Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/00823/2016**

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On January 8, 2019	**On February 1, 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MRS GILDA MAY MORGAN-COKE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jalal, Counsel instructed by 1st Call Immigration Services
For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a Jamaican national and she entered the United Kingdom on June 22, 2002 with entry clearance as a visitor until December 22, 2002. She did not leave the United Kingdom at that stage but on March 31, 2007 she submitted an application for naturalisation, but this was refused. On November 8, 2008 she submitted an application outside of the Immigration Rules for leave to remain, but this was refused on May 24, 2009.

2. She was served with papers for administrative removal on June 10, 2015 and in response she lodged an application for leave to remain on human rights grounds on June 15, 2015. This application was refused and certified on June 29, 2015. Further submissions were lodged in July of 2015 and ultimately, by consent, the respondent agreed to reconsider this matter when an application for judicial review was withdrawn on November 27, 2015.

3. The application was refused by the respondent on December 16, 2015 and the appellant lodged her grounds of appeal on December 29, 2015 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. It should be noted that additional grounds of appeal were lodged with the Tribunal on May 16, 2017. Her appeal came before Judge of the First-tier Tribunal Pacey on May 2017 and then in a decision promulgated on May 25, 2017 the Judge dismissed the appeal.

4. Permission to appeal was lodged on June 9, 2017 and Judge of the First-tier Tribunal Scott-Baker granted permission to appeal on January 5, 2018 finding it arguable the Judge had failed to deal with the additional grounds of appeal (Articles 9 and 12 ECHR) or made adequate findings as to the effect the removal of the appellant would have on the grandchildren.

5. No anonymity direction is made.

SUBMISSIONS

6. Mr Jalal adopted his colleague's grounds of appeal and submitted that the Judge had not dealt with Article 9 ECHR. He acknowledged that at paragraph 32 the Judge touched on issues of religion but submitted the consideration did not go far enough. He conceded there was no basis for an Article 12 ground and he withdrew that ground of appeal.

7. Turning to the other issues Mr Jalal submitted the Judge had erred in the way he dealt with Section 55 of the Borders, Citizenship and Immigration Act 2009 and with the way she dealt with the two minor grandchildren. The finding that the elder child (age 25) could look after his mother and take over the appellant's role was misconceived.

8. Mr Mills opposed the application and submitted that the grounds were a disagreement and that even if the Judge had dealt with those points in more detail there would have been no material difference to the outcome.

9. The appellant had claimed that she followed the Pentecostal faith and was part of a religious community and her husband stated that he wished to visit the graves of his parents. Mr Mills submitted that the Judge had dealt with the graves issue in detail at paragraphs 27 and 34 of her decision. The appellant's husband was not being prevented from visiting his parents' graves, if he chose to live in Jamaica, because he was a British citizen and entitled to travel to and from the United Kingdom whenever he wanted. The Judge had noted that the parents had not recently died and that visits were limited to four times a year.

10. He submitted that the Judge had dealt with Article 9 and that the grounds were a disagreement. Turning to the appellant's activities within the religious community he accepted that both the appellant and her husband carried out significant work with food banks but referred to paragraphs 77, 93 and 94 of Thakrar (Cart JR; Art 8; value to community) [2018] UKUT 336 (IAC). Whilst such activities can be taken into account the courts had made it clear that it would only be in exceptional circumstances that such behaviour would outweigh public interest. He submitted this was not one of those cases.

11. Turning to article 8, Mr Mills accepted the appellant did have strong connections to her grandchildren especially because what had happened to their father. However, the grounds of appeal overlooked two important factors namely:

    (a) the grandchildren's mother was now in a new relationship and living with her partner; and

    (b) the grandmother had moved out of the grandchildren's home at least five years ago at the date of hearing.

12. The appellant's role therefore within the grandchildren's home was much more reduced than what it had been in the past and to suggest that she was a primary carer overstated the role of the appellant. Mr Mills again referred to paragraphs 52 and 59 of Thakrar and submitted that the Tribunal had concluded that relationships between grandchildren and their grandparents were unlikely to carry material weight unless the grandparent had stepped into the shoes of the parent and this clearly was not the case. He submitted that the Judge had given full consideration to the grandchildren's position and even if more could have been stated in the decision he submitted that it was likely the appellant's case would have been weaker rather than stronger.

13. The final issue related to the appellant's daughter's health and he submitted the Judge was entitled to find there was scant evidence about her health. The only medical evidence was from June 2015 or before and at the date of hearing there was no updated evidence. Whilst her daughter did have some problems it was incumbent upon the appellant to present up-to-date evidence if she was seeking to advance health as an issue. The Judge had noted that the son lived in the property and was 25 and the daughter now lived with a new partner. He invited the Tribunal to dismiss the appeal.

FINDINGS

14. This is an appeal against the decision to refuse the appellant leave to remain. The immigration history is set out above. The appellant met and eventually married her husband in August 2012 at a time when they both were aware she had no leave to remain.

15. Grounds of appeal were lodged in which it was argued the Judge had failed to consider Articles 9 and 12 and Section 55 of the 2009 Act.

16. Dealing with Article 9, I am satisfied the Judge addressed all religious issues. Article 9 is concerned with the right to practice your religion. The Article states:

> "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."

17. The appellant and her husband were members of a Pentecostal church and at paragraph 32 the Judge acknowledged this membership but made the clear finding that the appellant could continue that faith in Jamaica.

18. Mr Jalal does not argue she would be unable to do this but simply says the Judge failed to attach sufficient weight to this.

19. I find that the issue of Article 9 was properly dealt with by the Judge. I do not find Article 9 extends to contributions within the community as such a contribution is more properly dealt with by way of private life (article 8). On the specific point as to whether Article 9 was addressed I accept the Judge did not mention the Article but I am satisfied the issues were dealt with. I take on board the case submitted to me by Mr Mills and agree with him that there is nothing in the appellant's case which would lead to the engagement of Article 9 and I do not accept that work within a community, the visiting of a grave or attendance at church would be sufficient to outweigh the public interest in removal for the purposes of article 8 ECHR.

20. The appellant's husband is entitled to visit the graves as and when he wishes as he is a British citizen. Their work within the community on food banks is admirable but ultimately if they were not there to do it no doubt somebody else would carry out that role within their community. Their work is significant but I do not find it falls within the class of rare cases identified by the court in Thakrar.

21. The second issue that had to be dealt with related to the grandchildren. The Judge considered the grandchildren at paragraph 47 and whilst I accept Mr Jalal's submission that it could have been in more detail nevertheless it is important to distinguish between children and grandchildren.

22. The Judge acknowledged that all but one of the grandchildren were minors (although of course it transpires that two of the grandchildren were no longer minors). That error is not material as ironically the Judge has written the decision more in the appellant's favour and against the appellant.

23. The Judge acknowledged that the appellant had been involved in their lives since 2002 but importantly the appellant had moved out of the family home five years prior to the date of hearing. Whilst her involvement with the grandchildren may well have been more significant while she was living there the reality is that the grandchildren would still see the appellant, but she was no longer their primary carer.

24. I take on board the submissions made by both representatives but also have regard to the findings in Thakrar when the Tribunal found that relationships between grandparents and grandchildren are unlikely to carry material weight unless they have stepped into the shoes of the parent. At the date of hearing this clearly was not the case and whilst the Judge has not specified this the reality is that if that observation had been included in paragraph 47 it would simply have weakened the appellant's chances rather than improved them.

25. Issues were raised in submissions regarding the appellant's daughter's health but there was, as identified in paragraph 26 of the decision, scant evidence of this. It is simply not enough to rely on medical evidence dated approximately two years prior to the date of hearing. Up-to-date medical evidence should have been produced if reliance was to be placed on it but in any event the appellant's daughter, who gave evidence, told the Tribunal in her witness statement that she now lived with her partner. The fact the Judge found the son could aid his mother should be read alongside the fact her daughter also has a partner who can provide further assistance. The findings were open to the Judge.

26. Having made those findings, the Judge then went on to consider the issue of proportionality. The Judge set out in some detail the pros and cons of the appellant's case and referred to case law. The Judge's approach cannot be faulted, and I am satisfied that none of the issues outlined either in the grounds of appeal or by Mr Jalal lead me to conclude there is an error in law.

Notice of Decision

There is no error of law and I uphold the decision.

Signed Date 17/01/2019

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I do not make a fee award as I have dismissed the appeal.

Signed Date 17/01/2019

Deputy Upper Tribunal Judge Alis