



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

Appeal Number: IA/44933/2013

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**On 28<sup>th</sup> July 2014**

**Determination**

**Promulgated**

**On 9<sup>th</sup> September 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MISS SHADE MAKKADA BOOTH  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr C Timpson, Counsel

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a citizen of Jamaica born on 26<sup>th</sup> September 1989. She entered the United Kingdom on 13<sup>th</sup> July 2002 and was granted leave to remain as a visitor until 12<sup>th</sup> August 2002. On 13<sup>th</sup> August 2002 she became an overstayer. Some ten years later on 22<sup>nd</sup> November 2012 she applied for indefinite leave to remain in the United Kingdom for a purpose not covered by the Immigration Rules. On 4<sup>th</sup> October 2013 a decision was

made to refuse the application for leave to remain on the grounds that removal would not place the United Kingdom in breach of its obligations under the Human Rights Act 1998 and to give directions under paragraph 10A of Schedule 2 to the Immigration Act 1971 for removal from the United Kingdom.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Law sitting at Manchester on 12<sup>th</sup> February 2014. In a determination promulgated on 26<sup>th</sup> February 2014 the Appellant's appeal against the refusal of further leave was allowed on human rights grounds.
3. On 6<sup>th</sup> March 2014 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those grounds contended that whilst the Immigration Judge had allowed the appeal under Article 8 and that the Appellant had been living in the United Kingdom for about thirteen and a half years without lawful leave, the judge found that the Appellant had no ties to Jamaica, the Appellant having left Jamaica at the age of 8. The Secretary of State submitted that the Appellant did not have ties to Jamaica, that she continued to have relatives there and that there was no objective evidence that whatever crime the Appellant's uncle is alleged to have committed, that remained a matter that would hinder the Appellant's ability to re-establish herself in Jamaica. It was further submitted that as the Appellant's mother also had no valid leave it was arguable that her return to Jamaica could be supported by her mother's possible removal.
4. Secondly it was contended that the Immigration Judge had failed to identify any compelling circumstances before going on to assess the merits of the Appellant's Article 8 rights.
5. On 10<sup>th</sup> April 2014 First-tier Tribunal Judge Holmes granted permission to appeal. Judge Holmes noted that ultimately the Appellant did not dispute that she did not meet the requirements of Appendix FM and in particular the requirements of paragraph 276ADE. He considered that it was arguable that the judge had misunderstood or misapplied the guidance to be found in *Patel, Nasim* and *Gulshan* as to the proper approach to an Article 8 appeal pursued on "private life" grounds. Judge Holmes noted that the Appellant was now an adult and neither she nor her mother faced a risk of harm upon return to Jamaica and that they both retained family links to Jamaica and were both overstayers. He considered that arguably the Appellant's position should have been considered on the basis that her mother was perfectly well able to accompany her to Jamaica and that there was no need for the Appellant's appeal to be considered on the assumption that she had to return to Jamaica alone. Even if she did, he considered it was arguable that the judge had failed to identify any adequate reasons for finding (if indeed that was an implicit finding - because it is not expressed) that the Appellant's circumstances were sufficient to render the removal decision unjustifiably harsh.
6. It is on that basis that this matter comes before me to determine whether or not there is a material error of law in the decision of the First-tier

Tribunal Judge. This is an appeal by the Secretary of State but for the purpose of continuity throughout proceedings the Secretary of State is referred to herein as the Respondent and Miss Booth as the Appellant. Miss Booth is represented by Mr Timpson. Mr Timpson is familiar with this matter having appeared before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer Mr Diwnycz.

### **Submissions/Discussions**

7. Mr Diwnycz indicates that the Secretary of State's position is best described within the Grounds of Appeal and the grant of permission both of which are recited above. His initial contention is that at some stage the Appellant must have returned to Jamaica because her last passport is issued from there. After discussion between legal representatives Mr Timpson confirmed that the Appellant had not been back to Jamaica and the Appellant advising that she handed in the relevant documents in the UK when they were sent to Jamaica. The position that she has not returned is therefore accepted.
8. Mr Diwnycz refers to the submissions made by Mr Dillon on behalf of the Secretary of State before the First-tier Tribunal Judge which are set out in some detail by Judge Law at paragraph 22 of his determination. Mr Timpson confirms that those submissions were made (he himself having been present before the First-tier Tribunal) and points out that Judge Law has given due and proper consideration to the decision in *Gulshan*. He asked me to allow the appeal.

### **The Law**

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
10. 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

11. Judge Law has carried out a very thorough and detailed analysis of both the factual history in this matter and the application of the law. He has given a very thorough consideration of all of the evidence, noted that whilst the Appellant may be an overstayer she arrived in the UK as a minor and that all her connections have been with this country. He has made findings of fact that the Appellant does not have ties with Jamaica which he was entitled to and he has given his reasons. He has made findings accepting the premises set out in paragraph 24 of his determination on Mr Timpson's submissions and those are findings that he was entitled to make. He has accepted that the Appellant had no-one in Jamaica that she could call a relative or friend and that she has strong connections with friends in the Manchester area and has an extremely strong private life and also a family life. To use Mr Timpson's phrase in his submissions to me, the Appellant is to all intents and purposes "a Manchester girl".
12. Judge Law has analysed the word "ties" and attached the normal meaning to the word and concluded that there were no ties in existence and that the only ties the Appellant has other than family ties are with friends and associates within the United Kingdom. He has concluded that there is no equivalent in Jamaica or elsewhere for the Appellant to attach to and in making such findings has balanced this against the fact that the Appellant has for all bar one month in her life been an overstayer in the United Kingdom on an unlawful basis. Further at paragraph 36 in the final assessment of the appeal the First-tier Tribunal Judge has concluded that the Appellant has lived all her adult life within the United Kingdom with the severance of all connections with Jamaica and that there is in existence a private life and a rendering of all contact with Jamaica which would enable her to claim to be accepted as having established a private life in the United Kingdom.
13. The decision of the First-tier Tribunal is well-constructed and well-reasoned. The judge has given due consideration to the relevant case law and has made findings which he was perfectly entitled to. He has identified the compelling circumstances in this matter and gone on to assess the merits of the Appellant's Article 8 rights. He has further given a very detailed analysis in reaching his conclusion that the Appellant does not have ties with Jamaica. In such circumstances the decision discloses no material error of law and the decision of the First-tier Tribunal is upheld and the appeal of the Secretary of State is dismissed.
14. This appeal was heard on 28<sup>th</sup> July 2014. That was the day on which Section 117 of the Nationality, Immigration and Asylum Act 2002 came

into force within the terms of Section 19 of the Immigration Act 2014. Of relevance is Section 117B which states:

- (1) *The maintenance of effective immigration controls is in the public interest.*
- (2) *It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—*
  - (a) *are less of a burden on taxpayers, and*
  - (b) *are better able to integrate into society.*
- (3) *It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—*
  - (a) *are not a burden on taxpayers, and*
  - (b) *are better able to integrate into society.*
- (4) *Little weight should be given to—*
  - (a) *a private life, or*
  - (b) *a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.*
- (5) *Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.*
- (6) *In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—*
  - (a) *the person has a genuine and subsisting parental relationship with a qualifying child, and*
  - (b) *it would not be reasonable to expect the child to leave the United Kingdom.*

15. The Act was not in force when this matter came before the First-tier Tribunal Judge and no reference is made to it by either legal representative. I acknowledge the content therein in particular paragraph 4(a) that little weight should be given to private life established by a person at a time when the person is in the United Kingdom unlawfully and (5) that little weight should be given to a private life established by a person when the person's immigration status is precarious. Despite those

factors which effectively bring into statute the previous general principles of law I am satisfied in this matter that the determination of the First-tier Tribunal Judge does not disclose a material error of law and that the decision which is fully reasoned explains the situation that arose relating to a young women from Manchester who was brought to this country as an 8-year-old child and has spent all her formative years both as a minor and as a young adult in the UK.

## **Decision**

16. The decision of the First-tier Tribunal does not disclose a material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal is maintained.
17. The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. No application is made to vary that order and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris