Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/07775/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26 February 2015	**On 26 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR GEORGE BARRINGTON BONNER
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Ms. Petterson, Home Office Presenting Officer.
For the Respondent: Mr. A. Alabi, Solicitor.

DECISION

1. No anonymity order has previously been made in these proceedings and no such application was made before me today. There is no need for such an order.

2. This is a respondent appeal but I shall henceforth refer to the parties in the original terms detailed in the decision of Judge of the First-tier Tribunal Abebrese following a hearing at Taylor House on 12 September 2014.

3. The appellant, born 4 October 1957 is a citizen of Jamaica.

4. He made an application for further leave to remain in the United Kingdom. His application was refused on 21 January 2014. The refusal was made under paragraph 322(1) of the Immigration Rules in respect of a refusal of leave to remain or a variation of leave. The appellant requested that his application be considered outside the Immigration Rules on the basis that he is a dependant and that the application is based on his long residency in the United Kingdom. The appellant's partner also made an application which was joined with his, however, the respondent considered their applications separately. The respondent in refusing the appellant's application concluded that she was not satisfied that there are compelling or compassionate circumstances surrounding the appellant's case and accordingly the respondent was not prepared to exercise any discretion.

5. The appellant appealed and in a decision promulgated on 22 September 2014 Judge of the First-tier Tribunal Abebrese allowed the appellant's appeal on Article 8 grounds.

6. The respondent sought permission to appeal. This was granted by Judge of the First-tier Tribunal Colyer. His reasons for so doing are:-

> "1. The Respondent seeks permission to appeal, against a decision of the First-tier Tribunal (Judge Abebrese) who, in a determination promulgated on 22nd September 2014, allowed the Appellant's appeal against the Respondent's decision to refuse his application for leave to remain in the United Kingdom on the basis of family and private life here under Article 8 ECHR.
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> 2. The Grounds for applying to the upper tribunal submit that the judge has made a material error of law, misdirecting himself with reference to article 8 ECHR. The appellant seeks to remain in the United Kingdom on the grounds of his relationship with his wife and his private life, and these are rights that are clearly sufficiently recognised in the immigration rules. the appellant is able to return to Jamaica and apply for entry clearance, or his wife is able to travel with him to Jamaica and continue their family life together in that country. It is submitted that the judge failed to have regard to the substantive requirements of appendix FM and appendix FM-SE in considering the appellant's case. The respondent refers to the case of Nagre; and the requirements of the immigration rules.
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> 3. The grounds disclose an arguable error of law."

Thus the appeal came before me today.

7. Ms. Petterson submitted that having found that the appellant did not qualify for leave to remain under the Immigration Rules it is only where there may be arguably good grounds for granting leave to remain outside

of the Immigration Rules would it be necessary for the judge to have proceeded to consider whether there are compelling circumstances not sufficiently recognised under them. She relied on the authority of **R (on the application of) Nagre v SSHD [2013] EWHC 720 (Admin)**. She went on to submit that the judge had materially misdirected himself in law in finding that there are compelling circumstances not sufficiently recognised under the Immigration Rules. The appellant seeks to remain in the United Kingdom on grounds of his relationship with his wife and his private life and these are rights that are clearly sufficiently recognised within the Immigration Rules themselves. He is able to return to Jamaica and apply for entry clearance, or his wife is able to travel with him to that country and continue their family life together there. Grants of leave outside of the Immigration Rules are reserved for the most exceptional cases and should not be used as a means to circumvent requirements of the Immigration Rules. Accordingly the judge has erred in allowing the appeal under Article 8.

8. Mr. Alabi submitted that the judge had focused on all relevant matters before coming to a conclusion that was open to him to be made on the evidence. This was not about the judge being sympathetic to the appellant's plight and therefore he has not erred in allowing the appeal in the way that he did. Article 8 was engaged and there were arguably good grounds for the judge to go outside of the Immigration Rules themselves. He has not materially erred.

9. In addition to the above matters the respondent has submitted within her grounds that the Immigration Rules themselves are a "complete code". I do not find that to be the position. It is though necessary for a judge to decide whether there are good reasons to consider Article 8 directly. See for example **MM (Lebanon) & Ors, R (On the Application Of) v Secretary of State for the Home Department [2014] EWCA Civ 985** and **R (on the application of) Esther Aben Oludoidoyi & Ors v Secretary of State (Article 8) (Lebanon) and Nagre IJR [2014] UKUT 5398 (IAC)**.

10. I appreciate that a good reason is one that is compelling or because there are exceptional circumstances. However there is no test of exceptionality; there does not have to be anything extreme to move to Article 8 directly. Good reason may be present if the Immigration Rules themselves do not provide discretion to examine whether the immigration decision is proportionate in light of all the appellant's circumstances but only if the consequences of the immigration decision are likely to have significant impact on the private or family life continuing. It will be necessary to carry out a proportionality exercise if a judge is satisfied that Article 8(1) is engaged but that proportionality exercise should be conducted within the terms of the Immigration Rules where possible.

11. This is an appeal where Judge Abebrese has materially erred as submitted by Ms. Petterson. It is an appeal where the issues raised by the appellant have been adequately addressed by the consideration of the Immigration

Rules and accordingly it was unnecessary for the judge to proceed to a further full and separate consideration of Article 8. On the individual facts of this appeal there is no reason for the judge to have gone on to give consideration to the Article 8 claim in the way that he did. As I say, in so doing he has materially erred. This is an appeal where the proportionality exercise was in effect conducted within the terms of the Immigration Rules themselves resulting in the appellant's application being refused by the respondent. For the same reasons the judge should not have allowed the appellant's appeal under Article 8.

Notice of Decision

12. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

13. I set aside the decision.

14. I remake the decision in the appeal by dismissing it.

Signed Date 25 March 2015

Deputy Upper Tribunal Judge Appleyard

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 25 March 2015

Deputy Upper Tribunal Judge Appleyard