



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/11544/2017

THE IMMIGRATION ACTS

Heard at Birmingham CJC

**Decision &
Promulgated
On 16 May 2019**

Reasons

On 3 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**S E W
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person, with the assistance of Mr D Forbes of Lifeline Options

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Watson promulgated on 13 April 2018 dismissing an appeal against a decision of the Respondent dated 9 September 2017 to refuse leave to remain in the United Kingdom.
2. The Appellant is a citizen of Jamaica born on 1 May 1977. Included as a dependant in her appeal is her son D born on 13 November 2009 in the United Kingdom.

3. The Appellant first came to the United Kingdom on 29 April 2003 as a carer for her grandfather, with leave granted initially until 29 July 2003, subsequently extended to 23 January 2004. Upon expiry of her leave no steps were taken to regularise her position. The Appellant's son was born almost 6 years after her leave had expired. Even then, it was not until 12 May 2014 that an application was made to regularise the Appellant's immigration status. The application was refused in September 2015. A further application was made on 11 November 2016; the refusal of this application on 9 September 2017 is the decision that is the subject of these proceedings.
4. The Appellant's application was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 9 September 2017.
5. The Appellant appealed to the Immigration and Asylum Chamber.
6. Before the First-tier Tribunal the Appellant was assisted by a 'McKenzie friend', being the wife of the vicar of that church which she attended. In preparation for the appeal the Appellant had also been assisted by a charitable organisation - Lifeline Options. Lifeline Options have also assisted the Appellant in the context of the appeal to the Upper Tribunal, and the Appellant has been assisted by Mr Forbes of that organisation before me today.
7. The Appellant's appeal was dismissed for reasons set out in the Decision of Judge Watson promulgated on 13 April 2018.
8. An application for permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Parker on 18 May 2018.
9. One of the core issues in these proceedings has been the position of the Appellant's son, and the extent to which he might benefit from the effects of paragraph 276ADE(1)(iv) of the Immigration Rules - and also the extent to which the Appellant might benefit from section 117B(6) of the Nationality, Immigration and Asylum Act 2002.
10. Before me Mr Mills on behalf of the Respondent has very fairly and very properly conceded that the First-tier Tribunal Judge fell into error of law in her approach to these matters. The question under section 117B(6) is one of 'reasonableness', and that is a question to be evaluated by reference to the circumstances of the child alone. However, it is apparent at paragraph

26 of the Decision of the First-tier Tribunal that the Judge in considering this issue had regard also to the immigration history of the Appellant:

"I find that in light of the mother's poor immigration history, in view of the S117 factors which are against the Appellant that it is reasonable for the child to leave the UK".

11. Mr Mills not only accepts that that is inconsistent with the applicable law as now understood pursuant to the decision of **KO (Nigeria)**, but also that it amounts to a material error of law.
12. In the circumstances, discussion before me focused upon the way forward in terms of remaking the decision in the appeal, and in particular the extent to which the primary findings of the First-tier Tribunal should be preserved as a foundation for a consideration of such matters anew.
13. On balance I am persuaded that the appropriate way forward is that this case be returned to the First-tier Tribunal for the decision in the appeal to be remade by any Judge other than First-tier Tribunal Judge Watson with all issues at large. In reaching this conclusion I am influenced by two matters in particular. The first is in relation to the nature of the accommodation for the Appellant and her son in Jamaica, and the second is in relation to the educational opportunities available to the Appellant's son in the event of being relocated to Jamaica.
14. In respect of accommodation, the Appellant's witness statement before the First-tier Tribunal referred to the current living circumstances of family members in Jamaica. In particular it was suggested that the only accommodation available the Appellant and her son was with family members on a piece of land upon which there was a two-bedroomed house; the land was agricultural land and the Appellant's relatives existed through subsistence farming.
15. I pause to note that a question was raised as to the title to that land; however there was no suggestion that the family members were facing any form of action to remove them from the land. The Appellant had also filed some documents in respect of the land situation generally in Jamaica, but again it seems to me that there is nothing in those documents that would suggest that there was any threat to the family losing the land. It also seems to me clear, notwithstanding the grounds of challenge in this regard that the Judge had consideration to all of the materials that were placed before her. Indeed, she addresses herself specifically to certain of these matters, and not only makes it clear that reference was made to the supporting materials and the nature of the Appellant's case (see

paragraph 5), but also that the Appellant described the situation that she and her son might face upon return to Jamaica in her oral evidence (see paragraph 21).

16. The First-tier Tribunal Judge concluded that there would be accommodation for the Appellant and her son upon return to Jamaica, and that they would not be facing a situation of destitution (see paragraph 22).
17. However, it seems to me that what is missing from the Judge's analysis is any clear consideration of the circumstance of the Appellant and her son joining a household consisting of a two-bedroomed property seemingly occupied by a significant number of other family members totalling, according to the Appellant's evidence, eleven at present.
18. Whilst this point alone might not have persuaded me that there was a material error of law, in circumstances where the decision in the appeal requires to be remade in any event, I consider this is a pertinent matter that requires some further exploration by way of evidence upon rehearing.
19. The second point is in relation to the educational system. Reference was made in the Appellant's witness statement to a concern that she would not be able to afford education in Jamaica for her son. Mr Forbes, however, acknowledges that no supporting materials were filed in the appeal in respect of the educational system in Jamaica and any possible difficulties in accessing education. Nonetheless, he informs me that he has available such evidence from other cases in which he has been involved. It is accordingly suggested that were the matter to be considered again the Appellant would seek to amplify the concerns expressed in her witness statement in respect of the educational system, and support such concerns by reference to country information materials.
20. I acknowledge, therefore, that there *may* be further matters that might properly be the subject of consideration upon rehearing.
21. In both of these contexts - accommodation and education - I am mindful of the fact that the Appellant has not been, as it were, formally represented by legal representatives in these proceedings and it seems to me that due allowance should be made for the fact that the materials before the First-tier Tribunal may not have been as complete as Mr Forbes suggests that they now could be. As I say, on balance, I am persuaded that consequently the circumstances of the Appellant and her son should be reconsidered by way of a fresh hearing before the First-tier Tribunal.

Notice of Decision

22. The decision of the First-tier Tribunal Judge contained a material error of law and is set aside.

23. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Watson with all issues at large.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: 14 May 2019

Deputy Upper Tribunal Judge I A Lewis