Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/22175/2018**

THE IMMIGRATION ACTS

Heard at Manchester (via Microsoft Teams)	**Decision & Reasons Promulgated**
On 28 May 2021	**On 15 June 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

PAULINE CAMPBELL
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Kwaku Antwi-Boasiako (Legal representative) on behalf of Spio & Co Solicitors
For the Respondent: Mr A McVeety Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Jamaica born on 20 March 1961, appeals with permission a decision of First-tier Tribunal Judge Traynor ('the Judge') promulgated in the 18 May 2020 in which the Judge dismissed the appellants appeal against the refusal of her application for leave to remain on human rights grounds.

2. The appellant sought permission to appeal asserting the Judge erred in law in finding (i) that the appellant is a grandparent, was not a parent within the meaning of paragraph EX.1 Appendix FM of the Immigration Rules, arguing paragraph EX.1(a) is not limited to birth parents, or biological parental relationships, (ii) by making a decision that is perverse, in particular in stating that the relationship between the appellant and her granddaughter and her daughter did not engage Article 8 and in failing to apply the principles set out in Razgar correctly to the circumstances of the appeal, arriving at a conclusion that was "clouded by the Appellant's immigration history" resulting in a failure to apply the relevant legal principles correctly, (iii) concluding there was no family life between the appellant and her granddaughter and her children when there was independent evidence that the appellant does the daily school run for her daughter, which it is argued, is sufficient for the definition of family life as held in ZB (Pakistan) and that the Judge failed to apply relevant legal principles correctly, (iv) incompletely failing to adequately assess the interests of the grandchildren, and whether removal of the appellant will result in a disproportionate impact on the welfare of the child Jessica as required pursuant to section 55 Borders, Citizenship and Immigration Act 2009, and, (v) that no reasonable Tribunal seized of the case would have concluded that there was no family life between the appellant and her grandchildren and that her presence is not necessary or essential in the functioning of the family and the grandchildren's lives, such that the determination amassed an error of law on the grounds of perversity.
3. The Secretary of State in her Rule 24 reply dated 14 August 2020, opposes the application.

Error of law

4. The assertion of perversity is totally without merit. In R (Iran) [2005] EWCA Civ 982 it is stated that perversity requires a high hurdle to be crossed and defines a perverse decision as one taken without any evidence or upon a view of the facts that could not be reasonably entertained. Establishing perversity requires the appellant to show this is a case in which the facts as found are such that no person acting judicially and properly instructed as to the relevant law could come to the same conclusion.
5. The Judge's findings are set out from [39] of the decision under challenge and can be summarised, inter alia, in the following terms:

    i. That the appellant does not have a partner, parent, or dependent child in the UK, although it is accepted she has two daughters and grandchildren living here [41].

    ii. The appellant is a grandmother and not a parent of the minor children, her daughter Melisha having primary responsible for her child Jessica, and although it is accepted that the appellant does, to some degree, assist her in that care but the fact she does assist does not elevate her status to that of parent. [43].

iii. There is no relationship between the appellant and her grand daughter, which is capable of satisfying the requirements of Appendix FM, the Rules, let alone paragraph EX.1.[43].

iv. There is no merit in the argument raised by the appellant's representative that the appeal can succeed on the basis that the refusal would be incompatible with the Appellant's right to respect for family life as considered under the Rules [43].

v. It is not disputed that the appellant has not been present in the United Kingdom for 20 years, or that she cannot qualify by virtue of age because she is over the age of 25 years, pursuant to paragraph 276ADE (1) [44].

vi. Pursuant to paragraph 276 ADE(1)(vi) the appellant failed to establish that she cannot reintegrate into Jamaica on her return, and that the appellant could not succeed on this basis [45 – 50].

vii. Considering article 8 ECHR outside the rules and section 55, it is a matter of convenience that the appellant is involved in taking and collecting her daughter Jessica from school. The appellant's oral evidence was that these arrangements were not essential and that other arrangements are made when Jessica attends after school clubs as the appellant does not have to leave her other daughter's children to collect her [51].

viii. The appellant has resided with her daughter Melisha throughout the time she has been in the UK, but that daughter is now an adult. There is no evidence supplied to show that if the appellant is returned to Jamaica that her daughter could not make arrangements for Jessica to be taken to and collected from school or for her extracurricular activities. There was no evidence from the daughter Melisha other than what was said in a brief witness statement to say she relies upon her mother. It was accepted that Jessica is nine years of age and will have known her grandmother throughout the whole life, but the appellant is a grandmother and not a parent. No evidence has been adduced that would "remotely suggest" that Jessica's care and welfare is likely to be harmed to any degree as a result of the appellant's return to Jamaica. Jessica's mother Melisha will continue as her primary carer [52].

ix. The relationship between the appellant and her daughters is not sufficient to amount to family life for the purposes of article 8 and article 8 is not engaged [54].

x. The relationship between the appellant and Jessica, whilst close, is capable of being maintained upon the appellant's return to Jamaica. On the balance of probabilities family life does not exist for the purposes of article 8 between the appellant and her granddaughter Jessica and therefore such rights are not engaged [55].

xi. The appellant does not live with her daughter Taneisha. Account is taken of the fact that the 15-year-old grandson of this family unit has autism, but the appellant is not the primary carer and does not live with them. Although

the appeal was adjourned to enable specialist evidence/reports to be obtained to show that this was a relationship which could be adversely affected by the appellant's removal, no such evidence was forthcoming. In the absence of any evidence to suggest that this grandson will be adversely affected or that the other two grandchildren of the family who are extremely young would face adverse consequences. It was not made out that such relationship as subsists between them was sufficient to amount to family life for the purposes of article 8 [56].

xii. In the alternative, if article 8 is engaged, the decision is proportionate for the reasons set out at [57 – 64].

6. It is noted that the appellant has lived with her daughter Melisha since she entered the United Kingdom on 9 May 2002 as a visitor, although her application for leave on arrival was refused with the appellant being granted temporary release until 10 May 2002 but overstaying thereafter. Any protected right the appellant has developed has been during the time her status in the United Kingdom has been precarious, as it is unlawful.

7. It is not made out there is any merit in the assertion the appellant should have succeeded under the Immigration Rules. Under the Rules, the terms "parent" is defined as:

> **"Parent"** includes:
>
> (a) the stepfather of a child whose father is dead, and reference to stepfather includes a relationship arising through civil partnership; and
>
> (b) the stepmother of a child whose mother is dead, and reference to stepmother includes a relationship arising through civil partnership; and
>
> (c) the father, as well as the mother, of an illegitimate child where the person is proved to be the father; and
>
> (d) an adoptive parent, where a child was adopted in accordance with a decision taken by the competent administrative authority or court in a country whose adoption orders are recognised by the UK or where a child is the subject of a de facto adoption in accordance with the requirements of paragraph 309A (except that an adopted child or a child who is the subject of a de facto adoption may not make an application for leave to enter or remain in order to accompany, join or remain with an adoptive parent under paragraphs 297 to 303); and
>
> (e) in the case of a child born in the UK who is not a British citizen, a person to whom there has been a genuine transfer of parental responsibility on the ground of the original parents' inability to care for the child.

8. The appellant's role with her grandchildren has been to support her own children who are the natural parents and primary carers of those children. It was not made out that the appellant can satisfy the above definition on the evidence and the specific findings made by the Judge that the appellant had not established that the relationship was sufficient to satisfy the definition of a 'parent' is a finding clearly within the range of those available to the Judge on the evidence.

9. There is a difference between de facto family life, which the Judge does not dispute exists between the appellant and her grandchildren or other family

members, and family life recognised by article 8 ECHR, the existence of which is a question of fact.

10. I find there is no legal error made out in the Judge conclusion the relationship between the appellant and her daughter Taneisha and her family unit does not engage article 8, as there was no evidence to support a finding that it did. There is also no basis for an assertion the Judge failed to properly consider section 55 in relation to Stephen as despite time being granted for evidence to be provided to demonstrate the adverse effect of the appellant's removal upon Stephen no such evidence was provided. The lack of relevant evidence is a material issue in this appeal.
11. So far as the appellant's relationship with her daughter Melisha is concerned, the Judges factual findings show that the appellant has since entry to the United Kingdom lived with this daughter and her child Jessica who was born after the appellant arrived in the United Kingdom, as noted by the Judge, and that the appellant has lived in that family unit for all the child's life. The Judge may have failed to properly analyse the nature of the relationship between the appellant who is dependent upon Melisha for accommodation and possibly other financial support in the absence of evidence the appellant has an income of her own. If that relationship is sufficient to amount to family life recognised by article 8, which I find it is likely to be the case, it is a relationship born of necessity, reflecting the appellant's illegal presence in the United Kingdom and a dependence created as a result of having no independent means of her own. That is relevant to the weight that such relationship warrants being given as part of any proportionality assessment.
12. So far as Jessica is concerned, the Judge clearly considered section 55, but found insufficient evidence had been provided to show that the impact upon the appellant's removal warranted a decision other than that made by the Judge. It was not shown on the available evidence, for example, that the best interests of Jessica or any other child was for the appellant to remain in the United Kingdom and that this was the determinative factor.
13. There is merit in the argument the Judge erred in finding article 8 did not exist as it will also exist on the basis of private life established between the appellant and members of her family, even if family life recognised by article 8 did not.
14. Any such error is not, however, material, as the Judge from [57] considered the position in the alternative is if article 8 is engaged. The Judge undertakes a proper analysis of the reality of the factual situation and clearly undertook the required balancing exercise. Although the grounds assert the Judge did not follow the Razgar guidance the Judge was not required to set out the five required stages provided they were considered, which in this appeal, I find they were.
15. The appellant's representative in his submissions referred to the evidence of school runs and that available in the statements supporting the appellant's claim, but the Judge clearly took that evidence into account and it was a conclusion wholly open to the Judge that that evidence was not sufficient to warrant the appeal being allowed. Indeed, it is a fair observation that the material provided was not very strong in support of the appellant's claim being based, as the Judge

noted, on a desire to continue the arrangement which are more convenient for the family members involved.

16. The submission that had further evidence been made available the outcome could have been different may be the case, but there was no such evidence before the Judge. The grounds fail to establish that evidence of the required quality exists in any event.
17. The Judge's finding in the alternative that any interference with a protected family or private life is proportionate is within the range of findings reasonably open to the Judge on the evidence and, having read the evidence and having heard submissions, is likely to be the only finding reasonably open to the Judge when the matter is considered as a whole.
18. Whilst the appellant does not like this decision and wishes to remain in the UK with her family the grounds falls foul of the judgement in Herrera v SSHD [2018] EWCA Civ 412 in which the Court of Appeal said that appellate tribunals must always guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if first tribunal had the advantage of hearing oral evidence. In this case there is insufficient material to support a finding the Judge has erred in law in a manner material to the decision to dismiss the appeal.

Decision

19. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

20. The First-tier Tribunal made an no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

    I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated 1 June 2021