



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/24606/2018

THE IMMIGRATION ACTS

Heard at Birmingham  
On 7<sup>th</sup> August 2019

Decision & Reasons Promulgated  
On 11<sup>th</sup> September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MRS JOSEPHINE ANDREA BURKE  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: No legal representation  
For the Respondent: Miss H. Aboni (Senior HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Gribble, promulgated on 26<sup>th</sup> February 2019, following a hearing at Birmingham on 12<sup>th</sup> February 2019. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a citizen of Jamaica. She was born on 21<sup>st</sup> July 1972. She is a female. She appeals against the decision of the Respondent, refusing her application for leave to remain in the UK on the basis of her marriage to a British citizen, a Mr Gregory, such a decision to refuse being dated 29<sup>th</sup> November 2018.

## **The Appellant's Claim**

3. The essence of the Appellant's claim is that she left Jamaica to come to the UK when she was aged 26. She arrived as a visitor. Thereafter, she overstayed. She married Mr Gregory. However, she has since become separated from him, though not divorced. She has a job. She has a strong set of community links with her friends and family. When she left Jamaica, life was hard. It is true that she had come as a visitor, but she did so in the hope that she could study, and she had relied upon her uncle to fund her studies, before her status was regularised through her marriage. She had now been in the UK for nineteen years. She had worked and she had contributed. She had committed no crimes. She had a wide network of family and friends. If she was removed back to Jamaica the decision to do so would be disproportionate and breach of human rights to privacy and family life. Significantly, the Appellant also relied upon the fact that her estranged husband suffers from a diagnosis of cancer. There was evidence to this effect dated 2014. However, she was not directly involved in his care. Nevertheless, her departure would be detrimental to his wellbeing.

## **The Judge's Findings**

4. The judge set out the Appellant's claim carefully and in detail. It was noted that the Appellant had left behind in Jamaica a partner and children aged 5 years and 2 years, the latter being with the Appellant's mother in Jamaica. She stayed beyond her visit because she thought her uncle would pay for her study in the UK but this fell through. (Paragraph 16). Her daughter was now aged 25 and her son was aged 22 in Jamaica. The daughter had qualified to become a nurse but could not find work in Jamaica and lived with her partner. Her son, was a student and lived in university accommodation in Jamaica. Since then, the Appellant's mother, with whom the children had stayed, had died in 2016. The Appellant herself had returned to Jamaica for the funeral. The Appellant's mother did not leave her house in Jamaica because she was living with her partner in his house.
5. The judge considered the position at first under the Immigration Rules (see paragraph 30), and concluded that the Appellant could not succeed under the Immigration Rules because she had not been in the UK for twenty years as required. Second, consideration was given to whether she could succeed outside the Immigration Rules. The judge noted however the Appellant had made visits to Jamaica in the last three years. This being so,

“She could not say she has no familiarity with her current culture and how systems operate there. I accept she would not find it easy to find work but she

does have a positive work history in the UK and has an impressive CV (page 1 to 4) which includes periods of work in Jamaica as a nanny when she was in her early 20s. It might be possible to get this sort of work again but in any event she has a useful UK qualification which would stand her in good stead” (paragraph 38).

6. In terms of how the Appellant would find accommodation in Jamaica, the judge concluded that

“She would also be able to stay with her daughter or one of her sisters in the short-term. She may be able to access support via AVR and she is likely, given she has such good and supportive family and friends in the UK, to be able to access some financial support from her wide network here to assist her financially ...” (paragraph 39).

7. The judge went on to consider exceptional circumstances (paragraphs 41 to 42) and found that there were none in the Appellant’s case. In undertaking a “balancing exercise”, the judge concluded that the public interest lay in the Appellant’s removal and that she could not succeed outside the Immigration Rules.
8. The appeal was dismissed.

### **Grounds of Application**

9. The grounds of application state that the Appellant has been in the UK for nineteen years, has worked hard, has contributed, and has not received any public funds, and that she would not be able to find a job with higher employment in Jamaica, and that she supports her son in his studies financially at his university in Jamaica.
10. Permission to appeal was granted on 8<sup>th</sup> April 2019 on the basis that it was arguable that when assessing the Appellant’s private and family life ties, including her ties to her husband, with whom she was separated, the judge had failed to consider the husband’s diagnosis of cancer.

### **Submissions**

11. At the hearing before me on 7<sup>th</sup> August 2019, the Appellant was unrepresented. I asked her if she had read the decision of the judge below. She confirmed that she had. I asked her if she understood why permission to appeal had been granted on the basis of the grounds of application that she had herself drafted, and she said that she did understand this. I asked her if she had anything to say in support of her appeal today against her decision of the judge below. The witness said that she had nowhere to stay in Jamaica. She said that she would find it difficult to get work. She said that she pays the fees of her son who is at university from work that she undertakes in this country. She had been here almost twenty years and would find it difficult to return back to Jamaica.

12. For her part, Miss Aboni submitted that this was nothing more than an attempt to reargue the appeal. The Appellant could not satisfy the Immigration Rules. She could not satisfy Appendix FM because her marriage was no longer subsisting. The judge had recognised that there would be obstacles but these were not “very significant obstacles” to her returning to Jamaica. The judge had also had regard to the “exceptional circumstances” and had found there to be none. At paragraph 46 the judge had set out the Appellant’s private life and concluded that she could not succeed on that basis. At paragraph 50, the judge had summarised the Appellant’s claimed human rights and noted that she had argued that she had been here almost twenty years, but the judge concluded that this did not comply either with the Immigration Rules or with her right to remain here outside the Immigration Rules.
13. This was a case where the grant of permission today was tied up with the cancer diagnosis of the Appellant’s husband. However, the marriage had broken down. They were separated. They were not living together. The husband had not attended to give evidence at the hearing. There were two other witnesses but the husband himself had not given evidence. What the other two witnesses had said was properly taken into account by the judge. There was no error of law.
14. In reply, the Appellant said that although her marriage had broken down, “but we could get back together again”, and that she was currently only three months away from completing twenty years’ residence in this country.

### **No Error of Law**

15. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows. This is a case where the judge below has given a clear, comprehensive, and well-reasoned decision. The judge has actually been quite sympathetic to the Appellant’s plight, noting that,

“I have sympathy for Miss Burke in the situation she finds herself. She has almost reached the point where her length of residence is determinative and any considerations around the public interest would not be relevant. However, she has not reached that point yet and almost meeting the requirements of the Rules is not sufficient” (paragraph 52).
16. That said, the judge had taken into account the question as to whether there were “particularly strong features of Miss Burke’s private life” and had concluded that “her private life is no more than would be expected of anyone who has been in the country for nineteen years. She has friends, she sees her family, she goes to work” (paragraph 50). She could on this basis not succeed under the Immigration Rules. Going further afield from that, the judge observed that “Miss Burke’s conduct in overstaying, whatever the reason, has been poor”, and although she had worked and paid taxes, she had done so without permission and had remained here unlawfully (paragraph 51).

17. Ultimately, the judge had weighed the public interest in maintaining immigration control, concluded that her private life falls to be given little weight and that her conduct has been poor, before deciding that the appeal could not succeed. Those conclusions were entirely open to the judge. There is no error of law insofar as it is being asserted that her husband has a diagnosis of cancer, because the husband did not give evidence at the hearing, and she is separated from him, and provides him with no direct support or care.

**Decision**

18. The decision of the First-tier Tribunal did not amount to an error of law. The decision shall stand.
19. No anonymity direction is made.
20. The appeal is dismissed.

Signed

Dated

Deputy Upper Tribunal Judge Juss

10<sup>th</sup> September 2019