



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

Appeal Number: HU/01622/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 September 2018**

**Decision & Reasons Promulgated  
On 26 September 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHAERF**

**Between**

**CLOVER MICHELLE PATTERSON  
(ANONYMITY ORDER NOT MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Mr D Coleman of Counsel instructed by Perera & Co,  
solicitors

For the Respondent: Ms K Pal of the Specialist Appeals Team

**DECISION AND REASONS**

**The Appellant**

1. The Appellant, Clover Michelle Patterson, is a citizen of Jamaica born on 31 March 1968. In 2001 she arrived as a visitor for six months. She states that subsequently she was granted leave to remain as a student nurse but the Respondent's records show that on 7 October 2002 she applied for such leave and on 16 December 2002 was refused. Her daughter, Celena Patterson, was born in Jamaica on 10 November 1996 and entered as a visitor in July 2002 with one month's leave. There is an issue whether the

Appellant sought to regularise her immigration status in 2007 but she did make an application on 16 April 2010 which was refused and her appeal against that decision dismissed. On 27 November 2012 she made a further application and was granted discretionary leave under the Immigration Rules (according to the Respondent's letter granting her leave) on account of her daughter until 13 June 2016.

2. On 12 May 2016, in time, the Appellant applied for further leave based on her private and family life protected by Article 8 of the European Convention. A week later Celena made an application for further leave and on 24 November 2016 was granted 30 months' discretionary leave expiring on 16 June 2019 by way of reference to paragraph 276 ADE(1)(iv) of the Immigration Rules. On the day of the hearing she was due in the afternoon to register as a first-year student at the School of Oriental and African Studies in London.

### **The Secretary of State's Decision**

3. On 10 January 2017 the Respondent refused the Appellant further leave because her daughter was over the age of 18 and appeared to be leading an independent life. Because she was over 18, the Respondent stated that Section EX.1 of Appendix FM to the Immigration Rules did not apply. The Appellant had not lived continuously in the United Kingdom for at least 20 years and did not meet any of the other time critical requirements of paragraph 276 ADE of the Immigration Rules.
4. Further, with reference to paragraph 276 ADE(1)(vi) the Respondent considered there were no very significant obstacles to the Appellant's re-integration into Jamaica to which she had travelled in December 2014. The Respondent acknowledged the Appellant had been raped in Jamaica at the age of 28 from which her daughter had been conceived. Nevertheless, the Respondent considered there were no sufficiently compelling circumstances to warrant the grant of leave outside the Immigration Rules.

### **First-Tier Tribunal Proceedings**

5. By a decision promulgated on 17 May 2018 Judge of the First-tier Tribunal P-JS White dismissed the appeal on human rights grounds, finding the Appellant had not shown that the requirements of Section EX.1 had been met because her daughter was over 18. He also found the Appellant's depression was not severe and there was no evidence the recommended treatment would be unavailable to her in Jamaica and that she would be able to establish a new circle of friends and re-integrate on return.
6. On 25 July 2018 Judge of the First-tier Tribunal Hollingworth granted the Appellant permission to appeal because it was arguable the Judge had not adequately dealt with, first the Appellant's fear of return, arising, at least in part, from her traumatic experience in Jamaica and second the length of

time she had been in the United Kingdom and the basis on which she had been granted discretionary leave on 13 December 2013.

### **Upper Tribunal Proceedings**

7. The Applicant attended the hearing, accompanied by her daughter. I explained the purpose of the hearing and the procedure to be adopted.
8. For the Respondent, Ms Pal properly accepted that the Appellant and her daughter lived together at the same address.

### **Submissions for the Appellant**

9. Mr Coleman produced a copy of the explanatory memorandum which the Respondent had prepared to accompany the Changes to the Immigration Rules in August 2017. He submitted the Judge had erred in his consideration of Section EX.1 which could apply where a parent was seeking further leave and had previously had leave issued in respect of a minor child who was now an adult.
10. He continued that the Judge had given inadequate consideration to the circumstances of Celena's conception. In reply to an enquiry put by me about medical evidence relating to Celena, Mr Coleman confirmed there was no expert evidence but referred to her statement in which she had at length given details of her relationship with and reliance on her mother, in particular at paragraphs 8-16 and 18. He concluded the Judge had made a material error of law and his decision should be set aside.

### **Submissions for the Respondent**

11. Ms Pal for the Respondent submitted the Judge had adequately dealt with the expert psychiatric evidence at paragraph 16 of his decision and he had found that treatment would be available in Jamaica.
12. At paragraph 13 he had noted the Appellant's poor immigration history. She had been granted discretionary leave on 13 December 2013 when her daughter was aged about 16 and that leave expired after her daughter's 18<sup>th</sup> birthday. She was now an adult and the Judge's conclusion at paragraph 18 of his decision was sustainable, namely that the consequence might be that she would have to decide whether to remain in the United Kingdom and lead an independent life or follow her mother to Jamaica. There was no material error of law in the Judge's decision.
13. In answer to a question from me, Ms Lal accepted that the Appellant met the antecedent requirements of the Immigration Rules for Section EX.1 to be considered.

### **Response for the Appellant**

14. Mr Coleman reiterated that it was essential to look at the relevant version of Section EX.1. The Judge had not considered the second limb of Section EX.1(a)(i)(aa). Additionally, in his assessment of the proportionality of the decision he had erred in failing to give due weight to what had happened to the Appellant in Jamaica.

### **Findings and Consideration**

15. Section EX.1 at the date of the decision under appeal, 11 January 2017 provided: -

This paragraph applies if

(a)(i) the applicant has a genuine and subsisting parental relationship with a child who ---

(aa) is under the age of 18 years, or was under the age of 18 years when the applicant was first granted leave on the basis that this paragraph applied;.....

(b) it would not be reasonable to expect the child to leave the UK;.....

I find the Judge made a material error of law in not addressing the second limb of sub-paragraph (aa) dealing with the situation where an applicant's child has ceased to be a minor.

16. In the balancing exercise to assess the proportionality of the decision under appeal the Judge did not refer to the circumstances of the birth of the Appellant's daughter which had been accepted by the Respondent and which may go some way to explain the lack of contact between the Appellant and her family referred to by the Judge at paragraph 14 and the difficulties she would have re-integrating on return to Jamaica.
17. These are material errors of law which impugn the conclusions which the Judge reached. Consequently his decision is set aside. There was no dispute as to the factual background to the Appellant's application leading to the decision under appeal. She has a genuine and subsisting parental relationship with her daughter who when the Appellant was granted leave under the Immigration Rules in 2013 was under the age of 18.
18. I take into account the Appellant's history in Jamaica, the length of time she has been in the United Kingdom (albeit much of it without leave), some 17 years at the date of the hearing in the Upper Tribunal, the unchallenged evidence of the particularly close relationship between the Appellant and her daughter and the position in life her daughter has now reached (about to embark on tertiary education after setbacks caused principally by

the state of the law: see paragraphs 6-9 of the daughter's statement). I also have considered the poor and in many respects quite unsatisfactory nature of the Appellant's immigration history. She speaks English and there was no challenge to her claim that she has supported herself and her daughter for many years without recourse to public funds.

19. I find that given the Appellant's history and the continuing close relationship of the Appellant and her daughter, that for the foreseeable future as a student the Appellant's daughter will be emotionally and financially dependent on the Appellant. The Appellant has no family to whom she can in reality turn to for assistance in Jamaica or in the United Kingdom and the same is so for her daughter.
20. The Appellant meets the requirements of Section EX.1 and so satisfies the requirements of the Immigration Rules. The Respondent has said the Immigration Rules reflect his understanding of the State's obligations under Article 8 of the European Convention. On that basis the appeal succeeds on human rights grounds.
21. For the sake of completeness, giving substantial weight to the public interest in the maintenance of proper immigration controls, I find that for the reasons already mentioned and taking account of the matters referred to in paragraphs 18-20 of this decision, the Respondent's decision is disproportionate to any of the legitimate public objectives identified in Article 8(2) of the European Convention. Consequently, the appeal would, if necessary, also succeed under Article 8 outside the Rules.

### **Anonymity**

22. There was no request for an anonymity direction and I consider none is required.

### **SUMMARY OF DECISION**

**The decision of the First-tier Tribunal contained a material error of law and is set aside. The decision is re—made and the appeal of the Appellant allowed.  
No anonymity order is made.**

Signed/Official Crest  
2018

Date 17. ix.

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal



**TO THE RESPONDENT : FEE AWARD**

I have allowed the appeal and so must consider whether to make a fee award. The basis on which the appeal has been allowed is on evidence submitted subsequent to the decision of the Respondent and so I find that it is not appropriate to make any fee award.

Signed/Official Crest  
2018

Date 17. ix.

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal