for leave came before another judge of the First-Tier Tribunal who in granting leave gave the following as reasons:

“1. The respondent seeks permission to appeal, in time, against the decision of First-Tier Tribunal Judge Maciel who in a determination promulgated on 21 May 2014 allowed on human rights grounds, in terms of Article 8 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (the 1950 Convention), the appellant’s appeal against the respondent’s decision to refuse leave to remain in the United Kingdom.

*2. The basis of the respondent’s grounds of appeal are that the First-Tier Tribunal Judge had materially misdirected himself in his assessment of the appellant’s Article 8 rights outside the Immigration Rules and the decision was therefore not in accordance with the law. In particular the respondent submitted that the First-Tier Tribunal Judge misdirected himself in applying the criteria specified in **R (On the application of) Nagre v SSHD [2013] EWHC 720** - whereby after applying the requirements of the Immigration Rules only if there may be arguably good grounds for granting leave to remain outside them, would it be necessary for Article 8 purposes to go on to consider whether there were compelling circumstances not sufficiently recognised under them.*

3. The First-Tier Tribunals Judge’s reasons for finding that there were good grounds for granting leave outside the Rules are arguably briefly and inadequately expressed.

4. There is also an arguable error of law in the submission that the First-Tier Tribunal Judge misdirected himself in finding that it would be disproportionate to expect the appellant to return to Jamaica to make an entry clearance application - in view of the evidence that it would not be a problem for the appellant to return to Jamaica to obtain entry clearance and to return. This submission is particularly arguable in view of the First-Tier Tribunal Judge’s finding that a separation for a month to make the appropriate application would not be proportionate, without adequate reasons being given for this conclusion.

5. The First-Tier Tribunal Judge’s determination does contain an arguable error of law. Permission to appeal is granted”.

8. Hence the matter came before me in the Upper Tribunal.
9. Mr Richards relied upon the grounds seeking leave. The Article 8 findings were inadequately reasoned and irrational. There was a concession that the appellant could not benefit from the rules. The public interest weighed against the individual. Paragraph 42 of the determination had not been adequately reasoned, no explanation has been given as to why it would be “not proportionate”.
10. Ms Grubb produced a skeleton argument minutes before the start of the hearing. No Rule 24 response had been lodged by the appellant. As I had not had the opportunity of considering the skeleton argument Ms Grubb led me through the document.

11. In essence it was argued that Article 8 still exists for consideration. There is nothing to say that there has been any change in the law with regard to that aspect. The case of **Huang v Secretary of State for the Home Department [2007] UKHL 11** still holds true. Ms Grubb argued that adequate consideration had been given by the judge and she referred me to paragraph 19 of the determination.
12. Clearly the judge had in mind that the rules provided a complete code, she referred me to paragraph 30 of the determination. The determination should be read in a common sense way. Clear reasons have been given. The sponsor has two children with whom he is in regular contact. As to the return to Jamaica to make an application Ms Grubb referred me to the case of **Chickwamba [2008] UKHL 40**. She acknowledged that this was not mentioned in the determination, but had been in her skeleton argument. Ms Grubb indicated there was no material error.
13. Mr Richards chose to make no response.
14. At the end of the hearing I indicated that I did consider, for the reasons now set out, that there was a material error of law and the decision of the First-Tier Tribunal must be set aside. A degree of fact finding was necessary and the appellant was not present at the hearing. I consider that the case falls within the practice directions of the Senior President and that it is appropriate to remit the case back to the First-Tier Tribunal to be re-heard. It goes without saying that by reason of the concessions already made, the decision of the First-Tier Tribunal under the Immigration Rules must stand and the facts found by the judge in respect of that aspect of the appeal are preserved.
15. I have noted in particular Ms Grubb's submissions and have now read her skeleton argument. This document sets out the relevant basis to be followed. The judge's determination is silent with regard to the majority of the authorities.
16. Sadly, the judge's determination was inadequately reasoned as to why it was possible to consider the Article 8 claim independently of the rules. The judge has acknowledged that they may well be a complete code, but has not properly conducted the exercise to explain why she was able to conduct the proportionality test in respect of Article 8 and the original decision of the respondent.
17. The determination is internally inconsistent with regard to the position of the appellant's partner. At one stage the judge finds that there are no insurmountable obstacles to the appellant living in Jamaica with the partner, but then goes on to find that it would be unreasonable for him to be required to live in Jamaica by reason of his career and family ties. There may well be an explanation for this apparent conflict, but no explanation has been given in the determination.
18. The judge then found that separation of one month would be disproportionate, despite the evidence given by the appellant's partner

that “did not think it would be a problem for the appellant to return to Jamaica to obtain entry clearance and return”. In addition there is little examination of the public interest to be weighed.

19. For these reasons I find a material error of law and the case is remitted to the First-Tier Tribunal to be re-heard by a First tier Tribunal Judge other than Judge Maciel. As indicated above the decision and findings in respect of the appeal under the rules made by Judge Maciel are preserved.

Signed

Date

Upper Tribunal Judge Poole

10th November 2014