Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/21456/2015
IA/21469/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 31 March 2017	**On 1 June 2017**
Prepared 4 April 2017	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MS ARLENE SIMONE WILLIAMSON
[A M]
(ANONYMITY ORDER NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Appearances:

For the Appellants: Miss A Nizami, Counsel instructed by Perera & Co Solicitors
For the Respondent: Mr T Wilding

DECISION AND REASONS

1. The Appellants are nationals of Jamaica, dates of birth 14 September 1972 and [ ] 2012 respectively. The first Appellant is the mother of the second Appellant.

2. The Appellants appealed the Respondent's decision, dated 26 May 2015, to refuse their applications for leave to remain in the United Kingdom

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under Appendix FM and paragraph 276ADE of HC 395 and under Article 8 ECHR. Their appeals were dismissed by First-tier Tribunal Judge NMK Lawrence (the judge) on 6 October 2016. Permission to appeal was given on 8 February 2017 by First-tier Tribunal Judge Parkes on all grounds.

3. The grounds of appeal raise a number of points but now only grounds 3 and 4 are pursued. Those relate to issues of the existence of family life between the second Appellant and his father, [DM] and the impact of the second Appellant's removal. The other issue pursued is that the judge failed to properly analyse whether there were compelling circumstances to consider the case in relation to Article 8 ECHR outside of the Rules.

4. The issue was also raised that the judge had made an error of law in failing to properly consider the factual situation relating to correspondence, dated 2 September 2013. For reasons given the judge explained how a letter requesting information on the progress of the case had in fact led to that letter being treated as if it were an application, giving rise to the decision dated 26 May 2015. In view of what was said by the judge in the decision (D11, 13), I conclude there is absolutely nothing in that point come what may

5. Judge Parkes, in granting permission to appeal, raised the issue of the absence of a decision on an application dated 25 October 2011 which he refers to as "the date of the application under consideration" and that the old Immigration Rules applied. The fact was that it was a decision referred to by the judge but it is clear that the application of October 2011, seeking FLR(O), was refused on 2 November 2011 with no right of appeal. Therefore that reference, in the grant of permission, I take to be immaterial. It is unclear what First-tier Tribunal Judge Parkes' decision of 8 February 2017 is addressing.

6. The fact of the matter was that before me the two remaining issues were as set out above. So far as the first Appellant was concerned, there were no very significant obstacles to reintegration into Jamaica within the terms

of paragraph 276ADE(1)(vi) of the Rules. The judge gave cogent reasons why that was so (D12-15, 17 and 18).

7. So far as the second Appellant was concerned, he had no route to remain under Appendix FM because of the period of time he has been in the United Kingdom as a child. He was after all a Jamaican national who had not been in the United Kingdom seven years.

8. The judge considered the second Appellant's best interests and extensively reasoned those matters (D19, 27-29). The judge plainly considered the relationship claimed between [DM] and the second Appellant and concluded that as a matter of course the first Appellant, if there is a genuine and subsisting relationship between them, could approach this matter through the entry clearance provisions and there is nothing to stop [DM], if he chooses, maintaining a relationship with the Appellants.

9. The judge considered the evidence relating to the second Appellant and contact between the child and [DM] (D25 and D26). For the reasons given the judge was particularly sceptical about the relationship claimed between the first Appellant with [DM] and the extent to which there was a relationship between [DM] and the second Appellant (D28). It is clear that the judge was not satisfied that the first Appellant could not earn a living in Jamaica and it was evident that the judge did not regard the first Appellant as likely to be dependent upon [DM] (D14-16).The judge was unimpressed with the First Appellants claimed loss of connections with Jamaica (D29-31)

10. In the circumstances, it does not seem to me the judge made any material error of law in considering the evidence and the conclusions that he reached are perfectly sustainable. No other Tribunal with the same material before it is in my view likely to come to a different decision.

11. So far as the Article 8 issues are concerned, the position was that the judge concluded there was at least a route through entry clearance for the

first Appellant and second Appellant to return to the UK and be with [DM], if that is what they chose to do. The judge looked at the matter and plainly considered whether there were compelling circumstances and the grounds of appeal are no more than a repetition of the belief that there were compelling circumstances. The conclusion that there were not, reading the decision as a whole, cannot be categorised as perverse or irrational or unsustainable.

12. The relationship between [DM] and his son [KM] (15 years of age), a British national, is of course a matter for him as to the part he plays in his life of which the evidence was thin indeed. In considering this matter I also read the statement of [KM], dated 1 September 2016 and understanding his wishes nevertheless it does not seem to me that what is said therein amounts to compelling circumstances.

13. However it does not seem to me that such rights or relationship as there may be between the two of them demonstrates compelling circumstances why the Appellants should remain or that his choice should be taken to be determinative of the compelling circumstances. The skeleton argument of Miss Nizami simply highlights that relationship and the fact is it does not seem to me that that demonstrates that the judge's decision was perverse or irrational or indeed the circumstance amount to compelling ones. Accordingly the Original Tribunal decisions stand.

DECISION

The appeals are dismissed.

ANONYMITY ORDER

None made.

FEE AWARD

The appeal has been lost and therefore no fee award is appropriate.

Signed Date 10 May 2017

Deputy Upper Tribunal Judge Davey