



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

Appeal Number: HU/15497/2019

THE IMMIGRATION ACTS

**Heard at : Field House
On : 28 May 2021**

**Decision & Reasons Promulgated
On: 11 June 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SANYA SIMONE SIMPSON

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Appearance

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Jamaica, born on 30 January 1982. She arrived in the UK on 14 December 2002 with entry clearance as a visitor valid until 14 June 2003. She did not leave the UK when her visa expired, but remained as an overstayer, making no applications to regularise her stay until 20 June 2011, when she made an application for leave to remain on human rights grounds. That application was refused without a right of appeal on 11 August 2011. Nothing further happened until 7 March 2019, when she made another human rights claim, on the basis of her family and private life.

2. In that application details were given of the appellant's difficult childhood in Jamaica. It was said that her father had moved out of the family home when she was eight years of age and her older sister had moved to USA and ceased communication with the family. Her older brother had mental health issues and some physical disabilities. Her mother asked her to leave the family home when she was 17 as she could no longer support her financially and the appellant then rented a room and found employment. After she completed her high school studies, her grandmother invited her to the UK for a visit, in 2002. She came to the UK and stayed with her grandmother but her relationship with her grandmother became strained and she moved out after a few months. She hoped to pursue a career in nursing but was unable to do so because of her immigration status. She therefore worked as a carer and was currently working for a Mr Peter Hale, an elderly man who was in the end stages of Parkinson's disease with whom she lived as his full-time carer. It was stated that the appellant was now seeking leave to remain on the basis of her private life in the UK, specifically her length of residence here (more than 16 years) and lack of ties to Jamaica. Reference was made to the appellant suffering PTSD as a result of being assaulted by the grandson of a patient in January 2018.

3. In the decision refusing the appellant's claim, the respondent considered there to be no evidence of very significant obstacles to integration in Jamaica and considered that the appellant could not, therefore, meet the requirements of paragraph 276ADE(1) of the immigration rules on the basis of her private life. It was considered further that there was no evidence of exceptional circumstances entitling her to leave outside the immigration rules. The respondent noted the evidence of the appellant's psychiatric treatment for PTSD but considered that she would be able to access suitable treatment in Jamaica.

4. The appellant appealed against that decision. Her appeal came before First-tier Tribunal Judge Housego on 5 February 2020. Mr Hale had not been able to produce a witness statement as he was in hospital, but his medical reports were available before the Tribunal and his medical condition was accepted by the Home Office Presenting Officer. It was also accepted that the appellant was his carer. The appellant gave evidence before the judge and he found her to be a truthful witness. The judge accepted from the appellant's evidence that Mr Hale had become like a grandfather to her and that she had been visiting him in the hospital on a daily basis. The judge noted that the appellant had been in the UK for half her life but accepted that that did not bring her within the immigration rules. He found that she could not meet the requirements of the rules as there were no very significant obstacles to her integration into Jamaica, although she had no real connection to the country. The judge found, however, that there were exceptional circumstances outside the rules such that the respondent's decision was disproportionate. He relied upon the case of Lama (video recorded evidence -weight - Art 8 ECHR) [2017] UKUT 16 as comparable to the appellant's case and found that family life had been established between the appellant and Mr Hale. He found that there was no evidence to show that Mr Hale's care needs would be met to the same extent as they were by the appellant and that, given Mr Hale's vulnerability and health condition, taken together with the appellant's own circumstances,

the balance fell in the appellant's favour in assessing proportionality. The judge accordingly allowed the appeal on human rights grounds.

5. The Secretary of State sought, and was granted, permission to appeal to the Upper Tribunal against Judge Housego's decision. The matter came before Upper Tribunal Judge Perkins on 27 July 2020. In a decision promulgated on 4 September 2020 UTJ Perkins found material errors of law in the judge's decision on the basis of all the grounds and set aside the decision. He directed that the decision be re-made in the Upper Tribunal. His reasons for so doing are as follows:

"8. Ground 1 complains that the Judge has not given adequate reasons for the decision.

9. In particular the judge is criticised in the Secretary of State's grounds for relying on **Lama**. This is something of a blind alley. The decision in **Lama** is a good working example of the flexibility that is needed to give proper effect to Article 8 of the European Convention on Human Rights. It most certainly did not establish that every person who works as a carer has established a right to remain in the United Kingdom but it does provide some kind of judicial support for the finding in this case that the relationship established between the claimant and Mr H was to be regarded as an important relationship at the "family life" end of the "private and family life" continuum. The point is that human beings are allowed to develop relationships. Some of them, such as a relationship between husband and wife or parent and minor child are easy to recognise and categorise and usually attract a great deal of respect but other relationships can become very important and, in principle, there is no reason why a close relationship that has developed between a person who would otherwise be a lonely vulnerable sick old man and a carer can be within the scope of the protection of the Convention.

10. However it is important to consider what has happened here. The rules do not provide for admission as a "carer" but there are policies that permit admission to the United Kingdom for a short time to make arrangements for a person's care by persons lawfully in the United Kingdom, typically by the NHS or a private nursing home. The policies are grudging and clearly intended to deal with immediate needs before long terms arrangements can be made but here the Tribunal has decided that the relationship between the claimant and someone the Judge did not here is so important that it must be given weight comparable to the relationship between life partners or parents and minor children. It is, with respect, an enormous leap.

11. I make it plain that there is a lot about the decision of the First-tier Tribunal that concerns me. Whilst there was nothing to undermine the claimant's evidence about her relationship with Mr H there was almost nothing outsider her testimony to substantiate it. The nearest that comes to independent evidence is a short supporting letter from Mr H in which he introduces himself and says that he:

"Can confirm that the [claimant] is my carer and she lives with me at the three bedroomed property I own.

[The claimant] has been my carer since August 2018. She works for me full-time. I pay her cash in hand on a weekly basis. I do not give her payslips and we do not have a contract of employment. I suffer from Parkinson's disease and I am in the last stage of this. I fully support [the claimant] application for leave to remain in the UK."

12. The Reasons for Refusal Letter criticise this letter pointing out that there was no evidence from the NHS or social services dealing with the possibility of alternative care.

13. Notwithstanding this criticism the case before the First-tier Tribunal was no better. Much more could have been done here if the case is as it seems. Some regard could have been had for the carer's policy at Part 17 of the Immigration Rules. Although concessions are made it is clear from the Rules that they strongly discourage people remaining in the United Kingdom because they are carers. If they have no other right to be there, there is little chance under the Rules of them being allowed long-term residence. This could have illuminated the balancing exercise.

14. Mr H has been described as a vulnerable man. If he is in the last stages of Parkinson's disease as is said that is no surprise to anyone but there seems to be no-one taking care of his interests independently of the claimant. There is no independent evidence to support the contention that the claimant's involvement in his life is as benign and supportive as she says. It may be that everything she said is entirely truthful but all that is known about the claimant with any confidence is that she is prepared to live in the United Kingdom for many years without permission and whilst there are undoubtedly worst examples of bad behaviour there is nothing there that makes her evidence particularly attractive or persuasive.

15. The second ground adds nothing to the first. It is essentially a reworking of the same point that the judge should not have made the findings that he did.

16. I am satisfied that the decisions that the claimant's relationship with Mr H is akin to family life and that interfering with the relationship is disproportionate are reasoned inadequately and I set it aside.

17. It may be that I will be criticised for not substituting a decision to dismiss the claimant's appeal but she did impress the judge and, for Mr H's sake I have decided to order a further hearing in the Upper Tribunal when the appeal will be redetermined. If the claimant wishes to rely on further evidence she must make an appropriate reasoned application in accordance with the rules.

18. Decision

19. The First-tier Tribunal erred in law. I set aside its decision and directed that the appeal be determined again in the Upper Tribunal."

6. The matter then came before me for a hearing in order for the decision to be re-made. The previous representatives, DJ Webb & Co, had informed the Upper Tribunal on 23 April 2021 that they were no longer representing the appellant. The appellant did not appear at the hearing and there was no explanation for her absence. The Notice of Hearing had been served on her and

she would therefore have been fully aware of the hearing date. Furthermore, there was no additional evidence since the hearing before the First-tier Tribunal, despite the direction made by UTJ Perkins.

7. Ms Cunha made brief submissions before me, referring to the lack of any evidence of Mr Hale's condition and whether the appellant was still providing him with care. Neither was there any further evidence about the appellant's own health and nothing to suggest that there were any issues which would meet the threshold for Article 3 or 8. The appellant could return to Jamaica and access any treatment she needed there.

Consideration and findings

8. There is little that needs to be said by way of findings, given the comments of UTJ Perkins at [17] of his decision and the lack of any further evidence from the appellant. It is now almost a year since the decision in the appellant's appeal was made by the First-tier Tribunal and there is no evidence to suggest that her circumstances remain the same. It is not known if she continues to care for Mr Hale or what her current situation is. Even if, following the guidance in Lama, there could be said to have existed a relationship sufficient to amount to family life between the appellant and Mr Hale – and given the very limited evidence it is unlikely that that was established – the fact is that there is no evidence as to whether that relationship has continued. Given the seriousness of Mr Hale's condition, it may be that he is no longer capable of being cared for at home and it could sadly be the case that he is no longer alive. Clearly, on the limited evidence before me, I cannot conclude that family life has been established for the purpose of Article 8.

9. Assuming that the appellant is still in the UK, I accept that she has established a private life here, having resided here for 19 years. However that is not sufficient in itself to meet the requirements of the immigration rules in paragraph 276ADE(1). There is no evidence to show that there would be very significant obstacles to her integration in Jamaica. She has lived the majority of her life in Jamaica and has family members living there. There is no evidence to suggest that her medical condition is such that she could not access any treatment required in Jamaica. Clearly she cannot meet the requirements of the immigration rules on the basis of family or private life.

10. On the basis that Article 8 is engaged at least on private life grounds, I turn to the question of proportionality, and whether or not there are any compelling circumstances that would justify a grant of leave outside the immigration rules. There is no evidence of the appellant's current circumstances in the UK. Her relationship with Mr Hale, even if still subsisting, would not assist her sufficiently to make out a claim on Article 8 grounds. Her situation is entirely different to that in the case of Lama, as relied upon by the First-tier Tribunal, since [43] and [44] of that decision made it clear that the appellant's impeccable immigration history and lawful stay in the UK was a weighty factor in the proportionality assessment, whereas Ms Simpson's entire stay in the UK has been unlawful following the expiry of her visa in June 2003. Having had regard to the factors in section 117B of the Nationality,

Immigration and Asylum Act 2002, considering that the appellant established her private life whilst living and working unlawfully in the UK and given the absence of any evidence of her current circumstances, it cannot possibly be said that the decision to refuse her claim is a disproportionate one. There is no breach of Article 8 and the appellant's appeal fails.

DECISION

11. The making of the decision of the First-tier Tribunal involved an error on a point of law and has been set aside. I re-make the decision by dismissing the appeal.

Signed S Kebede
Upper Tribunal Judge Kebede

Dated: 28 May 2021