Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/22645/2016

THE IMMIGRATION ACTS

Heard at Columbus House, Newport	**Decision & Reasons Promulgated**
On 25 September 2017	**On 27 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JAMIE-RAE NATHANIEL
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr. K. Hibbs, Home Office Presenting Officer
For the Respondent: Not represented

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge O'Hanlon, promulgated on 11 January 2017, in which he allowed Mr. Nathaniel's appeal against the Secretary of State's decision to refuse to grant further leave to remain in the United Kingdom on the basis of his private life.

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2. For the purposes of this decision I refer to the Secretary of State as the Respondent, and to Mr. Nathaniel as the Appellant, reflecting their positions as they were before the First-tier Tribunal.

3. The grounds of appeal state as follows:

> "The Judge allows the appeal under the immigration rules and declines to consider the Human Rights appeal. The right of appeal was limited to Human Rights grounds. The determination is wrong in law in terms of jurisdiction.
>
> In the alternative, the Judge gives inadequate reasons for finding that the appellant had spent over half his life in the UK on the basis of evidence that could not be tested in cross examination."

4. Permission to appeal was granted as follows:

> "It is arguable that in accepting a statement which was unsworn from a person (paragraph 17) claiming to have known the appellant for 20 years and failing to give adequate reasons for finding that the appellant had spent at least 20 years in the UK, the judge has made an arguable error of law."

The hearing

5. The Appellant attended the hearing but was not represented. He stated that he understood the purpose of the hearing. There was a discussion relating to the grounds of appeal, and the grant of permission, as set out below.

6. At the hearing I dismissed the appeal. I found that the decision did not involve the making of a material error of law. My full reasons follow.

Error of law decision

7. At the outset of the hearing it was agreed by Mr. Hibbs that the ground set out in paragraph 1 of the grounds of appeal did not identify a material error of law. The appeal had been allowed on the basis that the Appellant met the requirements of paragraph 276ADE(1)(v). This rule sets out the Respondent's policy in relation to private life claims. Therefore, given that the judge considered paragraph 276ADE(1)(v), he did not fail to "consider the human rights appeal". The judge did not proceed to consider the appeal "outside the rules", and there is no reference to section 117B of the 2002 Act, but any error in so doing cannot be material in the circumstances, as was accepted by Mr. Hibbs.

8. If the Appellant meets the Respondent's requirements for leave to remain on private life grounds, the public interest in maintaining effective immigration control will not be compromised by a grant of leave to

remain. Mr. Hibbs accepted that a simple line to the effect that the appeal was allowed on human rights grounds as the Appellant met the requirements of the immigration rules would have sufficed. There is no material error of law identified in ground 1.

9. In relation to the second ground, as acknowledged by Mr. Hibbs, this is not particularly clear. Clarity is not provided by the grant of appeal which states that the judge found that the Appellant had been here for 20 years. This was not the judge's finding, nor was it the Appellant's claim. Mr. Hibbs submitted, with reference to the reasons for refusal letter, that ground 2 was essentially a challenge to the judge's finding that the Appellant and Jamie-Rae Morgan were one and the same person, and his reliance on the letter from Novlette Reece when making this finding. He accepted that the Respondent would not seek to challenge the kind of evidence as had been provided by the Charlotte Keel Medical Practice (A13) which confirmed that Jamie-Rae Morgan, date of birth 1 March 1996, had been registered since 26 March 2001, and it was this letter on which the judge placed particular reliance as set out in [20].

10. The grounds are not well drafted, and there is no specific challenge to this finding. Given Mr. Hibbs' acceptance that the Respondent would not challenge the letter from the medical practice confirming length of residency, on which the judge placed particular reliance, I accept that ground 2 must be read as an assertion that the judge erred in his finding that the Appellant is Jamie-Rae Morgan.

11. I take into account Mr. Hibbs' submission that the letter from Novlette Reece was not accompanied by any evidence of ID. He also submitted that a simpler way of providing confirmation of the Appellant's name would have been for him to contact the Jamaican High Commission to obtain evidence from them, and for them to confirm the genuineness of the Birth Registration Form. However, having carefully considered the evidence which was before the judge, and bearing in mind that the standard of proof is the balance of probabilities, which the judge correctly states at [17], I find that the judge was entitled to make the finding that the Appellant and Jamie-Rae Nathaniel Morgan were one and the same person.

12. The judge states at the outset of [17] that he is aware of the Respondent's issues with regards to the Appellant's name. He refers to the Birth Registration Form which names the Appellant's father as Desmond Lloyd Morgan. He refers to the letter from Novlette Reece. He is mindful of the fact that it is not a sworn statement and that she has not given evidence. He states "having considered the document and the photographs in the light of all of the other information available to me, I do find that the explanation given by Novlette Paris Reece as to the Appellant's name is credible". He has taken the correct approach and considered the evidence in the round. While he has not set out the contents of all of this evidence, he has listed the evidence, both that contained in the

Respondent's bundle at [4], and the further evidence provided by the Appellant for the appeal at [5]. It is clear he was aware of the evidence which was before him. He has made specific reference at [5] to the evidence from Novlette Reece.

13. He finds the explanation given in the letter, when considered "in the light of all of the other information", to be credible. There was no challenge in the reasons for refusal letter to Shelda Grocia being the Appellant's mother. On the contrary, this was accepted (page 4). An application had been made in January 2014 with the Appellant as a dependent child on his mother's application. Shelda Grocia is the name given on the Birth Registration Form as the Appellant's mother. The information before the judge included letters which refer to Shelda Grocia and Jamie-Rae Morgan having lived at the same address (E1 and F1). Therefore the evidence before the judge showed Jamie-Rae Morgan to be living with Shelda Grocia, acknowledged by the Respondent to be the mother of Jamie-Rae Nathaniel. The evidence before him showed that the dates of birth for Jamie-Rae Morgan and Jamie-Rae Nathaniel to be the same. I find that the judge was considering the letter from Novlette Reece against the backdrop of this evidence. The evidence showed the Appellant to be related as claimed to his mother, who was named in the birth certificate, and with whom Jamie-Rae Morgan, with the same date of birth as the Appellant, had resided since 2001.

14. In [18], when considering length of residency, and with reference to the letter from the Charlotte Keel Medical Practice, he again refers to the fact that he has credible evidence that the Appellant and Jamie-Rae Morgan are one and the same person. As above, I find that this finding was open to him.

15. I find there is no error of law in the judge's finding that the Appellant and Jamie-Rae Morgan are one and the same person. While he has relied on the letter from Novlette Reece, he has considered her evidence in round with all the other evidence which was before him. While arguably he could have set out this evidence in more detail, there is no material error of law in his failure to do so.

16. Having found that there was no error of law in the judge's finding that the Appellant and Jamie-Rae Morgan are one and the same person, and given that there was an acceptance that the letter from the medical practice confirmed that Jamie-Rae Morgan had been registered since 26 March 2001, there is no error in the judge's finding that the Appellant met the requirements of paragraph 276ADE(1)(v), as he had lived in the United Kingdom for over half of his life, and he is aged between 18 and 25. The fact that the judge did not state that the appeal was being allowed on human rights grounds, as I have set out above, and as accepted by Mr. Hibbs, is not a material error of law.

Notice of Decision

17. The appeal is dismissed. The decision does not involves the making of a material error of law and I do not set the decision aside.

18. The decision of the First-tier Tribunal stands.

19. No anonymity direction is made.

Signed Date 25 September 2017

Deputy Upper Tribunal Judge Chamberlain