Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/14794/2013
IA/16152/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 2nd April 2014	**On 10th April 2014**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MRS CATHERINE ROACH
MS BRITTANY SHENISE TIPPER ROACH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Jafar (instructed Liyon Legal Ltd)
For the Respondent: Mr G Saunders (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellants, mother and daughter, appeal to the Upper Tribunal, with permission, against the determination of the First-tier Tribunal (Judge Andonian) promulgated on 19th November 2013. In that determination the Judge dismissed their appeals against the Secretary of State's decision to refuse them leave to remain in the UK outside the Immigration Rules and remove them pursuant to section 47 of the Immigration, Nationality and Asylum Act 2006.

2. My first task is to decide whether the First-tier Tribunal made a material error of law in its determination and if so whether and to what extent the determination should be set aside.

3. The grounds upon which permission was granted argue that the Judge erred in his consideration of Article 8 and in particular his consideration of the best interests of the second Appellant, who is a child. It is further asserted that the judge made a material error of law in his assessment of the Sponsor's monthly income in that his findings do not follow the evidence.

4. I have no hesitation in setting aside the determination. It was an application to remain on human rights grounds. The determination comprises two pages. Despite being an oral hearing with both parties represented the judge does not engage with the claim made by the Appellants, does not engage with the relevant Immigration Rules or appendix FM. It is not clear who the judge heard evidence from. The determination is unsustainable and it is set aside in its entirety.

5. Given the serious flaws in the First-tier Tribunal determination I proceeded to rehear the evidence. There was no application by either party to submit additional evidence and they therefore relied upon the original Respondent’s and Appellant’s bundles provided for the First-tier Tribunal hearing.

6. The circumstances of this appeal are that the Appellants, mother and daughter, are citizens of Antigua and Barbuda. The first Appellant was born on 13th March 1972 and the second Appellant on 14th November 1998.

7. The first Appellant married Joseph Samuel Roach in Antigua in 1993, where they were both resident. The second Appellant was born there. The couple also have an older son, also born in Antigua. The first Appellant claims that the family lived in accommodation provided free of charge by the local church. Her husband is a British citizen, obtaining his British citizenship in 2004. He travelled to the United Kingdom in 2010. All three of his siblings live in the UK with their families. His claim is that he came to the UK so as to be able to better provide for his family and he has been working in the UK since he arrived.

8. In July 2012 the Appellants, together with the older son, entered the UK as visitors. In December 2012 all three applied for settlement. On 11th April 2013 the Appellants’ applications were refused and on 19th September 2013 the son’s application was refused with no right of appeal. He has not challenged that decision by way of judicial review. He is therefore in the UK without leave and thus liable to removal.

9. The application and appeals are argued on Article 8 grounds alone.

10. I heard evidence from the first Appellant. She was asked by her representative what the effect of refusal would be on her daughter, the second Appellant. She said that since her daughter had been a baby her father had put her to bed. When he left for the UK she cried every night and her school grades went down. She had no appetite. When asked why, if the effect upon her daughter was so catastrophic her husband did not return, she said it was because he wanted a better life.

11. She said that when she came to the UK as a visitor with her two children she had paid return fares for all three of them but was unable to provide evidence of that.

12. Her evidence as to when the decision was made to stay in the UK was vague. She said that initially they had intended to stay for three months. When she was asked if she had intended to return to, what was now suggested were impoverished circumstances in Antigua, she said that the circumstances in Antigua were not impoverished. She said that when her husband came to the UK in 2010 when her daughter was 12, she cried every day and she realised, when the family was reunited in the UK, that separation would be hard.

13. She said that her daughter had started school in the UK in September 2012 while still here on a visit visa. She was vague about who, how and when the school was organised but did say that t was her husband who arranged it with the school.

14. She said that her husband had been a carpenter in Antigua and she said that her daughter had no medical or developmental difficulties.

15. I then heard from the first Appellant's husband.

16. He was asked what he would do if the appeal is rejected. He said it was hard because there was no property in Antigua as the family had lived in a church building and that he was living in the UK now. When pressed he confirmed that he would stay in the UK if his family were returned. He was asked how that would affect his daughter and he said that he knew for a fact that it would affect her a lot.

17. He was asked about the accommodation in Antigua and its not being available any longer and he claimed that someone else is living there now. He said he could not remember what his wife had put in her visa application form with regard to her accommodation and settled status in Antigua.

18. He said that his daughter had started school in the UK in September of 2012. He confirmed that he and his wife had both been to visit Wood Green Council about his daughter enrolling in school. They did that shortly after they had arrived.

19. He said that the family had intended to spend six months in the UK. He was unable to offer a credible explanation for why, if his daughter was

here on holiday, he enrolled her in school. He later admitted having done so to increase her chances of remaining.

20. In his submissions Mr Jafar argued that this was a genuine application and a genuine family. They had lived together in Antigua until 2010 when Mr Roach came to the UK. For the first 12 years of her life the second Appellant had had her father with her. The situation in Antigua was such that he decided to come to the UK for the sake of his family; to make a better life for them and to provide for them. They no longer have access to accommodation in Antigua. I was asked to take note that this was a close-knit family that was deeply affected by his departure from Antigua. He argued that there were exceptional compelling circumstances that should lead me to allow this appeal. The father cannot provide for his family in Antigua but he does support them in the UK. At this juncture I asked about the accommodation the UK and was told that the family of four lives in one room rented from a private landlord.

21. The Appellants fall a long way short of meeting the Immigration Rules, not just because they came as visitors. They also fail the maintenance requirements because the sponsoring husband/father is in receipt of benefits. They also fail on the basis of accommodation in that the entire family (mother, father, adult son and 15-year-old daughter) share one room.

22. So far as the exceptions contained in Ex.1 are concerned they do not assist.

23. It was accepted by Mr Jafar that the family do not come within the Immigration Rules.

24. In so far as considering the appeal under the ECHR is concerned I bear in mind Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 00640 (IAC) and Nagre [2013] EWHC 720 (Admin). I am also of course aware of the duty to consider the best interests of any child as a primary consideration.

25. Contrary to the submissions by Mr Jafar I find no compelling reasons why this appeal should be allowed on Article 8 grounds. This family have quite clearly sought to circumvent the Immigration Rules for settlement in the UK. Having managed to obtain entry clearance as visitors they then sought to remain outside the Rules. It is significant that in granting the visit visas the Entry Clearance Officer must have been satisfied that the two Appellants and the son/brother were settled and secure in Antigua with a home to return to; otherwise he would not have granted them visas. They either deceived the Entry Clearance Officer as to the circumstances in Antigua or they are trying to deceive me.

26. It is quite clear that it was always the family's intention that they should remain in the UK. This is evidenced by the contradictory evidence about the proposed length of stay (three months according to the first Appellant;

six months according to her husband). It is also evidenced by the fact that almost immediately upon arrival enquiries were made to enrol the second Appellant in school.

27. It is clear that the reason the family have sought to circumvent the Immigration Rules in this case is because they are well aware that they fall a long way short of meeting the requirements for settlement as a wife and child.

28. The best interests of the child in this case are, I find to be returned to the country of her nationality where she has lived for the first 13 years of her life with her mother. Her older brother also has to either leave or be removed to Antigua and she will therefore be with the family that she has grown up with.

29. I attach no weight to the claims of the catastrophic effects upon the daughter of separation from her father. Her father made a conscious decision to leave Antigua and his family to settle in the UK for a better life. Despite what they describe as the dreadful effects upon the daughter he chose not to return and indeed confirmed to me that notwithstanding the effect upon his daughter he would remain in the UK if they are to leave. It is strange that the Tribunal is required to consider the best interests of the child as a primary consideration when the child's parent does not. Any harm done to the child in this case is a direct result of the actions of her family and not by the actions of the Secretary of State. This is a thoroughly unmeritorious application.

30. The appeal is dismissed.

Signed Date 9th April 2014

Upper Tribunal Judge Martin