Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/16640/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4th May 2017	**On 17th May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

[N B]
~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Layne, Counsel
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Jamaica born on [ ] 1978. The Appellant has an extensive immigration history which is set out within the Notice of Refusal. She arrived in the United Kingdom on 27th September 1988. She made a previous application back in March 2003 for leave to remain as a

spouse and that application was refused on 25th November 2005. The Appellant's appeal was appealed to the First-tier Tribunal and the Appellant's appeal was dismissed and a further application for leave to remain outside the Immigration Rules issued on 7th February 2006 was subsequently decided on 13th September 2008 when the application was refused with no right of appeal. Nothing further appears to have happened until a Statement of Additional Grounds was lodged on 15th October 2014 supporting an application made on 30th September 2014 for a human rights claim for leave to remain in the United Kingdom on the basis of the Appellant's family life with [DT] and on the grounds of private life. That application was refused by the Secretary of State in a decision and a Notice of Refusal dated 8th April 2015.

2. Against that extensive background the Appellant lodged Grounds of Appeal to the First-tier Tribunal and the appeal was heard before Judge of the First-tier Tribunal Sweet sitting at Hatton Cross on 4th August 2016. In a decision and reasons promulgated on 15th August 2015 the Appellant's appeal was dismissed.

3. On 26th August 2016 the Appellant lodged Grounds of Appeal to the Upper Tribunal. That application for permission to appeal was refused by First-tier Tribunal Judge Foudy on 1st February 2017. Renewed Grounds of Appeal were lodged to the Upper Tribunal on 28th February 2017. Those renewed grounds appeared to mirror the original grounds.

4. On 17th March 2017 Upper Tribunal Judge Rimington granted permission to appeal. Judge Rimington noted that the grounds asserted that the judge had overlooked evidence and was in breach of the Appellant's and her mother's human rights for whom she cared. Judge Rimington noted that there was only limited written evidence in the appeal and minimal up-to-date evidence and bearing in mind the Appellant was unrepresented before the First-tier Tribunal and there were documented mental health issues it was arguable, just, that the judge had failed to give weight to the oral evidence of the Appellant and the passage of time since the previous decision over ten years' previously and had given inadequate reasoning when assessing family life with the Appellant's mother.

5. On 31st March 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24.

6. It is on that 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 Layne. The Secretary of State appears by her Home Office Presenting Officer Mr Clarke.

Preliminary Issue

7. It is pointed out to me that the decision on the application for permission to appeal granted by Upper Tribunal Judge Rimington makes reference to

the fact that the grounds assert *inter alia* that the judge did not take into account that the Appellant was in fear of return to Jamaica. It is the agreement of both Mr Layne and Mr Clarke that that aspect was not before the First-tier Tribunal Judge nor is it raised as an issue. In such circumstances by consent that allegation is withdrawn.

Submissions/Discussions

8. Mr Layne points out that the Appellant was not legally represented before Judge Sweet and that there was no Appellant's bundle, witness statement or up-to-date medical evidence. He submits that this is of some relevance. He acknowledges that it is the responsibility of an Appellant to provide their documentation but contends that the issue in question which relates to the family life that the Appellant enjoys with her mother had not properly been addressed at paragraph 24 of the decision and that this is the only paragraph in the First-tier Tribunal Judge's decision that gives any consideration to this aspect.

9. Mr Layne further submits that the judge was unaware as to what the Appellant's mother's health issues were or of the assistance provided by the Appellant as none of these issues were before the judge when he gave due consideration to the contentions made on the Appellant's behalf. He points out that the only evidence was from the previous hearing some ten years' previously and submits that this is a case where the issues go beyond normal emotional ties and that there was an exceptional dependency which was not addressed and that this represented the essence of the Appellant's case and that this is set out in the Grounds of Appeal. He submits that the failure of the judge to address these issues constitute a material error of law and he asked me to set aside the decision and for the matter to be remitted back to the First-tier Tribunal.

10. In response Mr Clarke points out that the contention for family life is based on a dependency and that there were some documents before the Tribunal as to be found within the Secretary of State's bundle and that the medical documents provided relating to the health of the Appellant's mother were not that old being from 2015. He submits that what is being argued is that the level of care provided to the Appellant's mother cannot be provided by the Appellant's brothers and is such that it forms family life. He asks me to give due consideration to the evidence that was before the First-tier Tribunal Judge. He takes me through those documents in the Appellant's bundle starting with a letter from the South London and Maudsley NHS Trust written by the clinical psychologist and also going on to consider witness statement evidence and further correspondence produced going back to June 2006 from Dr Babbs. He takes me in detail through the correspondence within that file including GP evidence and correspondence dating from 9th February 2015. His submission is clear that once those documents are looked at together the most recent evidence, which is only some twelve months prior to the hearing, does not indicate the level of intimate care relied upon by the Appellant.

11. He submits that the judge's approach was correct and that the judge followed the principles set out in *Devaseelan* noting the adverse credibility findings made by the First-tier Tribunal Judge back in 2006 and pointing out that there was no corroborative evidence before the judge relating to the contentions made by the Appellant and that it was open to the Judge to make the findings that he did at paragraph 24. He asked me to dismiss the appeal.

12. For the sake of completeness Mr Clarke takes me back to the original grounds and to points which are not specifically argued by Mr Layne namely the account made by the Appellant's mother and brothers and the precariousness of status and that of the Appellant and that taking all issues into account the judge's findings had been fair.

13. Mr Layne indicates he has no further submissions to make to me.

The Law

14. 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.

15. 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.

Findings on Error of Law

16. The thrust of Mr Layne's submissions are that the judge has failed to take into account contentions that are made of the level of care and dependency that the Appellant states she provides to her mother. The reference to family life with [DT] which was the basis upon which the human rights claim was made in September 2014 is effectively not an issue that is raised before me. Mr Layne's argument is that family life has not been addressed properly and that the judge did not know the extent of the health issues of the Appellant's mother and that he should have adjourned the case to enable further evidence to be made available if he thought that was appropriate. I reject that approach. I acknowledge that the Appellant is, or certainly was, at that time a litigant in person. However the Appellant has been in this country for a number of years, she speaks fluent English and she has adult family members. It is not for either the Tribunal nor the Secretary of State to make the Appellant's case. It is quite clear that if the Appellant wished to make the contentions that she did regarding the level of dependency that was open to her at the time that she made her application and gave evidence and it is equally clear that the evidence that is available, some of which is only twelve months prior to the date of hearing, does not support in any manner the contentions that are made as to the level of dependency that the Appellant contends that she provides.

17. That however is only incidental to the contentions that are extant before me. The issues are effectively whether or not the judge addressed the issue of family life properly. I am satisfied that on the very limited evidence that was available the judge has undoubtedly carried out such an exercise. I acknowledge that the judge has only provided two paragraphs on the issue relating to the care provided by the Appellant to her mother. The main aspect relates to that provided at paragraph 24. It is seemingly accepted that the Appellant's brothers who live with the mother provide support albeit that they work. There is absolutely nothing wrong with what the judge has said in his assessment at paragraph 24. He has started with a quite correct analysis that this is a claim based on family life with an adult and has noted that the two brothers live with their mother and are able to provide similar care. Based on all the facts that were before him the judge has come to conclusions that he was perfectly entitled to. In addition the judge has analysed the law quite properly and carefully at paragraph 23.

18. The issues are in effect very properly addressed by Ms Everett in her Rule 24 response. Paragraphs 3 to 5 set out the Secretary of State's position and I am satisfied that they succinctly reflect the correct analysis in this matter. The judge was entitled to take the previous determination as his starting point and acknowledging that the Appellant's private life had strengthened since then. The judge was entitled to make the uncontroversial finding that the Appellant cannot meet the Rules and proceeded to determine the Article 8 claim. As Ms Everett submits the judge directed himself appropriately and has given cogent reasons for the findings made. As to the principle issue as to whether the matter should have been adjourned for medical evidence I am perfectly satisfied that the

judge was entitled to make the findings that he did on the evidence that was before him and that it was open, had the Appellant sought to do so, to produce further evidence but that she failed to do so. The Appellant was perfectly capable of producing such evidence had she wanted to or if it was available.

19. In all the circumstances this is a well reasoned judgment set out clearly and distinctly and analyses the relevant factors. It discloses for all the above reasons no material errors of law and in such circumstances 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 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.

No anonymity direction is made.

Signed Date 9th May 2017

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 9th May 2017

Deputy Upper Tribunal Judge D N Harris