



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001451

First-tier Tribunal No: HU/56673/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 11 July 2023

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MARY COLE

Respondent

(NO ANONYMITY ORDER MADE)

Representation:

For the Appellant: Ms S. Lecointe, Senior Home Office Presenting Officer
For the Respondent: Mr A. Modupe of Ayodele Modupe Prime Solicitors

Heard at Field House on 26 June 2023

DECISION AND REASONS

1. For the sake of continuity, I will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.
2. The original appellant (Ms Cole) appealed the respondent's (SSHD) decision dated 13 September 2021 to refuse a human rights claim.
3. First-tier Tribunal Judge Farrelly ('the judge') allowed the appeal in a decision sent on 21 March 2023. The judge heard evidence from the appellant and her close family members. He accepted the appellant's evidence relating to her personal circumstances and the strength of her relationship with her daughter in the UK. The judge concluded that the appellant would not face 'very significant obstacles' to integration in Jamaica because she had lived there all her life. He accepted that she suffered from various age-related medical issues but concluded that they were not sufficiently serious to meet the high threshold to breach Article 3 of the European Convention on Human Rights ('ECHR') on medical grounds.

4. The judge concluded that the level of emotional and physical dependency that the appellant had developed with her daughter in the UK was such that it went beyond the normal emotional ties between adult relatives. He was satisfied that family life was established within the meaning of Article 8(1) ECHR. The judge went on to consider whether removal to Jamaica would be disproportionate for the purpose of Article 8(2). He directed himself to the public interest considerations contained in section 117B NIAA 2002. The judge considered the fact that the appellant's medical conditions might become a drain on public resources given the appellant's advancing age. He noted that her family members were willing to pay for medical treatment if she was not eligible. The appellant spoke English. Although she was not of working age, she is supported by close family members in the UK. The judge considered the case in the context of the appellant's immigration history. He accepted that the appellant arrived with the genuine intention of visiting her daughter but that unexpected events took over.
5. The Secretary of State applied for permission to appeal to the Upper Tribunal. The grounds of appeal make general submissions and are not particularised clearly. They appear to make two main points:
 - (i) The First-tier Tribunal failed to give adequate reasons to explain why the appellant's individual circumstances outweighed the public interest considerations and failed to conduct an adequate balancing exercise.
 - (ii) The First-tier Tribunal failed to give proper weight to the public interest considerations set out in section 117B of the Nationality, Immigration and Asylum Act 2002 ('NIAA 2002'). In particular, the judge failed to give 'little weight' to any private life established during a time when the appellant's status was precarious or unlawful.
6. I have considered the First-tier Tribunal decision, the evidence that was before the First-tier Tribunal, the grounds of appeal, and the submissions made at the hearing, before coming to a decision in this appeal. It is not necessary to summarise the oral submissions because they are a matter of record, but I will refer to any relevant arguments in my findings.

Decision and reasons

7. Ms Lecointe confined her submissions to reliance on the grounds and the general points made in the respondent's review that was before the First-tier Tribunal. She added that it was the respondent's case that the judge did not provide sufficient detail to explain his findings and that the respondent's case was 'the correct approach'.
8. I find that the grounds of appeal amount to disagreements with the decision and do not disclose an error of law that would have made any material difference to the outcome of the appeal.
9. The judge heard evidence from the appellant and her close family members in the UK who support her. There is no challenge to his finding that the appellant's relationship with her daughter amounted to family life within the meaning of Article 8(1) given the level of emotional and physical dependency that she now has upon her daughter. The judge considered all the relevant circumstances, including the nature of her immigration history. It was open to him to consider the

fact that the appellant stayed on beyond the period of her visitor visa due to unexpected events including the pandemic and a deterioration in her health. It was open to the judge to consider the appellant's medical conditions as part of the overall assessment under Article 8 even if he concluded that, taken alone, they were not sufficiently serious to engage the operation of Article 3 ECHR.

10. The judge was also entitled to consider the evidence about the appellant's previous circumstances in Jamaica, where she was living in isolation. He accepted that the appellant's daughter had been unable to find reliable care for her mother. The principles outlined in *Huang v SSHD* [2007] UKHL 11 at [18] were relevant in this case:

'... But the main importance of the case law is in illuminating the core value which article 8 exists to protect. This is not, perhaps, hard to recognise. Human beings are social animals. They depend on others. Their family, or extended family, is the group on which many people most heavily depend, socially, emotionally and often financially. There comes a point at which, for some, prolonged and unavoidable separation from this group seriously inhibits their ability to live full and fulfilling lives. Matters such as the age, health and vulnerability of the applicant, the closeness and previous history of the family, the applicant's dependence on the financial and emotional support of the family, the prevailing cultural tradition and conditions in the country of origin and many other factors may all be relevant.'

11. I am satisfied that the judge considered relevant factors that went in favour of the appellant as well as factors that were relevant to the assessment of what weight should be placed on public interest considerations. The judge referred to section 117B. It is difficult to see how the 'little weight' provision relating to private life would have made any material difference to the outcome of the appeal when the judge allowed the case with reference to the appellant's family life with her daughter. The only section relating to family life is section 117B(4), which requires a court or tribunal to give little weight to a relationship formed with a partner while a person in the United Kingdom unlawfully. This section did not apply on the facts of this case. Section 117B is silent as to what weight should be given to a family life based on dependency of this kind. Therefore, it was open to the judge to consider the circumstances as a whole and to assess where he considered a fair balance was struck on the facts of this case.
12. Another judge might have come to a different decision, but it is not arguable that this judge's conclusion was outside a range of reasonable responses to the evidence. The judge heard from the appellant and her family members and was in the best position to weigh the evidence. Clearly, he was aware of the appellant's immigration history and the need to consider what weight should be given to relevant public interest considerations. The respondent disagrees with the outcome but has failed to identify a material error of law.
13. For the reasons given above, I conclude that the First-tier Tribunal decision did not involve the making of an error on a point of law.

Notice of Decision

The First-tier Tribunal decision did not involve the making of an error on a point of law

The First-tier Tribunal decision shall stand.

M.Canavan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 June 2023