



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

Appeal Number: IA/22707/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 February 2016**

**Decision & Reasons Promulgated  
On 14 July 2016**

**Before**

**THE HONOURABLE MR JUSTICE COLLINS**

**Between**

**MISS PATRICHE ANDERSON  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Harding instructed by J McCarthy Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Flynn given on 17 January 2014, far too long ago regrettably in the circumstances of this case, which refused the appellant's appeal, she being a citizen of Jamaica, against the decision made on 22 May 2013 to remove her under Section 10 of the 1999 Act.
2. The history is significant so far as this is concerned. The appellant came to this country with her mother and sister and they were granted leave to enter originally on a visit visa in July 2002. There was then an application for leave as a child of a person present and settled together with her sister

but that was rejected and eventually there was an application in 2009 which again was rejected because of insufficient fee and finally an application for leave in December 2011 which was refused with no right of appeal. This was an application for leave by mother and the two sisters. At that stage the younger sister was I think still just under 18 but the appellant was an adult. However, following judicial review, there was a right of appeal granted although the decision to refuse was maintained.

3. The appeal came before District Judge Malone on 23 August 2011. Through what has been described as an administrative error although the circumstances and the details have not been disclosed, the appellant's appeal was not before Judge Malone and he dealt with the appeals of her sister and her mother. He decided that mother and sister should not have been the subject of removal, indeed their human rights claims succeeded but he made it clear beyond peradventure that he was dealing with the family together and he said and concluded that if the appellant's appeal had been before him he would, as he put it, obviously have allowed it. He said he could not allow the appellant's appeal as for some unexplained reason it was not on the Tribunal's system. Essentially for family reasons in his view there was compliance with the requirements of Article 8.
4. The appellant did not immediately apply for leave to remain but did so in December 2011. The Secretary of State was of course aware of the decision of Judge Malone and he had made it as we say entirely clear what the Secretary of State should do. The Secretary of State chose to ignore what Judge Malone had said, albeit there had been no appeal against his decision and rather than comply with it a decision was not reached until May 2013, inexcusably thus well over a year was taken, and then the application was refused. In the meantime the mother and sister had been given leave until some time in 2014.
5. It seems to us that there is an obligation upon the Secretary of State whatever technicalities may exist, to apply a fair system. Indeed she asserts that she does endeavour to act fairly in respect of all those who make applications. There can be no question but that she has not acted fairly in relation to the decision reached against this appellant and the way in which that decision was made. It should have been obvious that immediately she made the application in accordance with Judge Malone's decision she ought to have granted her leave which accorded with that granted to her sister and her mother. Not to have done so was in our view tantamount to maladministration and was so obviously unfair that it cannot properly be justified. She has been we are informed continuing to live with her sister and mother. The family situation is the same and indeed what prevailed largely with Judge Flynn in the decision that she reached in January of this year was that the situation with the stepfather, if we can call him that, Mr Burke, had changed but we gather that that as it were has gone back to what was originally considered to be the position and there is now a child who has been born to the mother. So there is effectively a stronger family situation that now exists and no doubt there is a Section 55 consideration which applies. However, it is apparent and

we have evidence to establish that not only mother but also the younger sister who is now an adult had been granted leave to remain until 2018. Again it is difficult to conceive how fair administration could not result in the same for her sister, the appellant. We are surprised that Mr Melvin as the Home Office Presenting Officer has not received sensible and suitable instructions from the Secretary of State recognising the unfairness of what has gone on, particularly in the light of the reasons for allowing this. Judicial review lies on the principles set out by Mr Justice Stewart-Smith as long ago as May 2014 in which he said there were important issues first there being no fact or point of law which could distinguish the claimant's case from that of her mother and sister in 2011, what is the effect of that decision and secondly whether the underlying decision of the Secretary of State in the 2013 proceedings could be lawful in the light of the evidence available, namely lawful continued residence by claimant's mother and sister until at least September 2014. He said there might be a complete answer to these arguments but they were not immediately apparent. Nothing said by Mr Melvin has indicated that there is any answer to those arguments. We are satisfied that the failure of the Secretary of State to have any regard in making the decision in 2013 to the decision of Judge Malone and the failure of Judge Flynn to recognise the importance of ensuring in a given case that unfairness did not prevail, that the decision of Judge Flynn was flawed.

6. Accordingly, what we propose to do is to allow this appeal and to direct that the Secretary of State give leave to this appellant in accordance with the leave that has been granted to her sister and her mother. We hope that the Secretary of State will take this decision to heart and to try to avoid such blatant unfairness in future decision-making. It is essential for the system to be respected that the Secretary of State properly has regard to decisions of the First-tier Tribunal and indeed the Upper Tier Tribunal. Simply to disregard is not proper administration by the Home Office and we hope that we will never have to see a case like this again.

### **Notice of Decision**

The appeal is allowed.

No anonymity direction is made.



Signed

Date: 2<sup>nd</sup> March 2016

The Hon. Mr Justice Collins sitting as a Judge of the Upper Tribunal

**TO THE RESPONDENT**  
**FEE AWARD**

No request made

A handwritten signature in black ink, appearing to be 'M. Collins', written in a cursive style.

Signed

Date: 2<sup>nd</sup> March 2016

The Hon. Mr Justice Collins sitting as a Judge of the Upper Tribunal