IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/10293/2014
IA/10297/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4th February 2015	**On 13th February 2015**

Before

THE HONOURABLE MRS JUSTICE PATTERSON
DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MISS SHANICE PETERGALE PALMER
MISS SHANELL ABIGAYLE PALMER
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr A Adeolu, Solicitor, Lonsdale Mayall Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are nationals of Jamaica and are twins, being born on 24th August 1995. They entered the United Kingdom as visitors on 18th January 2013 and appealed against the Respondent's decision to refuse to vary their leave to remain here and to give directions for their removal under Section 47 of the Immigration, Asylum and Nationality Act 2006.

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2. Their appeal was heard by First-tier Tribunal Judge Meates who dismissed the appeal under the Immigration Rules and under Article 8 ECHR in a determination promulgated on 24th October 2014.

3. Grounds of application were lodged and permission to appeal granted by Upper Tribunal Judge (UTJ) Deans in a decision dated 18th December 2014. Thus the matter came before us on the above date.

4. Mr Adeolu appeared for the Appellants. He submitted that in the judge's determination there had been no proper application of the principles set out in **R (Razgar) v SSHD [2004] UKHL 27**. Article 8 was not restricted to the length of time a person spent in a particular country and the judge should have looked at the quality of the family life that the Appellants enjoyed here. UTJ Deans had agreed there was an arguable issue in relation to Article 8. There had been no mention of the case of **Huang** in the decision. Mr Adeolu particularly emphasised the fact that the Appellants would be returning to a volatile society and could be preyed upon. This was a vital element of this appeal and absent their father (away at sea) and their mother (in the UK) they would be vulnerable to these attacks. In response to Mr Bramble Mr Adeolu accepted that he was not saying that the Appellants qualifed under Appendix FM but rather that the error of the judge was in his assessment of proportionality under Article 8. There was no democratic necessity for the Appellants to be removed and they operated as no threat to society. The judge had been wrong to attach weight to the public interest as outlined in paragraph 117B of the Nationality, Immigration and Asylum Act 2002. We were asked to set the decision aside and make a fresh decision allowing the Appellants' appeals.

5. Mr Bramble for the Home Office submitted that in the grant of permission to appeal the grounds in general were seen as no more than a disagreement with the findings made by the judge. UTJ Deans had indicated that no consideration appeared to have been given to section R-LRT-C of Appendix FM with the implication being that there might be some merit in the Appellants' argument that the judge should have looked at that section and made findings on it. However, although the judge had simply said in paragraph 26 that it was clear that the Appellants did not meet the requirements of paragraph 276ADE or Appendix FM the judge was quite correct to form that conclusion as the Appellants' mother could not be described as someone who was present and settled here. The judge had gone on to consider Article 8 per **Razgar**. He had made clear findings on the evidence. In particular at paragraph 22 the judge had recorded that Mrs Harmione Brown-Pryce had confirmed that the Appellants were supported by her, their Sponsor (their mother) and their father in Jamaica. She had also confirmed that the Appellants would return into school once they had completed their visit here.

6. In paragraph 23 the judge had noted that the Appellants' father was in Jamaica and there was an extended family network there. The Appellant Shanell Palmer had given evidence and confirmed that she maintained a

loving bond with her father and there was no explanation at all as to why their father could not make arrangements for their care in Jamaica.

7. At paragraph 24 the judge noted that the father played an active role in their lives and he would have concluded that the Appellants had not established that their mother in the UK had had sole responsibility for their upbringing. These factual findings were clear and furthermore the judge had dealt with the submission made by Mr Adeolu relating to the volatility of life in Jamaica for young women in the final sentence of paragraph 30 of the determination.

8. Mr Bramble said that it was entirely correct for the judge to consider paragraph 117B of the Nationality, Immigration and Asylum Act 2002 because in the balancing exercise it was important to take account of the public interest.

9. Finally it was said that the decision of the judge was not flawed. There were no errors and therefore the decision to dismiss the appeal should remain.

10. We reserved our decision.

Conclusions

11. Although now aged 19 years, the twins' initial application was made on 19th June 2013 when they were children. As such their application to remain here was (correctly) considered on that basis with the conclusion by the Secretary of State and thereafter Judge Meates that the Appellants did not qualify under the Immigration Rules. In granting permission UTJ Deans stated that no consideration appeared to have been given to Section R-LTR-C of Appendix FM but against that the judge had made a finding that the Appellants did not qualify under Appendix FM. As this was not challenged in any way by Mr Adeolu we need to say little more about that except that we agree with Judge Meates that the Appellants do not meet the terms of Appendix FM for reasons given in the refusal letter.

12. As Mr Adeolu confirmed to us, his position was that the decision was inadequate in its conclusions on proportionality with particular emphasis on the mentioning of paragraph 117B of the 2002 Act and to the dangers the Appellants would face in terms of their vulnerability as young women in the volatile society of Jamaica.

13. The judge was bound to take the public interest into account in undertaking the balancing act under Article 8 and as Mr Bramble said it is a statutory requirement to take into account what is said in paragraph 117B of the 2002 Act. It is transparently clear that no proper criticism can be made of the judge in this regard.

14. The judge summed up the facts in paragraph 30. She said that both Appellants had only lived here with their mother for a short period of time, namely since 18 January 2013. They had previously lived with their

mother in Jamaica up until the age of 7 and then lived with their grandmother and aunt. They have throughout this period maintained their relationship with their father who has been providing them with emotional and financial support. The judge said that there was nothing at all exceptional or unusual in the Appellants' circumstances. There was nothing at all that would prevent or cause any difficulties to them on their return to Jamaica. They can live with their father, their aunt or other extended family members. Their father will continue to provide for their financial support and their mother may continue to do so.

15. We pause to say that on the evidence presented to her these were all findings that the judge was entitled to make. The judge went on and did make findings about the high level of violence in Jamaica perpetrated against young women but said that the Appellants were safe prior to coming to the UK and would, therefore, with the assistance of their family members, be safe on their return to Jamaica. There was nothing in the profile of either Appellant to permit the judge to form a different conclusion.

16. For these reasons it is our view that the judge carried out the appropriate balancing exercise in assessing the competing interests between the parties in relation to the the Appellants' fundamental but qualified rights under Article 8 ECHR. The particular complaints made by Mr Adeolu in his oral submission were dealt with more than adequately by the judge.

17. There is therefore no error in law in the judge's findings and the decision must stand. There is no need for an anonymity order and we were not asked to make one.

Notice of Decision

18. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

19. We do not set aside the decision.

Signed Date **13th February 2015**

Deputy Upper Tribunal Judge J G Macdonald