Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/27946/2015**

THE IMMIGRATION ACTS

Heard at Field House
On 20 March 2018

Decision & Reasons Promulgated
On 22 March 2018

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mrs TRACY [G]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K McCarthy, Counsel (instructed by D J Webb & Co, Solicitors)
For the Respondent: Miss J Isherwood, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Kelly on 30 January 2018 against the determination of First-tier Tribunal Judge Moore who had dismissed the appeal of the Appellant seeking settlement outside the Immigration Rules on Article 8 ECHR

family life grounds. She is married to a British Citizen. The decision and reasons was promulgated on 14 August 2017.

2. The Appellant is a national of Jamaica. The Appellant had entered the United Kingdom lawfully as a visitor on 6 July 2002, with nominal leave to enter for 6 months. She failed to leave the United Kingdom either then or after her various applications for further leave to remain were refused. Her previous appeal was dismissed by the First-tier Tribunal in 2014. On 25 February 2013 she had been cautioned for attempting to obtain a forged British passport. On 23 May 2015 she married her British Citizen husband with whom she had lived since 2006. The Appellant's latest application under appeal was against the Respondent's decision dated 27 April 2015. That appeal had been allowed by the First-tier Tribunal on 11 July 2016 but the Respondent appealed and the First-tier Tribunal's decision was set aside the Upper Tribunal and sent back to the First-tier Tribunal to be reheard.

3. The gravamen of the present appeal was the Appellant's claimed parental relationship with her (step) grandchildren, in particular her 12 year old grandson who had been diagnosed as autistic with learning difficulties. The judge found that there were no insurmountable obstacles to the continuation of family life with the Appellant's husband outside the United Kingdom, which was a matter of choice as the husband had always been aware that the Appellant's status was precarious. The Appellant did not meet the Suitability requirements of Appendix FM, nor were there very significant obstacles to her reintegration in Jamaica where she had lived to the age of 24. The judge was satisfied that the welfare and needs of all of the (step) children and (step) grandchildren (including the autistic step grandson) were best met by remaining in the United Kingdom where they had always lived with their respective parents. There were no exceptional circumstances and the Respondent's decision in pursuit of a legitimate objective and was proportionate.

4. Permission to appeal was granted on a limited basis. It was considered arguable that the judge had erred in reaching the conclusion that the Appellant did not have a parental relationship with her step grandson. The judge had not given sufficient attention to the expert's report (Dr Halari) which showed that her assessment had been based on observation as well as on the information given by the Appellant and the child's mother. That was arguably a material error of law which could have affected the outcome of the appeal.

5. Standard directions were made by the tribunal. A rule 24 notice opposing the appeal was filed by the Respondent.

Submissions

6. Ms McCarthy for the Appellant relied on the grounds of onwards appeal and grant. Agyarko [2017] UKSC applied to reasonableness. The judge had misunderstood and had not dealt properly with the expert evidence concerning the 12 year old autistic step grandson. This was not a case where the expert had relied solely on the information given by the Appellant and the child's mother, as the judge had suggested. The expert had identified her duty to the tribunal. The expert's report described her own observations of the relationship, which plainly were part of the evidence on which her opinion had been based. This bore directly on the best interests assessment, which was flawed. Weight was due to the expert's opinion which was not given. The needs of the autistic child and the effect of the step grandmother's absence from him had not been adequately considered. The determination should be set aside and remade.

7. Ms Isherwood for the Respondent relied on the rule 24 notice and submitted that there was plainly no material error of law. ***Devaseelan*** (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka * [2002] UKIAT 00702 applied to the earlier First-tier Tribunal determination, the one which had not been set aside and the judge had been right to refer to it. The expert's report expressly stated that the sources of information had been the Appellant and her step daughter in law. The judge had interpreted the expert's report correctly and the judge's Article 8 ECHR findings were open to him. The substance of Agyarko in the Supreme Court had been applied. The onwards appeal should be dismissed.

No material error of law finding

8. In the tribunal's view the grant of permission to appeal was generous, and failed to reflect the fact that the appeal was in reality a misconceived one, with weak evidence. Unfortunately it is typical of many appeals seen in the First-tier Tribunal and again in the Upper Tribunal involving couples seeking to rely on Article 8 ECHR grounds. Had the Appellant returned to Jamaica in 2006 as she should have done, or indeed at various points subsequently as each succession application was refused, she would have been able to enter the United Kingdom to join her husband under the far less stringent provisions of the now repealed paragraph 281 of the Immigration Rules. Those Immigration Rules were replaced by from 9 July 2012 by the much more demanding provisions of Appendix FM. There was no evidence that those provisions could not with appropriate efforts be complied with, subject of course to the Suitability issue arising from the Appellant's caution. The current unhappy situation was created by the parties. Compliance with the law is not a matter of individual

choice. Time and money have been wasted seeking the impossible, when other solutions were available.

9. Rightly there was no further attempt to challenge the judge's other findings of fact concerning the Appellant's family life with her husband, and the ability for their family life to be continued in Jamaica. Rather the focus of the onwards appeal was on the Appellant's allegedly parental relationship with her step grandson. This claim in itself was misconceived and was not supported by cogent evidence. The grandson lives with his competent and loving mother, as the judge found. The mother is the effective sole parent, where the child's emotional dependency lies. The judge found, for secure reasons, that the Appellant's rôle in her step grandson's life was in effect as a babysitter, and that the extent of her involvement was exaggerated: see [24] of the decision and reasons. That rôle is, of course, typical in many families where grandparents provide free child care enabling the parent(s) to work or have respite from constant responsibility. This is of particular value in this family as the care of an autistic child is demanding.

10. The submissions that the judge had misunderstood the Appellant's rôle, failing to see that it had a therapeutic or parental dimension which the child's mother alone was unable to supply, and had given no or insufficient weight to the expert's report, had no substance. As Ms Isherwood pointed out at, the sources of information referred to by the expert were the Appellant and her step daughter: see, e.g., [3], [11], [23] and [28] of the report. That had to be so because the report was prepared following a single interview. The observations recorded by the expert were partly qualified, e.g., at [53] of the report the term chosen is "seemed" when discussing the child's emotional dependency. The judge was entitled to give limited weight to the report for all of the reasons he gave, in particular his finding that the Appellant and her step daughter had embellished their evidence and that the allegedly quasi parental relationship had not been advanced in 2014 despite the opportunity to do so. The child concerned was 12 years old at the date of the appeal hearing and had received specialist infant educational provision: see the school report in the Appellant's bundle of evidence. His school provision is plainly of great importance, coupled with his mother's understanding of his condition.

11. The tribunal finds that the onwards appeal has no substance and that there was no material error of law in the decision challenged. The judge's best interests assessment as required under section 55 of the Borders, Citizenship and Immigration Act 2009 was carried out thoroughly and ample reasons were given for the conclusions reached. None of the minor

children included in the evidence for the appeal would be leaving their homes or educational environments, where they received full support. All would have to come to terms with change in any event. There were as the judge properly found no exceptional circumstances.

12. The Appellant and her husband (whose children are all adults) have several reasonable options open to them for the continuation of their family life, i.e., to live together in Jamaica or to travel there together on a visit while entry clearance is sought or to separate on a temporary basis while the Appellant obtains entry clearance on the terms prescribed by the Immigration Rules.

DECISION

The appeal is dismissed

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed **Dated** 20 March 2018

Deputy Upper Tribunal Judge Manuell