Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/18726/2019**

THE IMMIGRATION ACTS

Heard at Field House
by Skype for Business
On 24 February 2021

Decision & Reasons Promulgated:
On 04 March 2021

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

LAMAR AAMIR RAMEEZ CURRIE
[NO ANONYMITY ORDER]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Representation:
For the appellant: **Jonathan Holt, Counsel instructed by TMC Solicitors**
For the respondent: **Mr Tony Melvin, a Senior Home Office Presenting Officer**

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 18 October 2019 to refuse him leave to remain on private and family life grounds. The appellant is a citizen of Jamaica.

Background

2. The appellant came to the United Kingdom on 27 July 2002, when he was 9 years old. His father and uncle arranged the journey: once in the United

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Kingdom, the appellant and his father stayed with Marcelene Samuels, who told the First-tier Tribunal that she had known the appellant for 18 years (in context, since he was 8 years old), even before he came to the United Kingdom. The relationship between Ms Samuels and the appellant's father broke down and he left without making any arrangement for the appellant. A family arrangement was made for the appellant to live with another family member, Ms Corrine Coote, who raised him as though he were her own child. The appellant has never been in trouble in the United Kingdom and has educational achievements which are to his credit and that of his foster family.

3. The appellant is now an adult and lives independently. He reached the age of majority on 17 July 2011. He no longer lives in his foster family's home but remains close to her and her children, whom he considers as siblings, as they do him. For most of the time since leaving school, the appellant has not worked and has been supported by family and friends. He worked for a time at Marks and Spencer and also at Sainsburys. He has a personal bank account and a Marks and Spencer pension plan. Because of his status, has not been able to work as a PE Instructor, having obtained a Level 2 BTec Diploma in Sport.

4. The appellant has made a great many applications to regularise his status. In fact, it seems that Ms Coote made them and paid for them: in evidence to the First-tier Tribunal, the appellant did not seem to have much knowledge of the detail of these applications, although all of them were made when he was an adult and all when he had no extant leave:

   (a) In 2012, 2 applications were made on human rights grounds in July and August, both of which were refused;
   (b) In 2013, there were 7 separate applications: in January, a visitor application; in February and March, two long residence applications in August, a private and family life application; in August, two applications for compassionate leave outside the Rules (the first invalid, as no fee accompanied it, the second refused) and in November 2013, an application on private and family life grounds. All the 2013 applications were refused;
   (c) In 2014, there were three applications in May, August and September, all for compassionate leave to remain outside the Rules. All were refused;
   (d) On 10 February 2015, the appellant made an application for private and family life leave which was granted under paragraph 276ADE(v). He was given 30 months' leave to remain until 2 October 2017, when he would be 24 years old;
   (e) On 23 October 2017, after the expiry of his leave under paragraph 276ADE(v), the applicant applied for a new Biometric Residence Permit card. The respondent refused. He made an application for leave to remain on 16 December 2017, which was also refused;
   (f) On 18 April 2019, the applicant made an application for leave to remain on private and family life grounds. Paragraph 276ADE(v) had ceased to apply to him and he was unable to bring himself within

paragraph 276ADE(vi). That application was refused on 18 October 2019 and is the decision under challenge.

First-tier Tribunal decision

5. The First-tier Judge noted that the appellant had now reached the age of 26. She accepted that he was 'fully integrated into the culture and way of life of the United Kingdom' and she also accepted that the appellant had strong bonds to his foster family, though below the *Kugathas* dependency level. She found that he was 'very much part of the family of those who have supported him since he was a child.

6. The judge upheld the respondent's finding that paragraph 276ADE(vi) was inapplicable: the appellant was now over 25 years old and could not show that there would be very significant obstacles to his integration in Jamaica if returned there. He lived there until he was 9 years old and still had some extended family members there. He had been able to undertake retail employment in the United Kingdom and in Jamaica, where he would not have the difficulty of having no status, the First-tier Judge found that he would be able to find work.

7. At [20], the judge found that there was not family life between the appellant and his foster family, although there was private life. At [21], she noted that the relationship with his United Kingdom family was an element of the appellant's 'clearly established private life' in the United Kingdom. Article 8 was engaged.

8. At [23]-[25] the judge performed the analysis which section 117B of the Nationality, Immigration and Asylum Act 2002 (as amended) requires, concluding at [25] that 'I am obliged to give little weight to his private life'.

9. The First-tier Judge's decision concluded at [26]:

> "26. I have considered above in detail aspects of the appellant's private life when considering whether he satisfies the Rules. Those factors are relevant for the consideration of proportionality also and I take account of them. I also take account of the ties that the appellant has with those who have become his family and the close bond they have with him. However, it is not unusual for adult members of a family to relocate abroad and maintain their bond via contact and visits. Some members of the family have visited Jamaica before, and there was nothing to suggest they would not be able to do so again. Having considered all the factors above, individual to the appellant, and weighed the public interest factors, I am unable to find that the appellant has shown that the decision constitutes a disproportionate interference with his rights under Article 8 [ECHR]."

10. The appellant appealed to the Upper Tribunal.

Permission to appeal

11. First-tier Judge Keane granted permission to appeal on the basis that the First-tier Judge had accepted that there was family life with his United Kingdom foster family and that he had ‘but the slightest of ties with Jamaica’. The grant continues:

> “…It was incumbent upon the judge when assessing the proportionality of the decision under appeal to carry out a balancing exercise taking into account relevant considerations. The judge arguably did not accord any or adequate weight to such considerations when assessing the proportionality of the decision under appeal but *merely relied upon statutory considerations which redounded in favour of the respondent.* The judge arguably failed to take into account relevant considerations and had the judge done so he might arguably have arrived at a different finding in respect of proportionality. The application for permission is granted.” [*Emphasis added*]

Rule 24 Reply

12. There was no Rule 24 Reply on behalf of the respondent.

Triage submissions

13. On 26 August 2020, Upper Tribunal Judge Pitt gave triage directions, in the light of the COVID-19 pandemic.

14. Triage submissions were received from TMC Solicitors, who represent the appellant. They do not engage expressly with the Part 5A presumptions in the 2002 Act, which are crucial to the understanding of the First-tier Judge’s decision. The appellant disputes the weight given to his private life, arguing that the proportionality decision was perverse and that he has fluent English (the language of Jamaica, as well as the United Kingdom), is financially independent, and that it would be in the public interest to retain him in the United Kingdom. The appellant contends that the First-tier Judge failed to ‘exercise discretion in the appellant’s case by considering the case outside the Immigration Rules’.

15. For the respondent, Mr Alain Tan from the Specialist Appeals Team settled a detailed response to the grounds of appeal. The grounds may be summarised by saying that it is the Secretary of State’s case that the First-tier Judge made a careful, intelligible and adequately reasoned decision, with which the Upper Tribunal should not interfere.

16. That is the basis on which this appeal came before the Upper Tribunal.

Submissions today

17. Mr Holt for the appellant noted that from the age of 9 until he reached his majority in 2011, the appellant would have had family life with his foster family. The judge had not given that former family life any weight and if, as Mr Holt argued was the case her, the appellant had no independent existence in his adult life, that family life should be taken to continue. Mr Holt was unable to produce any authority for this novel assertion.

18. As regards private life, Mr Holt accepted that there would be no very significant obstacles to the appellant's reintegration in Jamaica, but argued that the judge had failed to take into account, and/or to resolve conflicts in the evidence, around the appellant's strength of integration and ties in the United Kingdom, and had done so at a level which led her to make a wrong decision on the proportionality of removal.

19. Mr Holt asked me to set aside the decision of the First-tier Tribunal and to remit the appeal to the First-tier Tribunal for remaking afresh, with the findings at [12] on the appellant's ties to his foster family in the United Kingdom preserved.

20. For the respondent, Mr Melvin argued that there was no material error of law in the decision. All relevant matters had been considered and the appellant's private life had been properly assessed at the date of hearing. Mr Melvin relied on the decision of the Court of Appeal in *AA (Nigeria) v Secretary of State* [2020] EWCA Civ 1296 which emphasised the narrow circumstances in which an appellate Tribunal may interfere with a finding of fact made by a judge who has heard oral evidence and argument at first instance. He asked me to uphold the decision of the First-tier Judge.

Analysis

21. I have some difficulty with the terms of the grant of permission in this appeal. The provisions of part 5A of the 2002 Act are mandatory: the judge was bound by them and it is certainly not an error of law to 'rely upon statutory considerations' in Article 8 proportionality assessment.

22. I have considered the First-tier Judge's decision. It is very carefully reasoned, taking each issue sequentially and always giving weight to the strength of the appellant's links with the United Kingdom and his foster family here, who brought him up. Contrary to what is stated in the grounds, the judge did make a finding on family life at [20]: he found that the *Kugathas* dependency required for family life between an adult and his parents and siblings was not reached.

23. However, the legal position is very clear. This appellant came to the United Kingdom age 9 (presumably as a visitor) and remained here without leave thereafter. That was not his fault: he was a child. It cannot be held to his detriment and the judge did not do so.

24. From 2011, however, the appellant was an adult. He remained here without leave for a further four years, before being granted 30 months' leave to remain as a person under 25 who had spent more than half his life in the United Kingdom. When that leave expired in 2017, he remained here again, making applications for leave to remain.

25. Since the appellant reached majority, he has had leave to remain for only 30 months out of that 9-year period. He has worked, sometimes, presumably during the 30 months when he had leave. He has been here

either precariously (see section 117B(5)) or unlawfully (see section 117B(4)) and little weight can be given to any private life he has accrued in either capacity period. The judge did not err in so finding.

26. The judge made a perfectly proper assessment at [26] of whether there were any exceptional or compassionate circumstances for which leave to remain should be given outside the Rules. Again, the strength of his connections was taken into account.

27. There is no material error of law in the First-tier Judge's decision and I uphold the decision made. This appeal is dismissed.

DECISION

28. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Signed Judith AJC Gleeson Date: 24 February 2021
Upper Tribunal Judge Gleeson