Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/35169/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 7 July 2014	**On 3 September 2014**

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

The Secretary of State for the Home Department

Appellant

and

Miss Sheryll Jennifer Brown

Respondent

For the Appellant:	Mr S. Whitwell, Home Office Presenting Officer
For the Respondent:	Mr G. Davison, counsel, instructed by AJA Solicitors

DETERMINATION AND REASONS

1. The respondent is a citizen of Jamaica who was born on 14 July 1970. She is now 44 years old. The immigration history is succinctly set out in paragraph 23 of the determination of First-tier Tribunal Judge Eban, promulgated on 20 May 2014 which is challenged by the Secretary of State, as the appellant in this appeal. For the sake of continuity, I shall refer to Miss Brown as the appellant, as she was before the First-tier Tribunal.

2. In sub-paragraph (4) of her findings in paragraph 23, the First-tier Tribunal Judge found that the appellant's presence in the United Kingdom was indispensable to the well-being of her 93-year-old great-uncle, Mr Brown. She found that without the appellant's assistance, he would probably have to go into a nursing home because, although care assistance was provided to him from social services this

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would in all probability amount to no more than a few hours a day. (This is not entirely surprising since, and with her presence, no additional care is necessary. That is not to say additional care would not be made available were she to be removed.) The effect of her departure from the United Kingdom would sever the relationship as he would not be able to return with her to Jamaica.

3. In paragraph 24 of her determination, the First-tier Tribunal Judge mentioned that the care provided for her elderly relatives was exceptional, her devotion to Mr Brown was mentioned by all of the witnesses, no paid care would do as much as she did for him and that her support enabled him to have some independence in his own accommodation.

4. These findings are not challenged in the grounds of appeal before me. It is well arguable that they might have been, but they were not.

5. In addition, the Judge considered the relationship that the appellant had developed with Mr Polius since 2008 which the appellant hoped would lead to marriage. The Judge recited in paragraph 23, subparagraphs (7) to (9) that Mr Polius has no connection to Jamaica and would not accompany the appellant were she to be returned there. He could not easily afford the cost of travel to Jamaica and, without apparently submitting medical evidence, told the Judge that he believed his health would not stand long distance travel. The Judge noted that, were she to apply as a fiancée, the Judge found it was likely that her application would be refused because of what she described as her appalling immigration history but that can hardly be a reason why it would be disproportionate to remove her given her immigration history was entirely of her own making.

6. In paragraph 24 of her determination, the Judge considered collectively the close and genuine bond that the appellant had both with Mr Polius and Mr Brown, her great-uncle, and that it was therefore disproportional and to remove her.

7. In paragraph 3 of the grounds, the Secretary of State correctly identified the fact that the relationship with Mr Polius, with whom she does not live, fell well short of the sort of exceptional circumstances that might merit a departure from the Immigration Rules and, in particular, the Secretary of State's (and Parliament’s) approach to Article 8 as articulated in them. The challenge is well made.

8. The difficulty, however, is that the grounds of appeal do not challenge the Judge's findings in relation to the appellant’s role as a carer's to her great-uncle, Mr Brown. He had given evidence that he had no help from social services and was entitled to none, unless he paid for it. She recorded his evidence in paragraph 10 of the determination. The Judge made a finding of fact that the appellant’s care for her elderly relatives, by which she included Mr Brown's wife who had died during the previous year, was exceptional. I do not regard that it is permissible for me to distinguish between the Judge's description as her care being

'exceptional' and the exceptionality test that has now found its place in justifying whether there should be a departure from the Immigration Rules.

9. In paragraph 4 of the grounds, it is said that the Article 8 assessment should only be carried when there are compelling circumstances not recognised by the Rules. Using what appears to be a pro forma paragraph, it is said that the First-tier Tribunal Judge did not identify such compelling or exceptional circumstances. However, whether the Secretary of State agrees or disagrees with it, the Judge *did* find there were exceptional circumstances in relation to her care for Mr Brown. It is not assisted by the respondent's stating that exceptional circumstances means that refusal would lead to an unjustifiably harsh result because this is precisely what the Judge found.

10. For these reasons, I am satisfied that there is no legitimate means by which the grounds of appeal can be construed as a challenge to the Judge's assessment of exceptionality in relation to Mr Brown and this is sufficient to render the determination legally sustainable notwithstanding the obvious error in relation to her approach to the relationship between the appellant and Mr Polius.

11. I am not persuaded that the grounds of appeal properly permit it to be argued that her error in relation to the evidence of Mr Polius has skewed her overall assessment of the proportionality balance requiring the determination to be re-made. Were the Tribunal tasked with re-making the decision, it would be bound by unchallenged findings of fact and the findings of fact that her role as the carer of Mr Brown was exceptional would be the starting-point from which the re-making of the decision would proceed. In such circumstances, I see little prospect of the Upper Tribunal reaching a different conclusion on proportionality given that starting-point.

<u>DECISION</u>

The grounds of appeal fail to establish the Judge made an error on a point of law and the original determination of the appeal shall stand.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL
28 August 2014