



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/31327/2013

**THE IMMIGRATION ACTS**

Given orally at Field House  
On 29<sup>th</sup> September 2014

Determination Promulgated  
On 3<sup>rd</sup> October 2014

Before

UPPER TRIBUNAL JUDGE PETER LANE

Between

MISS MOYA SHANON SERVICE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr N Garrod, Counsel instructed by Marsh & Partners Solicitors  
For the Respondent: Mr M Shilliday, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant appeals with permission against the determination of the First-tier Tribunal, Judge Greasley, sitting at Hatton Cross on 10<sup>th</sup> July 2014 in which he dismissed her appeal against the refusal of the respondent to vary the appellant's leave to remain in the United Kingdom. The appellant is a citizen of Jamaica. She was born on 16<sup>th</sup> November 1991. She arrived in the United Kingdom at or around the age of 11 and has remained here since. The basis of her application was for

discretionary leave to be granted to her in line with that of her mother, who has leave to remain until 2016.

2. The respondent refused the appellant's application. In her decision dated 21<sup>st</sup> June 2014 the respondent noted that although the appellant continued to reside at the same address as her mother she was said to have two jobs and an income of around £1,600 a month:

"It has been decided therefore that you are capable of living an independent life, and are no longer dependent upon your mother. Therefore, after carefully reviewing your application for active review of discretionary leave, the Secretary of State is not satisfied that the grounds under which you were previously granted discretionary leave still persist and your application for further discretionary leave is refused."

3. The decision continued by analysing the position with regard to Article 8, noting amongst other things that the appellant could not satisfy at that stage the requirements of paragraph 276ADE of the Immigration Rules.
4. There is or has been some doubt as to the policy by reference to which the respondent analysed the application. I am, however, satisfied that Mr Shilliday has identified the correct policy in a document handed to me this afternoon. As regards applicants who were granted discretionary leave before 9<sup>th</sup> July 2012, which includes the present appellant, the relevant provisions of the policy are as follows:

- Decision-makers must consider whether the circumstances prevailing at the time of the original grant of leave continue at the date of the decision. If the circumstances remain the same and the criminality thresholds do not apply, a further period of three years' DL should normally be granted.
- If there have been significant changes or the applicant fails to meet the criminality thresholds ... the application for further leave should be refused."

5. The First-tier Judge heard oral evidence from the appellant and her witnesses. It is fair to say that the judge was troubled by certain aspects of the evidence bearing on the Article 8 issue. So far as earnings were concerned, however, it appears that the judge was not persuaded that the level of the earnings was as great as that indicated in the respondent's decision. I put it in that way because I have to say that the determination is somewhat problematic as regards the relevant findings.
6. The documentary evidence makes it abundantly plain that at the relevant time the applicant was working in what can in no sense be described as a full-time capacity and that her income working in connection with dental nursing was far less than that indicated by the respondent. Indeed, in fairness to the judge, he noted in terms of paragraph 22 that she was working on a part-time basis and earned between £500 and £600.
7. The judge made no clear findings on the question of whether the respondent had correctly applied her policy. That is the main basis upon which permission to appeal was granted. I do consider in the circumstances that that error was material.

8. Before me, Mr Shilliday submitted that all that was needed was a demonstration that the factual matrix was different from that when leave was last granted. In that regard he submitted that the appellant had become an adult and that that in itself was a change. In fairness to Mr Shilliday, it appears that that cannot be right since the last period of leave granted to the appellant covered a period after she had achieved the age of 18.
9. What therefore the judge should have done was to have considered whether the respondent had correctly had regard to the evidential matrix in considering whether the grounds upon which the appellant was previously granted discretionary leave still persisted.
10. It is plain for the reasons I have given that the respondent fell into error as regards the nature of the appellant's employment. Whether a person who has recently ceased studies and is still living at home and is, albeit an adult, of young age, is working part-time or full-time is clearly a material issue. The respondent has made a mistake in that regard, as is plain from the evidence.
11. The question for me is whether that mistake and all other relevant matters combined point to a situation where the only rational response that a respondent could make to the facts would be to grant a further period of discretionary leave.
12. I am not in a position so to conclude. I do, however, consider that the evidence, even making allowance for the degree of exaggeration regarding the absence of ties in Jamaica, strongly points to the appellant having the basis of a very good case for showing that she should be granted a further period of discretionary leave. She is making tentative steps towards gaining employment. She does, however, continue to reside with her mother. There is evidence to the effect that there is an emotional bond with the mother and with other relatives. It may be that that bond is not sufficient to engage Article 8(1) but that is not necessarily the test for the present purposes of deciding whether to grant discretionary leave.
13. In short, properly analysed, the factual position favours the appellant; although, as I say, I do not go so far as to find that a grant of leave is the only rational response. What I do find, however, is that the judge failed to make proper findings by reference to the correct policy. I find that those failings were material. I therefore re-make that part of his decision by allowing the appeal against the refusal of leave to the extent that the application for a variation remains outstanding before the Secretary of State. In the circumstances I do not consider it desirable or indeed appropriate to make findings on Article 8. That matter remains inchoate.

Signed

Date

Upper Tribunal Judge Peter Lane