Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/10464/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On the 7th September 2021	**On the 11th October 2021**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

KERN REON GORDON
(ANONYMITY ORDER NO MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms P Layoo, Solicitor
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Antigua born on 27th June 2000. He arrived in the UK on 1st June 2011 as a visitor and then applied to vary that leave to remain outside of the Immigration Rules, an application which was refused on 21st December 2012. He then overstayed. He made four applications in 2013/14 which were refused. He then applied on 19th March 2019 to remain in the UK on the basis of his family and private

life in the UK. This application was refused in the decision of the respondent dated 3rd June 2019. His appeal against this decision was dismissed by First-tier Tribunal Judge SJ Clarke in a determination promulgated on the 23rd October 2019.

2. Permission to appeal was granted by First-tier Tribunal Judge Andrew on 28th July 2020 on the basis that it was arguable that the First-tier judge had erred in law in conducting the Article 8 ECHR balancing exercise, and in particularly by arguably not making findings about the appellant's relationships in the UK, and especially that with his grandmother.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to determine whether any error was material and whether the decision of the First-tier Tribunal needed to be set aside and remade.

Submissions – Error of Law

4. The grounds of appeal are drafted by the appellant in person. In short summary he sets out that he arrived in the UK when he was very nearly eleven years old, and is now only a young adult, and that he had to leave Antigua because he had been cared for by his maternal grandmother, having been abandoned by his mother, but she had become ill and moved back to Dominica and so he was brought to the UK where he has lived, and formed all of his current family and private life ties. He has a very strong, close relationship with his paternal grandmother, Aditha Gordon, especially as her daughter died in 2017. He argues that it would be devastating for both of them if he had to leave. In an additional statement dated the 7th September 2021 the appellant also suggests that he has spent more than half of his life in the UK.

5. Ms Layoo made extensive submissions (such as how traumatic return to Antigua would be for the appellant who had grown up in the UK and how traumatic his removal would be for his paternal grandmother who had sadly lost her daughter in this country) on the appellant's behalf in which she attempted to re-argue the case as if it were a hearing before the First-tier Tribunal despite my efforts to encourage her to explain instead how the First-tier Tribunal had erred in law in its decision-making. Ms Layoo argued that the appellant had a half-brother (rather than a step-brother) but was unable to identify any evidence that was before the First-tier Tribunal regarding this person. She suggested that his existence might have been raised in oral evidence but Ms Layoo had no transcript of the hearing so there was no evidential basis for this submission, particularly as she had not represented before the First-tier Tribunal.

6. The respondent, in the Rule 24 notice, argues that the grounds are simply a disagreement with the decision of the First-tier Tribunal, and

that the relationship with the appellant's paternal grandmother is addressed at paragraph 12 of the decision and a balancing exercise conducted at paragraph 13 of the decision. I did not need to call on Mr Melvin to make further submissions.

7. At the end of the hearing I explained to the appellant that the grounds and submissions did not identify any legal mistakes by the First-tier Tribunal and so that his appeal could not succeed, but I did not given an oral judgement and instead set out my reasons in writing below.

Conclusions – Error of Law

8. The First-tier Tribunal does not accept, at paragraph 10 of the decision, that the appellant was abandoned by his mother because of the differing accounts given by the witnesses about how the appellant was cared for in Antigua prior to coming to the UK. At paragraph 12 the First-tier Tribunal does not accept that the appellant has a family life relationship with his paternal grandmother because his evidence was that he intends to study and work rather than look after her, even if he is currently giving her some temporary assistance. I find that both of these findings are unarguably properly made: the finding that it had not been shown the appellant had been abandoned by his mother was made not only on the evidence of the grandmother, which it was argued by Ms Layoo before me could be unreliable because she had not expected to give evidence and was perhaps confused due to grief, although there was no medical evidence to support such a proposition, but also on the basis of the inconsistent evidence of the appellant and his father on who had provided care for the appellant in Antigua. The finding that the relationship between the appellant and his paternal grandmother was a private life rather than family life relationship was plainly open to the First-tier Tribunal on the facts as they do not live together and there was no evidence of greater than normal emotional or financial dependency between the two adults.

9. There is no error in law in relation to the treatment of the appellant's period of residence which is accurately recorded in the decision. Paragraph 276ADE(1)(v) of the Immigration Rules provides that anyone who is over 18 years and under 25 years old and has spent half of their life in the UK is entitled to succeed in an application to remain on private life grounds. However in October 2019, at the time of decision on his application, the appellant had spent 8 years and four months in the UK and he was 19 years and 3 months old. He had not therefore spent half of his life in the UK, as this would have been a period of 9 years and 7.5 months. Currently the appellant is 21 years and 3 months old, and has spent ten years and 3 months in this country, so he still has not lived in the UK for half of his life. He will not have spent half of his life in the UK until June 2022, when he will have been present here for eleven years and will be 22 years old.

10. The First-tier Tribunal first properly and lawfully considers the appeal by reference to the private and family life Immigration Rules. It finds that the appellant, a healthy, well-educated 19 year old adult at the time of hearing, would not have very significant obstacles to integration if he were to return to Antigua, his country of nationality and where he would have some familiarity with the country as he had lived there for the first 11 years of his life. It was found that he would be able to make friends, work and study there with the support of his father. As a result the appellant did not qualify to remain in accordance with the private life Immigration Rules. There was found to be no applicable family life Immigration Rules for the appellant.

11. The First-tier Tribunal then went on to consider whether the appellant could succeed in his appeal under Article 8 ECHR when consider more broadly outside of the Immigration Rules. It is accepted that removal from the UK would interfere with his family life ties with his father and with his private life ties with his grandmother, friends and studies formed in the UK, where he was brought as a child, a matter which was not his choice. It is concluded however that this would not be a disproportionate interference with his Article 8 ECHR rights as he would be able to recreate an equivalent private life in Antigua, and his father, who visits Jamaica regularly, could visit him in Antigua and he would be able to keep in contact with family in the UK. I find that this decision-making gives consideration to all of the evidence before the First-tier Tribunal and is unarguably rational, and thus was a decision lawfully open to the First-tier Tribunal.

12. Ms Layoo and the appellant informed the Upper Tribunal that the appellant has no step-brother and so the reference to this person in the decision of the First-tier Tribunal is a factual error: whilst is a regrettable mistake this is not a material error which affected the legality of the decision-making as it was simply said in the decision that the presence of this non-existent person in the UK did not make the appellant's removal in the UK unlawful.

Decision:

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

2. I uphold the decision of the First-tier Tribunal dismissing the appeal on human rights grounds.

Signed: Fiona Lindsley Date: 7th September 2021
Upper Tribunal Judge Lindsley