



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Ce-File Number: UI-2021-  
001807**  
**First-tier Tribunal No:  
HU/04054/2020**

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On the 25 October 2022**

**Decision & Reasons Promulgated  
On the 21 February 2023**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**MR FLOYD EVERTON ADAMS**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Moksud, Counsel

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge J Austin promulgated on 29 September 2021, dismissing his appeal against a decision of the Secretary of State made on 30 July 2018.

### **The Appellant's Case**

2. The appellant is a citizen of Jamaica born in 1961. He last entered the United Kingdom on 18 April 2013 and has remained here since. The appellant has himself suffered from serious ill-health but his case was based primarily on his submission that he has a family life with his elderly mother, born 1930, who lives in the United Kingdom and that to remove him now to Jamaica would be a breach of his Article 8 rights.

### **The Respondent's Case**

3. The respondent did not accept that there is a family life between the appellant and his mother nor was she satisfied that the appellant met the requirements of paragraph 276ADE of the Immigration Rules; nor that it would be in breach of his Article 8 rights to remove him to Jamaica given that he still has family there. It was not accepted that there would be significant obstacles to his integration into life in Jamaica again.
4. The judge heard evidence from the appellant and sponsors and submissions from appellant and submissions from both representatives.
5. The judge found:-
  - (i) the appellant had previously suffered from cancer which had been treated and there was no evidence of any serious ongoing medical problem or that further treatment will be required which would not be available to him in Jamaica [22];
  - (ii) the appellant's mother has significant healthcare issues, is hospitalised and receiving end of life care [24];
  - (iii) the appellant now had limited contact with her as she was in hospital, is elderly and found vulnerable due to current risks of COVID infection, no longer relying on him for assistance [26];
  - (iv) the appellant's family life did not meet the requirements of Appendix FM [27];
  - (v) the appellant had family in Jamaica in the form of an adult son and other family there [29]; there was little evidence of other family life such as direct and new relatives in the United Kingdom;
  - (vi) there were no significant obstacles to the appellant returning to Jamaica and the decision did not engage the appellant's Article 8 rights and was proportionate [30].
6. The appellant sought permission to appeal against the decision on the basis that the judge had erred:
  - (i) in misdirecting himself in relation to Article 8 in not applying the correct test to assess whether there was a family life between the appellant and his mother for the purposes of Article 8;

(ii) erred in his assertion the failure to find family life and failed in his approach at [27] making it unclear whether he was satisfied that Article 8 was engaged or not.

7. On 9 November 2021 First-tier Tribunal Judge L J Murray granted permission.

### **The Hearing**

8. Mr Moksud explained that sadly the appellant's mother had died on 10 October 2021.

9. Mr Moksud submitted that the judge's error was material and that notwithstanding the subsequent death, the decision ought still to be set aside as it could be allowed, albeit that he would have to rely on further evidence which was not before the Tribunal and which had not yet been obtained.

10. Mr Diwnycz submitted that there was no material error of law and in any event the decision should not be set aside.

### **The Decision**

11. I am satisfied that the judge did misdirect himself in law in that having found that there was a close relationship, that the appellant had provided care and support for his elderly mother but that the emotional ties were not "exceptionally different from those which were in any other aged mother and son" even taking into account that his mother's life was near its end. That is a misdirection as to the relevant test as is set out in **Kugathas**.

12. Further, and in any event, I consider that the judge erred in concluding that there was no family life in these particular circumstances given the prior assistance, given the mother's then terminal condition and, it is difficult to understand how a judge could rationally have concluded in most circumstances he would be able to keep in contact by remote means from Jamaica having found that his presence was of assistance.

13. The judge also erred at [27] making it unclear whether he had accepted that Article 8 was engaged or not, and before considering whether the decision was proportionate. Further, and in any event it is unclear what factors he took into account in assessing proportionality and this is in any event vitiated by the observation there was no family life.

14. Accordingly I am satisfied that the decision did involve the making of an error of law.

15. I therefore turn to Section 12 of the Tribunals, Courts and Enforcement Act 2007 which provides as follows:

12 Proceedings on appeal to Upper Tribunal

(1) Subsection (2) applies if the Upper Tribunal, in deciding an appeal under [section 11](#), finds that the making of the decision concerned involved the making of an error on a point of law.

(2) The Upper Tribunal-

(a) may (but need not) set aside the decision of the First-tier Tribunal, and

(b) if it does, must either-

(i) remit the case to the First-tier Tribunal with directions for its reconsideration, or

(ii) re-make the decision.

16. I note that Section 12(2)(a) states that the Tribunal may but need not set aside the decision of the First-tier Tribunal. It is a matter of discretion – see VOM (Error of law - when appealable) Nigeria [2016] UKUT 410 (IAC) at [22]. As noted in MA (Iraq) [2021] EWCA Civ1467 at [77]:

... As the UT pointed out in paragraph 22(d) of VOM (Error of Law when appealable Nigeria) [2016] UKUT 410 (IAC), the discretion conferred by section 12(2)(a) enables the UT to decline to set a decision of the FTT aside when the error of law in question is immaterial. The UT's reasoning in VOM was cited by the Court of Appeal, without disapproval, in AA .

17. In this case, the sole challenge in the grounds was to the finding that there was no family life between the appellant and his mother. She, sadly, has died, and thus there is no proper basis on which the appeal, given the other unchallenged findings, could succeed. There is thus no purpose is served in remaking the appeal, and I am not satisfied, bearing in mind the overriding objective and rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 that it would be in the interests of justice to set aside the decision of the First-tier Tribunal.

18. Accordingly, for these reasons, I conclude the decision of the First-tier Tribunal did not involve the making of a material error of law affecting the outcome.

### **Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of a material error of law affecting the outcome and I uphold it.

Signed

Date 20 December 2022

Jeremy K H Rintoul  
Upper Tribunal Judge Rintoul

