



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

Appeal Number: OA061552014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 26<sup>th</sup> April 2016**

**Decision & Reasons  
Promulgated  
On 8<sup>th</sup> June 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MISS TRISAN RENEE WILLIAMS  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Rene, Counsel

For the Respondent: Mr S Walker, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Jamaica born on 3<sup>rd</sup> March 1997. The Appellant sought entry clearance to the United Kingdom as a child dependant. The Appellant's application was refused under paragraph 297 of the Immigration Rules by the Entry Clearance Officer. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Watt sitting at Hatton Cross on 1<sup>st</sup> September 2015. In a decision promulgated on 15<sup>th</sup>

September 2015 the Appellant's appeal was dismissed both under the Immigration Rules and on human rights grounds.

2. The Appellant lodged Grounds of Appeal to the Upper Tribunal on 13<sup>th</sup> October 2015. On 4<sup>th</sup> March 2015 Judge of the First-tier Tribunal Simpson granted permission to appeal. The judge noted that the Appellant claimed that the First-tier Tribunal Judge:-
  - (a) had failed to give due weight to the neglect that the Appellant was suffering at the hands of her aunt;
  - (b) had failed to give sufficient weight to the Appellant's need for emotional support and guidance from her mother;
  - (c) had failed to give adequate consideration as to whether there were stable arrangements for the child's physical care in Jamaica.
3. Judge Simpson noted that the application was also made under paragraph 297(i)(e) (sole responsibility) although paragraph 297(i)(f) was also considered. As the Sponsor was not a settled person any application under paragraph 297 must, she considered, fail but it was arguable that consideration ought to have been given to paragraph 301 which would apply where a Sponsor has limited leave to remain as in this case. Judge Simpson considered it was arguable that the matter ought to have been remitted for reconsideration on that issue alone. Further she noted that the decision was silent as to whether the Sponsor had sole responsibility even though it was not apparently disputed that the Appellant's natural father had deserted her mother prior to the Appellant's birth. Judge Simpson considered the points raised in the grounds that they were all issues to be considered within the context of Article 8 once a decision had been made as to whether or not paragraph 301 would apply. Finally it was noted that there was an indication in the decision that the judge may have erroneously assessed the Appellant's circumstances as at the date of the hearing rather than at the date of application.
4. A very lengthy and detailed Rule 24 response was served by the Secretary of State on 16<sup>th</sup> March 2016. I have given due and full consideration to the Rule 24 response. It is on this basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by her instructed Counsel, Mr Rene. Mr Rene is familiar with this matter. He appeared before the First-tier Tribunal. He is also the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer, Mr Walker.

### **Preliminary Issue**

5. Whilst acknowledging that the grounds are very specific Mr Rene seeks to amend the Grounds of Appeal to take into account the judge's approach to Article 8. He acknowledges that that is a fresh application. He is opposed

by Mr Walker. I ruled that the grounds having not been previously considered by a judge as to whether or not there was in fact even a prospective error of law on the purported amended ground, that it was inappropriate to bring such an application before me for consideration at this stage and the application was dismissed.

### **Submission/Discussion**

6. Mr Rene contends that there is an error of law at paragraph 26 of the First-tier Tribunal Judge's decision in that she has directed herself having considered the basis upon which Article 8 was considered in *Mundeba (Section 55 paragraph 297) [2013] UKUT 88 (IAC)* to then go on and find that there is no evidence of neglect or abuse produced before her set out at paragraph 30 of the decision. He submits the evidence before the First-tier Tribunal Judge sets out that the factors in *Mundeba* have been identified to be in this appeal and that the evidence before the judge is unchallenged namely that the Appellant was suffering from neglect in the aunt's household which led to the Appellant not being fed by the aunt nor attending school. He submits that the judge's interpretation diluted the real situation and failed to give due weight to this and that the judge had failed to take account of the Appellant's letter where she outlined the neglect suffered at the hands of her aunt. He contends this is material.
7. It is his contention that that letter was produced to the judge and he also refers me to the Sponsor's witness statement which reflects the lack of discipline being exercised on the Appellant because the Sponsor is not present. He further reiterates that the aunt had drawn attention herself to the situation within the household. He contends that the factual matrix created compelling circumstances which the judge failed to address.
8. So far as the grant of leave is concerned he submits that this should have been considered under paragraph 301 and that paragraph 301(i)(b) addresses the issue of sole responsibility and the judge did not make findings with regard to sole responsibility. He accepts that paragraph 301 is not set out in the Notice of Refusal but had it been it would have been open to the Appellant and her representatives to take this into account before the First-tier Tribunal Judge.
9. Finally he takes me to paragraph 12 of the Rule 24 response and submits that the broad brush approach expressed therein and the seeming reliance on *SS (Congo) [2015] EWCA Civ 387* dilutes the strength of the sole responsibility argument. He asked me to find that there is a material error of law, to set aside the decision of the First-tier Tribunal and to remit it for rehearing.
10. Mr Walker in response points out that at paragraph 9 of the decision all documents before the judge are listed including a letter from the Appellant and therefore this was considered. He further points out that the judge has made findings regarding the present situation in Jamaica and whilst may not have made specific reference to the content of that letter, it was,

he contends, an issue that was before the judge and that no material error of law is disclosed and that the appeal should be dismissed.

## **The Law**

11. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## **Finding**

13. The judge has, as Mr Walker has commented, set out at paragraphs 8 and 9 copies of the documents that were before him. That in itself of course does not mean that they have been considered but it at least indicates that the judge has addressed the issues that were present. This includes the Appellant's letter. The judge has thereafter gone on to consider all the relevant factors. These are set out in detail firstly in the evidence set out at paragraphs 12 and 13 and thereafter at the conclusions reached specifically a paragraph 30. Paragraph 30 is important. The judge has started by addressing the issue of the child's welfare. Whilst acknowledging that the judge has not made specific reference to the content of the letter, the judge has therein gone into some detail in assessing the current situation in Jamaica. The judge has made findings that he was entitled to. He has accepted that the relationships are not good between the Appellant and her aunt and her aunt's partner. He has set out the extent of the evidence that was before him and has quite properly given due consideration as to whether there are compelling circumstances which would lead to the conclusion that there has been an

interference with the Appellant's Article 8 rights. He has found that there was not. I am satisfied that whilst the judge has not set out in any great detail the individual evidence within paragraph 30 he has done sufficient and has considered the general factors and made findings which he was entitled to.

14. So far as the other issues are concerned, whilst suggestion is made that this matter should have been considered under paragraph 301, the fact remains that it was not and it was not taken up previously. It is not open at this stage which is an appeal against the analysis by the First-tier Tribunal Judge to raise that issue and even the raising of it does not, I am satisfied, reflect that there is a material error of law in the decision of the First-tier Tribunal Judge. Further I note that this issue is in any event addressed at paragraphs 7 and 8 of the Rule 24 response.
15. In addition I find the submissions made with regard to the purported dilution to the strength of sole responsibility contended at paragraph 12 in the Rule 24 amounts to little more than mere disagreement and that paragraph 30 albeit succinct shows that the judge has analysed all issues and made findings which he was entitled to. In such circumstances the decision of the First-tier Tribunal Judge discloses no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

### **Notice of Decision**

The decision of the First-tier Tribunal discloses no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date 8<sup>th</sup> June 2016

Deputy Upper Tribunal Judge D N Harris

### **TO THE RESPONDENT FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 8<sup>th</sup> June 2016

Deputy Upper Tribunal Judge D N Harris