



IAC-FH-NL-V2

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00506/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

**Given extempore
On 1st February, 2016**

On 15th March 2016

Before

Upper Tribunal Judge Chalkley

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS BRIDGETTE CHARMAINE INKIN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

*For the Appellant: Mr C Avery, Senior Home Office Presenting Officer
For the Respondent: The appellant in person*

DECISION AND REASONS

1. In this appeal the Secretary of State is the appellant and Bridgette Charmaine Inkin is the respondent. To avoid confusion I am going to refer

to the Secretary of State for the Home Department as being “the claimant”.

2. The respondent is a citizen of Jamaica, who first entered the United Kingdom on 28th July, 1990 and was granted six months’ leave to enter as a visitor. The respondent returned to Jamaica on 28th December, 1990 and then sought entry again on 25th May 1992. She was granted entry to the United Kingdom for one year and subsequently granted a working holiday visa from 22nd January, 1993 until 21st January, 1995. She then returned to Jamaica on 23rd April, 1994 and sought to re-enter the United Kingdom on 4th July, 1994. She was questioned and subsequently granted leave to enter until 12th January, 1995. On 20th August, 1994, she gave birth to her daughter. On 20th January, 1995 she claimed asylum, claiming that she feared persecution if she returned to Jamaica. Her screening interview took place on 20th March, 1995 and while the asylum application was pending the respondent was sentenced in the London Crown Court to four years’ imprisonment for wounding with intent to cause grievous bodily harm. The conviction was on 30th August, 1996. Whilst in prison the respondent was interviewed on behalf of the claimant and following that interview an asylum interview was conducted. The notice of decision was made on 4th August, 1998.
3. The Reasons for Refusal Letter of 18th July, 1998 was attached to that notice of decision, together with a memorandum from a Mr F Edmiston of the Immigration Service dated 12th August, 1998, presumably addressed to the Governor of the prison where she was being held, that the Secretary of State had decided to make a deportation order against her. An appeal was lodged on behalf of the claimant and while that appeal was pending the respondent made an application for leave to remain as the wife of a person present and settled here. That application was made on 27th January, 1999. Nothing seems to have happened until after a visit by Immigration Officers which took place on 18th July, 2000. A report was made by the Immigration Officers dated 27th October, 2002 after the respondent had been subsequently arrested for shoplifting. No further action was taken on that.
4. The Immigration Officer noted that the respondent was still awaiting the outcome of her application made on the basis of her marriage. It appears that the Immigration Service were under the impression that the respondent had withdrawn her appeal lodged in August 1998 against refusal of asylum following her marriage. It was on 11th August, 2006 that a letter was written by her MP to a Minister at the House of Commons enquiring about the application. On 4th January, 2007 the claimant wrote to the respondent’s Member of Parliament. In April 2010 letters had been written by the respondent’s Member of Parliament, again enquiring about the progress, and a response was received on 27th April, 2010 from the Border Agency which set out at length the respondent’s immigration history and went on to state that the writer was not able to give an exact date when the respondent’s case would be resolved and at that time was awaiting allocation to a case owner. It was again noted that the

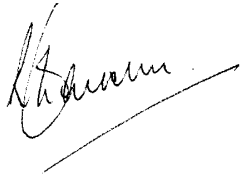
respondent had applied for asylum which had been refused and had subsequently applied for leave to remain on the basis of her marriage. Attached to a copy of that letter is a Minute of 27th April, 2010, noting that the respondent's solicitors had submitted an appeal against the refusal of her asylum but the appeal had not been processed and that the respondent had made an application for leave to remain on the basis of her marriage and that had not been resolved either.

5. On 28th August, 2010, the respondent's Member of Parliament, Mr Simon Hughes MP, again wrote to the Home Office and on 8th September, 2010, in a response from the Home Office, the claimant advised that an exact date when the matter would be resolved could still not be provided. Enquiries were made subsequently by solicitors acting on behalf of the respondent and pointing out that there had been a delay in the conclusion of the respondent's application and in consideration of her appeal. On 15th December, 2011 the Secretary of State wrote to the respondent informing her that she had been convicted of an offence on 30th August, 1996, at Inner London Crown Court, and that the Secretary of State was considering her liability to deportation. The respondent was asked to make further representations. The claimant referred to Article 33(2) and indicated that since the respondent would be a danger to security of the country or was convicted of a particularly serious crime, then she would not be entitled to benefit from the 1951 Convention. The claimant decided that Section 72 of the 2002 Act applied and that the respondent was considered to constitute a danger to the community. Numerous letters appear to have been written by the respondent's solicitors requiring that the respondent's case be processed further and the claimant again requested details of the respondent's background and circumstances on 5th November, 2012. A further letter was written by the claimant which was responded to by the respondent's representatives. A Statement of Evidence Form was submitted on 14th February, 2014, in respect of the respondent's application and a further asylum interview took place. The claimant then decided to refuse the respondent's application and to make a deportation order. The reasons are set out in a letter of 27th February, 2014.
6. The respondent gave Notice of Appeal and her appeal was heard by First-tier Tribunal Judge Bird on 4th August, 2014 and 14th January, 2015. At paragraph 41 of the determination the judge said this:

"All the submissions on behalf of the [claimant] were under the new Immigration Rules and Section 117C of the Immigration Act 2014. Section 117C states that the deportation of foreign criminals is in the public interest. I will consider this appeal in accordance with the Immigration Rules referred to above and further consider the [respondent's] private and family life in accordance with Article 8 under the Convention rather than as defined in Appendix FM and Section 276ADE. I remind myself that the burden is on the [respondent] to establish the facts that she relies on and the standard of proof is that of a balance of probabilities."
7. Elsewhere in the determination the judge makes it clear that she is applying the law as she believes it would have been at the time of the deportation decision, rather than as it was at the date of the hearing and

as it is today. The judge found that there was no evidence that the claimant had produced to show that the respondent constituted a danger and concluded that the respondent's Article 8 rights would be breached by her removal, given the inordinate delay on the part of the claimant. The claimant challenged the decision. The grounds of application contended that there was no provision for a deportation appeal to be allowed on Article 8 grounds outside the Rules and reference was made to case law firmly establishing in jurisprudence that the Rules under deportation are a complete code and any allowance on appeal by an appellant must be seen through the lens of that code. By allowing an appeal under Article 8 outside the Rules, was, it was suggested, an error of law.

8. Mr Avery argued that it was a material error. The judge should have applied the law at the date of the hearing, not as it was at the date of the deportation order. She should have looked at Article 8 within the framework of the Immigration Rules, bearing in mind that the respondent was convicted of an offence which carried a four year prison sentence. There had been delay acknowledged, but the respondent should not necessarily benefit from that delay when she should have left the United Kingdom following the making of the order.
9. The respondent appeared before me in person and confirmed that she had no solicitors acting on her behalf. I explained the purpose of the hearing and the submissions made by Mr Avery to the effect that the judge had erred in law in the decision. The respondent indicated that she did not know what was going on, but I explained that it was said that the determination of the judge could not stand and it was proposed by Mr Avery that the matter should be re-heard afresh since there has effectively been no fair hearing, the judge applying the wrong Rule. I believe that after my explanation the respondent understood the situation.
10. In all the circumstances I am satisfied that the decision is flawed. The Judge should have proceeded to deal with the issues on the basis of the law as it is today and not as she believed it was at a time in the past when the order was made. As a result, the respondent has been denied a fair hearing. It may well be that the decision is the same, but First-tier Tribunal Judge Bird's determination cannot be permitted to stand. I remit this for a hearing afresh by a Judge other than First-tier Tribunal Judge Bird. It is not immediately apparent to me why it would have taken two days to hear this appeal but if, after a review it appears that two days is necessary to hear the appeal, I would urge the First-tier Tribunal to allocate two days to it, rather than end up with a situation where an appeal is heard on two separate days with a space of some four months.
11. No anonymity direction is made.

A handwritten signature in black ink, appearing to read 'Chalkley', with a long horizontal stroke extending to the right.

Upper Tribunal Judge Chalkley