Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08097/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18th December 2018	**On 21st March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

MISS TYRA TAISHA JAMES
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms. [PL], Sponsor assisted by Ms. [R], McKenzie Friend
For the Respondent: Mr. E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal ("F*t*T") Judge Keith promulgated on 30th July 2018 dismissing the appellant's appeal against the respondent's decision to refuse the appellant's application for entry clearance as a child.

2. At the hearing before me, the appellant had no legal representation but the appellant's mother and sponsor, Ms [L] attended. She was assisted by Ms [R] who acted as a McKenzie friend. The Tribunal was told that the appellant's mother cannot read or write English, and would be assisted by Ms [R]. Ms [R] confirmed that she has no legal qualifications and is a teacher and trainer in health and social care. She is a friend of the appellant's mother, and she confirmed that she is not been paid to assist the appellant with the appeal.

3. The appellant is a national of Jamaica. She was born on 20th September 1999 and has remained in Jamaica living with her maternal grandparents for the significant majority of her life. On 6th March 2017, aged 17½, she made an application for leave to enter the UK as a child to join her mother. The application was refused for the reasons set out in a decision dated 28th June 2017. The Entry Clearance Officer ("the ECO") was not satisfied that the requirements for indefinite leave to enter the UK as the child of a parent present and settled in the UK under paragraph 297 of the Immigration Rules, are met by the appellant. Furthermore, the ECO was not satisfied that there are any exceptional circumstances which, consistent with the right to respect for private and family life contained in Article 8, might warrant the grant of entry clearance outside of the requirements of the rules. The appellant's appeal against that decision was dismissed by F*t*T Judge Keith and it is that decision, that is the subject of the appeal before me.

The decision of the F*t*T Judge

4. A summary of the background to the appeal and the reasons for refusal relied upon by the ECO are set out at paragraphs [2] to [5] of the decision of the F*t*T Judge. The appellant's case on appeal is summarised at paragraphs [6] to [7] of the decision, and the Judge identified the issues at paragraph [10] to [25] of the decision. The fact that the appellant is the daughter of Ms [L], her sponsor, was not in issue. At paragraphs [17] to [27] of the decision, the Judge refers to the evidence set out in the appellant's bundle and the oral evidence of the sponsor at the hearing of the appeal.

5. Having heard evidence from the appellant's mother, the F*t*T Judge had regard to the requirements set out in paragraph 297 of the Immigration Rules, and the decision of the Upper Tribunal in TD ("Sole Responsibility") Yemen [2006] UKAIT 00049. The F*t*T Judge sets out his findings of fact at paragraphs [41] to [52] of his decision.

6. For the reasons set out at paragraph [41] of the decision, the Judge found that the appellant was unable to satisfy the requirement that she can and will be accommodated adequately by her mother without recourse to public funds. For the reasons set out at paragraph [42] of the decision, the Judge found that the appellant could not satisfy the requirement that she will be maintained adequately without recourse to public funds. The Judge then turned to consider, at paragraphs [43] to [47] of the decision, whether the requirements set out at paragraph 297(i)(e) or 297(i)(f) of the rules could be met by the appellant. That is, one parent is present and settled in the United Kingdom and has had sole responsibility for the appellant's upbringing, or, one parent is present and settled in the UK and there are serious and compelling family or other considerations which make exclusion of the appellant undesirable. The Judge concluded, at paragraphs [44] and [47] as follows:

> "44. *Based on the above findings, I concluded that it had not been shown that there were serious and compelling family or other circumstances making the appellants exclusion undesirable. Whilst reference has been made to the particular vulnerability of the appellant in the absence of supervision, living in Jamaica, there is no suggestion that the situation had resulted in such risks and I was not satisfied that those risks would increase in the event of refusal of entry clearance.*
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> …
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> 47. *In summary, I find that at best, the sponsor has joint (sic) parental responsibility for the appellant with her own parents, i.e. The appellant's grandparents, who are engaged in matters of parental responsibility such as in the appellant's educational progress"*

7. Having found that the appellant cannot satisfy the requirements of the immigration rules, the F*t*T Judge addressed the Article 8 claim. At paragraph [48] of his decision, the F*t*T Judge states:

> *".. The appellant was on the cusp of adulthood at the time of her application and is now over 18 years old. I accepted the appellants and the sponsor are in regular*

> *contact and the sponsor has made some financial contributions to the appellant's upbringing. I am not however satisfied that their relationship goes beyond normal emotional ties. In reaching this conclusion, I find that the appellant's focus will continue to be with her grandparents, with whom she has lived the entirety of her life and who have had engagement in important aspect of her life. The regularity of contact between the appellant and sponsor as well as financial remittances did not, I concluded, constitute relations beyond that of an adult daughter/ mother relationship and in particular I do not find that there were greater ties by virtue of any kind vulnerability."*

8. The Judge's conclusions are to be found at paragraphs [49] to 52] of the decision. Insofar as the requirements of the Immigration Rules are concerned, the Judge states at paragraph [49] as follows:

> *"Based on the findings that I made, I concluded that the sponsor did not have sole parental responsibility for the appellant and I concluded that there was not serious and compelling family (sic) circumstances that would make the appellant's exclusion from United Kingdom undesirable. I also concluded, based on the above findings that the appellant would need recourse to public funds both in respect of accommodation and income were she permitted to enter United Kingdom. I concluded therefore that the appellant did not meet the requirements of paragraph 297 of the Immigration Rules."*

9. As to the Article 8 claim overall, the F*t*T Judge states at paragraphs [50] to [52] of the decision as follows:

> *"50. However, I also considered the appellant's claim by reference to Article 8. Based on my findings, I concluded that the appellant has not established a family life at the date of this hearing with the sponsor (sic), noting that she is no longer a minor, beyond the normal emotional ties. However, I accept that there is a genuine relationship between the two, and I therefore consider the question proportionality, using the balance sheet approach recommended by Hersham Ali. On the one hand, the appellant did not meet the Immigration Rules and I considered the need to avoid recourse to public funds where a person seeking entry clearance to settle should not be a burden on the public taxpayer. This was a weighty consideration. On the other hand, I also considered the fact that the appellant and sponsor evidently wish to develop a relationship and that the refusal of entry clearance would impact on that. However, I was also conscious that the sponsor's physical presence with the appellant has been intermittent, noting that for the first 10 years of the appellant's life she was not present at all and thereafter, not even on an annual basis. The couple have been able to develop the relationship via social media, including regular contact and the sponsor has been able to visit the appellant in Jamaica.*
>
> *51. For the reasons already set out, I do not accept the appellant would be vulnerable in Jamaica and has a home to live in with her grandparents who while*

> *ageing would, I find, continue to provide her with a social network and accommodation. I considered that at the time of her application, the appellant was a minor for the purposes of section 55 of the 2009 Act. That being said, she was on the cusp of being 18 and continues to live in her home and with her grandparents with whom she has lived the entirety of her life. I find that the appellant's best interests have not been affected because of her remaining with those grandparents. Considering section 117B of the 2002 Act, I noted the appellant's lack of financial independence in the sense of needing to rely upon taxpayers money to support herself if she were permitted to enter the United Kingdom.*
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> *52. The refusal of entry clearance in the circumstances would be no more than to maintain the status quo and having weighed the impact of refusal on the development of the relationship, versus the evident financial burden that the appellant would place on the UK taxpayer, and having considered all of the factors already referred to I have concluded that it was proportionate for the appellant to be refused entry clearance.*

The appeal before me

10. In support of her appeal before me, the appellant claims that the Judge erred in his evaluation of the evidence, and that impacted upon the analysis of whether the appellant is able to meet the requirements of the Immigration Rules and the assessment of the Article 8 claim. The appellant makes a number of criticisms about the Judge's consideration of the evidence. The appellant claims that her mother had previously made applications, on two separate occasions, for the appellant to join her mother in the United Kingdom. The applications were refused. It is said that the Judge also erred in his consideration of the number of occasions upon which the appellant's mother had travelled to Jamaica to visit her. The appellant claims that the Judge erred in his assessment of whether the appellant's mother has had sole responsibility for her upbringing. She claims that the Judge could not rationally have concluded on the evidence, that parental responsibility for the appellant has been exercised jointly between the appellant's mother and the appellant's grandparents. It is said that parental responsibility could not lawfully be vested in such a way, and it would be considered unlawful if applied to anyone living in United Kingdom.

11. Permission to appeal to the Upper Tribunal was granted by F*t*T Judge Hollingworth on 1st November 2018. The matter comes before me to determine whether the decision of the F*t*T contains a material error of law, and if so, to remake the decision.

12. Before me, it was submitted on behalf of the appellant that the decision of the F*t*T Judge contains a number of factual errors. For example, at paragraph [3] of his decision, the F*t*T Judge states "..*The appellant had last seen the sponsor in 2014 and the sponsor has been resident in the UK since 2011..*". In fact, the F*t*T Judge had before him in the appellant's bundle, the witness statement made by the appellant's mother. She confirms in her witness statement dated 14th July 2018, at paragraph [1], that she arrived in the UK in 2001, and at paragraph [6], that she visited the appellant in 2010, 2012, 2014 and 2017. It was submitted on behalf of the appellant that there has never been any formal transfer of parental responsibility from the appellant's mother to the appellant's grandparents. The appellant's mother maintains that she has always retained parental responsibility and it was not open to the Judge to conclude that parental responsibility is held jointly between the appellants mother and the appellants grandparents. It was said that the fact that the appellant had been left in the care of her grandparents, is not to say that the sponsor has given up her responsibility for her daughter. The appellant maintains that the decision of the F*t*T Judge is entirely unreasonable and that in reaching his decision, the Judge took into account factors such as the lack of a signature on school documents. It was submitted that the F*t*T Judge simply failed to properly consider the role that the appellant's mother plays in the appellant's life. The appellant's grandparents are unable, and do not want to continue, to look after the appellant and so the current arrangements cannot continue. The appellant submits that the health of her grandparents and the fact the current arrangements cannot continue should have led to the conclusion that is the exclusion of the appellant from the UK, is undesirable.

Discusssion

13. It is now well established that what is required in a decision is that the reasons provided must give sufficient detail to show the parties and the appellate Tribunal, the principles upon which the lower tribunal has acted, and the reasons that led it to its decision, so that they are able to understand why it reached its decision. The reasons need not be elaborate, and need not deal with every argument presented. The Court of Appeal in **R & ors (Iran) v SSHD [2005] EWCA Civ 982** held that a

finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence.

14. I have carefully read the paragraphs that the appellant seeks to criticise, and the decision as a whole. It is uncontroversial that the appellant was left living with her maternal grandparents when the appellant's mother came to the United Kingdom in 2001. I reject the claim that the Judge proceeds upon a mistake as to fact. At paragraph [3] of the decision of the F*t*T Judge, the Judge is referring to the matters set out in the respondent's decision to refuse the application. At paragraph [17] of his decision, the Judge refers to the witness statement made by the appellant's mother, and properly notes that "*... The sponsor had visited the appellant in Jamaica in 2000, 2002, 2004 and 2017. The sponsor had been present at the appellant's graduation ceremony.*". At paragraph [18] of the decision, the F*t*T Judge noted that "*The sponsor had made a previous application for the appellant to join her in the United Kingdom.*". The F*t*T was clearly aware of the evidence relied upon by the appellant, as set out in the witness statement made by her mother. In reaching his decision, at paragraph [45], the F*t*T Judge noted that "*... the sponsor has not visited the appellant for nearly 10 years from entering the United Kingdom in 2000 until 2010. Whilst I note that the sponsor had made regular visits to Jamaica since that date, even then, her evidence was contradictory.*". In reaching that decision, the Judge considered the oral evidence of the appellant's sponsor as set out at paragraph [20] of the decision that "*... She visited every year except for one year when she believed she had visited in 2012 ...*" and the evidence as set out in the witness statement.

15. In my judgement, it was open to the F*t*T Judge, on the evidence, to find that the requirements of paragraph 297 of the Immigration Rules could not be met by the appellant for the reasons set out at paragraphs [41] to [47] of the decision. I reject the claim that the Judge erred in his assessment of whether the requirement of paragraph 297(i)(e) of the rules was met. The question for the Tribunal Judge was not whether the appellant's mother retains parental responsibility for the appellant, but whether the appellant's mother has had sole responsibility for the appellant's upbringing. In

reaching his decision, the F*t*T Judge referred to the guidance set out in TD ("Sole Responsibility") (Yemen [2006] UKAIT 00049, noting in particular that "responsibility" for a child's upbringing may be undertaken by individuals other than a child's parents, and may be shared between different individuals. That is likely to arise particularly in cases where, as here, the child remains in their country of nationality, whilst the parent claiming to have responsibility for the child lives in the UK. It was in my judgement open to the Judge to find, at paragraph [47] as follows:

> "47. *In summary, I find that at best, the sponsor has joint (sic) parental responsibility for the appellant with her own parents, i.e. The appellant's grandparents who are engaged in matters of parental responsibility such as in the appellant's educational progress"*

16. Having carefully considered the circumstances in which the appellant finds herself, it was in my judgment open to the F*t*T to also conclude, at paragraph [44] as follows:

> "44. *Based on the above findings, I concluded that it had not been shown that there were serious and compelling family or other circumstances making the appellants exclusion undesirable. Whilst reference has been made to the particular vulnerability of the appellant in the absence of supervision, living in Jamaica, there is no suggestion that the situation had resulted in such risks and I was not satisfied that those risks would increase in the event of refusal of entry clearance.*

17. At paragraph [36], the F*t*T Judge correctly noted that the appellant's ability to satisfy the immigration rules is not the question to be determined by the Tribunal, but is capable of being a weighty, though not determinative factor, when deciding whether such refusal is proportionate to the legitimate aim of enforcing immigration control. Here, the Judge found that the interference is proportionate to the legitimate public end sought to be achieved.

18. At paragraph [42] of his decision, albeit in brief terms, the Judge addresses the appellant's Article 8 claim by reference to the evidence before him. It is well-established in the authorities that there is no relevant family life for the purpose of Article 8 simply because there is a family relationship between two adults (such as a parent and child) who live in different countries. There has to be something more

than normal emotional ties. In this case it was claimed by the appellant that there is more because of the appellant's continued dependence upon her mother notwithstanding the fact that she lives with her grandparents on a day-to-day basis. The Judge accepted that the appellant and sponsor are in regular contact, and that the sponsor has made some financial contributions to the appellant's upbringing. The Judge did not however accept that the relationship goes beyond normal emotional ties, and found that the appellant's focus will continue to be with her grandparents, with whom she has lived the entirety of her life and who have had engagement in important aspects of her life. The Judge stated, at paragraph [48], as follows:

> *"… The regularity of contact between the appellant and sponsor as well as financial remittances did not, I concluded, constitute relations beyond that of an adult daughter/ mother relationship and in particular I did not find that there were greater ties by virtue of any kind vulnerability."*

19. Ordinarily, a parent and an adult child would not necessarily acquire the protection of Article 8 without evidence of further elements of dependency, involving more than the normal emotional ties. Article 8 protects the rights not only of the appellants but also their family members and each case has to be assessed on its own particular facts. In the end, the evidence was insufficient to satisfy the Judge that the family life between the appellant and her mother is greater than that normally to be found between adult children and their parents. That was against a backdrop of the appellant's mother having lived in the UK since 2001, and the appellant having lived with her grandparents since that time. The assessment of an Article 8 claim is entirely fact sensitive, and whilst I accept that a different Judge might have found the relatively modest threshold required to establish a family life to have been met, that is not to say that the decision reached by the Judge on the evidence, is irrational or perverse.

20. In any event, even if the Judge erred in his finding that the appellant has not established a family life with her mother, that error is, in my judgment immaterial. Even if Article 8 is engaged, the Tribunal would need to look at the extent to which

an appellant is said to have failed to meet the requirements of the rules, because that may inform the proportionality balancing exercise that must follow.

21. Here, the judge concluded that the requirements of the rules cannot be met. Furthermore, the Judge concluded that any interference with family life is proportionate to the proper public interest in the maintenance of fair but firm immigration. The test under Article 8 is an objective one, whatever the subjective feelings of the appellant may be. Understandably, the appellant would wish to join her mother in the UK. It is also understandable that the appellant's grandparents who are now much older than when the appellant was left with them in 2001, might find it more difficult to maintain responsibility for the appellant and that the appellant, her mother and her grandparents would wish to have the appellant living in the United Kingdom. On any view, the appellant was an adult by the time of the hearing before the F*t*T and the Judge was bound to consider the Article 8 claim, on the facts as they were at the time of his decision.

22. The only ground of appeal available to the appellant was that the respondent's decision is unlawful under s6 of the Human Rights Act 1998. As to the Article 8 claim, the burden of proof was upon the appellant to show, on the balance of probabilities, that she has established a family life with her mother and that her exclusion from the UK as a result of the respondent's decision, would interfere with that right. It was then for the respondent to justify any interference caused. The Judge found that it was proportionate for the appellant to be refused entry clearance. It was open to the Judge to conclude that, weighing all matters up, the decision to refuse entry clearance is not disproportionate, for the reasons set out.

23. Having carefully considered the decision of the F*t* Judge and the submissions made before me, in my judgment the findings made by the F*t*T judge are not irrational or unreasonable in the *Wednesbury* sense, or findings that are wholly unsupported by the evidence. The Judge did not consider irrelevant factors, and the weight that he attached to the evidence either individually or cumulatively, was a matter for him.

The written grounds of appeal amount to nothing more than a disagreement with the findings of the Judge, that were properly open to him.

24. It follows that in my judgment, the decision of the F*t*T does not contain a material error of law, and the appeal is dismissed.

Notice of Decision

25. The decision of the F*t*T Judge did not involve the making of an error of law and the appeal is dismissed.

26. No anonymity direction is made.

Signed Date 24th January 2019

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and there can be no fee award.

Signed Date 24th January 2019

Deputy Upper Tribunal Judge Mandalia