



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/18772/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 8<sup>th</sup> April 2014

Determination Promulgated  
On 23<sup>rd</sup> April 2014

Before

DESIGNATED JUDGE MURRAY

Between

MS MONICA BLAKE  
(ANONYMITY NOT DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Singer, Wellers Law Group, Bromley  
For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a citizen of Jamaica born on 24<sup>th</sup> October 1977. She appealed against the decision of the Respondent dated 8<sup>th</sup> May 2013 refusing her application for leave

to remain in the United Kingdom under the Human Rights Act 1998 and refusing to vary her leave to remain in the United Kingdom. Her appeal was heard by Judge of the First-tier Tribunal Jones on 3<sup>rd</sup> February 2014. The appeal was allowed on human rights issues, in a determination promulgated on 11<sup>th</sup> February 2014.

2. An application for permission to appeal was lodged by the Respondent and permission was granted by Judge of the First-tier Tribunal Osborne on 28<sup>th</sup> February 2014. The grounds of application are that the evidence does not disclose any exceptional circumstances that would make the decision to remove the Appellant unjustifiably harsh, particularly with reference to her social and cultural ties in Jamaica. The grounds of application also state that the judge found the delay occasioned by the Respondent to be a determinative factor in the appeal and yet delay alone cannot be a determinative factor. The grounds argue that the First-tier Judge failed to take into account the findings of the Upper Tribunal in the case of **Nasim and Others (Article 8) [2014] UKUT 00025 (IAC)** relating to the nature and purpose of Article 8 and its limited utility in respect of private life cases.
3. There is a Rule 24 response which states that the Respondent's application amounts to nothing more than a disagreement with the First-tier Judge's assessment of the facts. The response refers to **EB Kosovo [2008] UKHL 41** and goes on to state that all three of the aspects of delay mentioned in that case apply to this case.

### **The Hearing**

4. The Presenting Officer directed me to paragraph 41 of the determination which states that the appellant's Article 8 claim is based entirely on her right to private life, not family life. He referred to the appellant's "genuine" mistake in her application on 5 August 2011, (when she had leave to remain in the United Kingdom), stating that when she resubmitted her application on 28 August 2011, she was an over-stayer. He then referred to the judge finding the "delay" on the part of the Home Office prejudiced the appellant, submitting that if her history is looked at, any delay was justified. At paragraph 47 the judge refers to the appellant's few ties to Jamaica. The presenting Officer submitted that her mother is there and she spent the first 25 years of her life there.
5. The Presenting Officer referred to the appellant's private life in the United Kingdom being mainly as a student and submitted that the judge has not given any reasons as to how her moral and physical integrity will be damaged if she has to return to Jamaica and submitted that when assessing proportionality the judge has not dealt properly with public interest and the necessity of immigration control in the United Kingdom, finally submitting that paragraph 47 is deficient, resulting in an error of law which goes to the materiality of his decision.
6. The appellant's representative submitted that even if the balancing exercise is recalculated, specifying the matters referred to by the Presenting Officer, the result will still fall in the appellant's favour, so there is no material error of law. He submitted that in paragraph 47 the judge did not require to give more detail as he had done this previously in the determination and found the appellant to be credible.

He referred to the delay, submitting that had the appellant not made a mistake in her original application she might well have been granted ILR or at least would have accumulated 10 years lawful residence in the United Kingdom which would have entitled her to apply for ILR under paragraph 276B of the Immigration Rules. He submitted that the appellant's private life was not only as a student. Most of her family members are here and the judge had before him letters of support from friends and relatives, evidence of her good character, her help in the church and her role in the community.

7. The representative referred me to the said case of EB (Kosovo), submitting that although the judge did not quote this case, he quoted the cases that preceded it. The representative referred me to Nasim and others UKUT 00025 (IAC), submitting that although this is different to the current case the judge paid close attention to the nature and purpose of Article 8, and in the current case the appellant has substantial private life out with her studies.

### **Determination**

8. The judge has carefully set out the history of this case and the burden and standard of proof. He has found the Appellant to be credible and her witness to be credible. He has dealt with Article 8 of EHCR in the correct way, referring to the case of **Razgar [2004] UKHL 27**.
9. The judge has based his decision on the Appellant's private life.
10. He is satisfied that the minor mistake made in her application of 5<sup>th</sup> August was indeed, only a mistake. He has noted the length of time the Appellant has been in the United Kingdom, the majority of that time with valid leave and he has referred to delay by the Respondent, taking into account the appellant's history and the reasons for this delay, noting at paragraph 46 that the Appellant possibly missed out on the opportunity to make an application for settlement based on ten years' long residence, as a result of her original application of 5<sup>th</sup> August 2011 being returned to her. The judge finds that this must weigh in the appellant's favour in his assessment of proportionality.
11. The judge has considered the evidence on file in its totality, taking into account her presence in the United Kingdom as a student and also the considerable evidence before him of her private life outside her studies.
12. It is clear that the appellant's claim cannot succeed under the Immigration Rules and this must weigh against her when proportionality is assessed but the judge has given proper reasons for his findings based on what was before him.
13. The Presenting Officer has submitted that the judge has not taken into account public interest and the necessity for immigration control or made a decision on how the appellant's moral and physical integrity will be affected if she has to return to Jamaica.

14. In the judge's balancing exercise he has found the appellant and her witness to be credible, has considered the effect of her application of 5 August being rejected and has given this and the delay on the part of the Home Office considerable weight in his balancing exercise. This is not a case where delay is the only determinative factor. He is aware that the appellant has been in the United Kingdom legally for most of her stay and has been here for around 11 years, has few remaining ties to Jamaica and has most of her family members in the United Kingdom, all of which go to the appellant's moral and physical integrity. He has found that all of these matters weigh in the appellant's favour.
15. Public interest is clearly affected by the delay and the original application not being dealt with by the Home Office. The same applies to the necessity for immigration control. The judge has clearly considered the appellant's moral and physical integrity when dealing with proportionality and found that these matters, including the fact that the claim cannot meet the terms of the Immigration Rules, are outweighed by the issues in the appellant's favour. The judge was entitled to reach his decision based on what was before him.

### **Decision**

16. There is no material error of law in the judge's determination.
17. The judge's decision that the Appellant's appeal succeeds, shall stand.
18. Anonymity has not been directed

Signed

Date

Designated Judge Murray  
Judge of the upper Tribunal