Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/26313/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24 August 2015	**On 24 September 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS ANDREA HENRY

Respondent

Representation:
For the Appellant: Mr Stephen Whitwell, Senior Home Office Presenting Officer
For the Respondent: Mr Simon Harding, Counsel, instructed by J McCarthy Solicitors

DETERMINATION AND REASONS

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.

2. The appellant (hereafter the Secretary of State) appeals against the decision of the First-tier Tribunal (Judge Shamash) allowing the

respondent's appeal against a decision taken on 12 June 2014 to refuse to grant her leave to remain in the UK.

Introduction

3. The respondent first entered the UK in September 1999 and submitted an asylum application in March 2002. She was then encountered at Stanstead Airport on 1 October 2002 in possession of a British passport with a substituted photograph. She was arrested, charged and pleaded guilty to possession of a false instrument. She was sentenced to 9 months imprisonment. The respondent's MP sought to assist her to remain in the UK but no leave to remain was granted. The respondent was released in 2003 and there was no further contact until 2010. The Secretary of State wrote to the appellant telling her that the Case Resolution Directorate was responsible for the resolution of her appeal. Nothing happened until judicial review proceedings were issued and the Secretary of State agreed to consider the respondent's claim.

4. The Secretary of State concluded that the respondent did not meet the requirements of Appendix FM of the Immigration Rules ("the Rules") because she had not been living with Mr Francis ("the sponsor") in a relationship akin to marriage for at least two years prior to the date of application. The respondent claims that the relationship began in 2009 and cohabitation began in March 2014. The Secretary of State considered that there was no evidence that the respondent had lost social and cultural ties to Jamaica and there was no reason to grant leave to remain outside the Rules.

The Appeal

5. The respondent appealed to the First-tier Tribunal and attended an oral hearing at Taylor House on 17 February 2015. She was represented by Mr Harding. The First-tier Tribunal found that the respondent was a credible witness who was waiting to marry and start a family until her immigration status was resolved. The relationship was genuine. The judge accepted the sponsor's evidence that he was born in the UK and his job and family are in the UK. His uncle was murdered in Jamaica in 2008 after living in the UK for 30 years, having returned to Jamaica to undertake a criminal prosecution. The judge found that the case fell on the cusp of paragraph 276ADE in terms of time in the UK and the respondent had no ties with Jamaica. She had little in the way of familial ties because her brother lived in the United States and her sister was about to join her husband there. The judge allowed the appeal under paragraph 276ADE of the Rules and Article 8 in the alternative on the basis that it would be unjustifiably harsh to require the respondent to return to Jamaica to make an application for entry clearance as a partner.

The Appeal to the Upper Tribunal

6. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law in finding that the respondent met the requirements of paragraph 267ADE of the Rules because the appellant had not live in the UK for more than 20 years. The judge failed to consider section 117B of the 2002 Act when assessing proportionality – under section 117B(4) little weight should have been attached to the relationship with the sponsor.

7. Permission to appeal was granted by First-tier Tribunal Judge McDade on 12 June 2015 on the basis that the grounds were arguable.

8. Thus, the appeal came before me

Discussion

9. Mr Whitwell submitted that there was no express finding that paragraph 276ADE was met. It is difficult to find a meaning for the paragraph because 15 years is not on the cusp of 20 years. The respondent had a sister in Jamaica as at the date of decision. "Unduly harsh" has nothing to do with paragraph 276ADE. The respondent was brought up in Jamaica and has a sister in Jamaica. She clearly has not lost ties. Delay is not relevant to paragraph 276ADE.

10. Mr Harding conceded that paragraph 26 of the decision could be clearer. However, the question of no ties was considered and the evidence was that the sister was going to relocate. The judge had to look at the question of practical support and the degree of support and the finding was properly couched in the future tense. The judge considered a range of issues, addressed herself to the correct test and considered relevant factors including her criminal offending in the UK. The judge had a significant margin of appreciation and the decision was not one that no judge could make.

11. Both sides made further submissions on delay, Article 8 and section 117B of the 2002 Act. I have not found it necessary to make a decision about those submissions. Both parties agreed that the previous version of paragraph 276ADE in force as at the date of decision applied to this appeal.

12. This is a somewhat unusual case in that the respondent has been waiting for many years for a decision in relation to her asylum claim. During that period the asylum claim fell away and the respondent was left with relying upon her relationship with the sponsor and lack of ties to Jamaica. The core of the decision is paragraphs 26-27. I find that the reference to "*the cusp of 276ADE"* is not central to the decision because the judge was clearly aware that the appellant had not been in the UK for 20 years.

13. The judge considered and applied Bossadi (paragraph 276ADE; suitability; ties) [2015] UKUT 00042 (IAC). The judge found that the respondent is a healthy 37 year old woman whose brother lived in the USA and whose

sister was about to relocate to the USA. The appellant would then have no family in Jamaica. The sponsor would not live in Jamaica save for a short period. The respondent would have no support in Jamaica. She had lived in the UK for 15 years and had never lived in Jamaica as an adult. She had no support network and little in the way of familial ties in Jamaica. I accept that all of those findings were open to the judge on the evidence.

14. I accept that paragraph 27 would have benefited from clearer separation of the issues that were relevant to paragraph 276ADE. However, it is not disputed that the judge allowed the appeal under paragraph 276ADE and that was clearly on the basis that the appellant had no ties with Jamaica. I find that it was open to the judge to take into account the fact that the sister was about to relocate to the USA when determining that issue. In practical terms, the appellant had no family ties with Jamaica because she would have no family members in Jamaica when she was returned. I find that it is at least possible for a person to lose ties with their home country after an absence of 15 years.

15. Paragraph 276ADE(vi) of the Rules (as it was) states that the requirements to be met by an applicant for leave to remain on the grounds of private in the UK are that as at the date of application the applicant was aged 18 years or above, had lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but had no ties (including social, cultural or family) with the country to which he would have to go if required to leave the country. I find that it was open to the judge to find that the requirements of that sub-section were met and that the judge's decision is not perverse or irrational. All relevant factors were considered and the judge carried out a rounded assessment. No material error of law arises.

16. I therefore find that the judge did not err in law when allowing the appeal under paragraph 276ADE of the Rules. I have not found it necessary to consider the alternative finding under Article 8 outside the Rules which was unnecessary given that the judge had already allowed the appeal in terms of private life within the Rules. Thus, the First-tier Tribunal's decision to allow the respondent's appeal under the Rules did not involve the making of an error of law and its decision stands.

Decision

17. I dismiss the appeal of the Secretary of State.

Signed  Date 22 September 2015

Judge Archer
Deputy Judge of the Upper Tribunal