**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: IA/47974/2013
IA/47992/2013

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Determination Promulgated** |
|---|---|
| **On 12th August 2014** | **On 18th Aug 2014** |

**Before**

**UPPER TRIBUNAL JUDGE POOLE**

**Between**

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

Appellant

**and**

**(1) MISS THERESA RAQUEL RICHARDS**
**(2) MASTER DEVONTAE ELISHA-JOSHUA RICHARDS-HARRIS**
**(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr P Deller, Home Office Presenting Officer
For the Respondent: Ms A Seehra, Counsel

**DECISION AND REASONS**

1. I will refer to the parties by the style in which they appeared before the First-Tier Tribunal.

2. Both appellants are nationals of Jamaica. The first appellant was born 29 October 1988 and is the mother of the second appellant who is a male child born 20 July 2013.

3. Both appealed against a decision by the respondent to refuse leave to remain in respect of the first appellant and to refuse to vary leave to remain in respect of the second appellant.

4. Their appeals came before Judge of the First-Tier Tribunal Carroll sitting at Taylor House in 22 May 2014. There was an oral hearing. Each party was represented by counsel (the appellants by Ms Seehra).

5. In summary the judge conclude that the first appellant no longer had any "meaningful ties with Jamaica" and that she therefore satisfied the provisions of paragraph 276ADE(vi) of the Immigration Rules.

6. The final two sentences of paragraph 8 of the judge's determination state as follows:

> "In the context of Article 8, the first appellant clearly enjoys a family life with the second appellant. The decisions under appeal amount to an interference with the appellants' family life and I find that the decisions give rise to a disproportionate interference with the right of the appellants to a family life and to the private life of the first appellant".

7. Under the heading "Decision" the judge stated simply "I allow this appeal".

8. The respondent sought leave to appeal that decision alleging that the judge erred in law by finding the appellant to have no ties to Jamaica. The grounds make reference to paragraph 7 of the determination, wherein Judge Carroll had stated "It is very surprising and regrettable that there is no evidence before me from the first appellant's father, or from the father of the second appellant. The first appellant claims that she is no longer in a relationship with the father of her child but I note from the second appellant's birth certificate that his father is said to be a Jamaican national". The grounds go on to contend that it is for the appellant to prove that she has no ties to Jamaica. If she were in a relationship with a Jamaican national it is likely that she would be held to have such ties to Jamaica. The grounds go on to allege that the judge did not make a finding that the first appellant's relationship with the father of the child had ended and in such circumstances it could not be said that the appellant had proved that she had no ties to Jamaica.

9. In granting leave to appeal another judge of the First-Tier Tribunal gave the following as his reasons:

> "1. The respondent seeks permission to appeal against a decision of First-Tier Tribunal Judge Carroll promulgated on 5 June 2014 whereby the appellant's appeal against the Secretary of State's decision was allowed. The application is in time and is admitted.
> 2. The main appellant arrived in the in 2001 when she was 12 and has not left since. An application for leave to remain was refused and further representations rejected. This application was rejected but the appeal allowed on the basis that the main appellant had not meaningful ties to Jamaica.
>
> 3. The grounds argue that the judge having noted that there was a regrettable absence of evidence from the appellant's father or the father of her child (a Jamaican national) had not found that the relationship with the child's father had ended was wrong to find that she had no meaningful ties to Jamaica.
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> 4. The grounds are arguable and permission to appeal is granted".

10. Hence the matter came before me in the Upper Tribunal.

11. At the commencement of the hearing Ms Seehra was able to confirm that her client (the first appellant) was present and understood the nature of the proceedings. Ms Seehra produced a Rule 24 response which had been served upon the respondent, but I could find no copy on the court file.

12. The response contained 13 paragraphs and contended that there was no error of law, and that grounds seeking leave were merely a disagreement with the judge's "positive decision". On behalf of the appellants it was contended that she no longer had any meaningful ties to Jamaica and therefore succeeded under the Rules and that there had been no challenge to the findings in respect of Article 8. The response also stated that the decision of the First-Tier Judge should not be disturbed.

13. Each representative then made an oral submission. A note of those submissions has been made on the Record of Proceedings.

14. In summary Mr Deller relied upon the grounds seeking leave. He emphasised the burden lay with the appellant to show that no ties remained between her and Jamaica. However there were two Jamaican nationals in the form of the fathers of both the first appellant and the second appellant. They were both Jamaican nationals. Mr Deller then went on to refer to the judge's treatment of Article 8. There was very little in the determination with regard to that. The final two sentences of paragraph 8 would be wholly inadequate. Whilst accepting that the grounds seeking leave were silent on the subject of Article 8, Mr Deller

referred to it as being "Robinson obvious". The Immigration Rules would have an Article 8 concept. There would be overlap that the judge had not followed the appropriate steps before embarking upon Article 8 consideration.

15. Ms Seehra referred to her response and in particular to the findings made by the judge regarding the length of time the appellant had been in the United Kingdom. There were community ties. It was not a transient situation and the first appellant was an important member of the church congregation. The first appellant had not had an easy relationship with her father and was no longer in a relationship with the father of the second appellant. This had no been challenged.

16. Ms Seehra specifically referred to the challenge to Article 8 that had now been made by Mr Deller. That had not been in the grounds of appeal. If it was "Robinson obvious" it should have been in the grounds seeking leave. There had been no application to amend. In any event the judge was entitled to go and consider Article 8.

17. At the end of the proceedings I announced my decision that I found a material error of law contained within the judge's determination and the decision must be set aside.

18. In the circumstances of this case and with great respect to the judge of the First-Tier Tribunal, I do find that the determination inadequate. There is no dispute that the onus is upon the appellant's (primarily the first appellant) to show that she has no meaningful ties to her home country.

19. Paragraph 7 of the determination sets out the assessment of the appellant's case. The judge quite properly identified the possibility of relevant evidence being available from the fathers of the two appellants. Without further explanation there is some relevance in establishing the situation between the first appellant and the second appellant's father. It is especially so bearing in mind that there must have been close relationship fairly recently. The judge was understandably concerned and this is evidenced by the final two sentences of paragraph 7.

20. It is often said that a determination must be written for the losing party. That being the case the respondent is justifiably at a loss to understand how the judge moves from the contents of the last part of paragraph 7 to a conclusion that the judge was satisfied that the first appellant no longer had ties with Jamaica. There is a lack of explanation and I consider that to be an error of law. Given the judges views on the absence of evidence with regard to the two fathers, I consider this error to be material to the outcome of the appeal.

21. Turning now to the question of Article 8 this does cause me some concern.

22. Mr Deller concedes that the initial grounds are silent as to a challenge, but he implies that the error is so obvious that it would not be necessary for it to be specifically pleaded. Ms Seehra does not accept that point. Normally I would agree with Ms Seehra, however on a close inspection of the determination I am of the view that this is not a normal situation.

23. I have quoted above the final two sentences from paragraph 8 of the determination. I have also noted the very brief decision at paragraph 9. Again, I am of the view that a reading of the judge's determination, especially by the losing party, would be uncertain as to the outcome. By saying "I allow this appeal" is the judge referring to the first appellant's appeal under the Rules or under Article 8 and what about the second appellant? Is the judge purporting to allow the first appellant's appeal under the Rules and the second appellant's appeal under Article 8? One can make assumptions, but it is certainly far from clear.

24. What is clear is that as a determination on Article 8, paragraphs 8 and 9 of Judge Carroll's determination are wholly adequate, and here amounts to a material error of law.

25. I therefore set aside the decision and the fairest disposal to both parties are for these two appeals to be reheard before the First-Tier Tribunal by a judge other than Judge Carroll as I consider that further evidence will be presented. This case meets the criteria set out in the senior Presidents Direction. None of the findings of Judge Carroll can be preserved.

Signed Date 18/8/14

Upper Tribunal Judge Poole