



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

Appeal Number: HU/04801/2015

THE IMMIGRATION ACTS

Heard at Newport (Columbus Decision & Reasons Promulgated House)

On 10 October 2017

On 27 October 2017

Before

**UPPER TRIBUNAL JUDGE A GRUBB
DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

Between

**DAPHNE ELAINE HOWELL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Grubb, Counsel instructed by Hoole and Co Solicitors

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a citizen of Jamaica. She was born on in 1958 and so is 59 years old. Having entered the UK on a visit visa in August 2002, she overstayed. She first applied for leave to remain on the basis of family and private life in March 2010. The application was refused, since which time she has periodically made further applications without success. On 10th of January 2014 she was served with form IS.151A confirming to her that she

was an over-stayer, and I S.151A part 2, notice of the respondent's intention to remove her to Jamaica. On 2 September 2014, she made a further application for leave to remain, on the basis of family and private life. This too was refused, initially without an in-country right of appeal. Judicial review proceedings prompted a reconsideration, with a fresh decision issued on 18 August 2015, again refusing the application, but notifying the appellant of an in-country right of appeal. The appellant exercised her right of appeal and it came before Judge Solly in the First-tier Tribunal, on 9 January 2017. The judge dismissed the appeal.

The Appeal to the Upper Tribunal

2. On 23rd of August 2017, the appellant was granted permission to appeal by the First-tier Tribunal, it being found that the judge had arguably failed to make adequate findings on material evidence integral to the family life claim.
3. On 05 September 2017, the respondent filed a rule 24 notice seeking to uphold the judge's decision.
4. Before us, Ms Grubb, who represented the appellant, relied and elaborated upon the Grounds of Appeal. Ms Grubb drew to our attention to paragraph 52 of the judge's decision, which is as follows:
 - (a) *"The Home Office accept that the appellant have a genuine and subsisting parental relationship with her son may be considered as involving extraordinary bonds which normally exist between adult children and their parents. However, the evidence before me was that the nature of the care provided by the appellant for her son and grandchild son was akin to that of a wife. The social worker confirms that the son has parental responsibility for the grandson Jahvanni and he receives carer's allowance for him. There is no evidence as to why Jahvanni's father is unable to fully parent his son Jahvanni. There is no evidence about what he cannot do due to his sight problems and accordingly I find that Carlton's sight problems do not prevent him parenting his son."*
5. Ms Grubb argued that there was a wealth of evidence before the judge going to the history of the appellant's son's failure to fully parent his son. The position was most strongly reflected in the social services evidence that, absent the presence of the appellant grandmother in the household, the child would have gone into local authority care. The closure of the case to children services in January 2016 indicated the continuing success of the caring arrangements which revolved upon the appellant's presence in the child's father's household, as confirmed from the medical evidence of Dr K Alexander referencing the stability that the appellant's presence brings to both her son and her grandson. The medical evidence stresses the vulnerability of the grandson Jahvanni. The judge was overly concerned with the "why" as opposed to the actual factual matrix. Whilst it may be that the judge concluded that the appellant's father would be able to step up to the plate, and fully parent his child in the event of the

appellant's removal, the decision does not say so, nor provide reasoning to justify that conclusion.

6. In short, the judge concludes that the appellant has a role akin to that of a wife in the household. Ms Grubb makes the point that that makes her role "as mother" to the child. In that context, the conclusion that the appellant has no parental role in relation to the child because he has a natural parent whom the judge finds has not established why he cannot (or will not) fully parent the child, results in too narrow a consideration of the family life between the appellant and the child.
7. Mr Richards relied on the rule 24 response to the point that the judge had taken account of the relevant evidence and she was entitled to conclude that the appellant did not enjoy a parental relationship with her grandson. On the findings, the best interest consideration was sufficient.

Discussion

8. The judge rejected the submission that the father's failure stemmed from alcohol and drug dependence because of the lack of medical evidence to confirm such a diagnosis. The judge recognises the importance of the appellant's role in the household referring at [47] to the evidence of the school that the appellant is a key figure in the child's life, supporting him by attending events such as parent evenings and medical appointments with the school paediatrician, being the point of contact the school use most often because of problems in consistently being able to make contact with Jahvanni's father, and that the appellant "is the most constant adult in Jahvanni's life and a vital asset in facilitating Jahvanni's development in ensuring his well-being. The judge also gives prominence at [49] to a letter from Dr K Alexander indicating that the appellant has been providing a degree of stability to both her son and grandson, and that the grandson is very vulnerable, and would be particularly at risk if he had no stable home life.
9. We find that the appellant's grounds are sustained. The judge has failed adequately to assess the evidence in the context of the relationship between the appellant and the grandchild. Although concluding that the appellant's son has a relationship of dependency upon her, such as to engage family life rights, the judge failed to give adequate separate consideration to the position of the relationship between the appellant and her grandchild. The judge appears distracted by her finding that the son retained his parental relationship and responsibilities towards the grandson. Parental relationships are not necessarily exclusive. It follows the judge's reasoning provides insufficient findings of fact as to the character and quality of the family life enjoyed with her grandson. Without a proper assessment of that relationship, appropriately set out in the reasoning, the finding as to parental responsibility is and the impact of interference upon family life insufficiently reasoned. Detailed fact-finding and assessment of the relationship remains outstanding.

10. In light of our conclusions we are in agreement with the representatives jointly expressed view that the matter should be dealt with *de novo*, and in those circumstances, we find the appropriate course is to remit the matter to the First-tier Tribunal.

Decision

11. The decision of the First-tier Tribunal reveals an error of law for the reasons set out above.
12. The appeal is remitted to the First-tier Tribunal for a *de novo* hearing before a Judge other than Judge Solly

Signed

E. Davidge

Date 24 October 2017

Deputy Upper Tribunal Judge Davidge