



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/15700/2019

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre (remote)  
On the 14<sup>th</sup> June 2021

Decision & Reasons Promulgated  
On the 29<sup>th</sup> June 2021

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Yvonne Majorine Henry  
(no anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: Mr Moksud, Counsel instructed by direct access  
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Jamaica born on the 11<sup>th</sup> May 1974. She appeals with permission against the decision of the First-tier Tribunal (Judge Thorne) dated the 28<sup>th</sup> October 2020 to dismiss her appeal against the Respondent's decision to refuse to grant her leave to remain on 'private life' grounds under Article 8 ECHR.

2. The basis of the Appellant's claim before the First-tier Tribunal was that a combination of factors meant that it would be disproportionate to refuse to grant her leave. These factors were
  - a) that she had lived in this country a long time and had a well-established private life here;
  - b) she had nothing to return to in Jamaica and continued to fear an abusive ex-partner;
  - c) as a gay woman she would face very significant obstacles to integration in Jamaica where societal attitudes are generally virulently homophobic.
3. The First-tier Tribunal considered the Appellant's case within the *Razgar* framework. It accepted that she had a private life here and that the decision to refuse her leave interfered with that private life. The Tribunal directed itself that the decision was taken lawfully in pursuit of a legitimate aim under Article 8(2) and so the only question to be decided was whether it was a disproportionate response to the need to protect the economy.
4. At its §48 the Tribunal sets out various factors weighing in favour of, and against, the Appellant. It specifically had regard to the 'public interest' factors set out in Part 5A of the Nationality, Immigration and Asylum Act 2002. It rejected her evidence that she was afraid of her ex-partner in Jamaica, noting that she had never made an asylum claim on that basis. The Tribunal found that the Appellant would have support in Jamaica, *inter alia* from her own adult daughter who still resides there. Although she did have friends in the United Kingdom, those relationships could be maintained by telephone or visits.
5. The Appellant drafted her own grounds of appeal. Her complaint, shortly stated, is that despite her sexuality having been relied upon before the First-tier Tribunal the matter is not addressed in the decision. In granting permission First-tier Tribunal Judge Lever observed that the decision is "light" in its consideration of the evidence. In subsequent directions made by the Upper Tribunal, Judge Rintoul said this:

"The core of the appellant's challenge to the decision of the First-tier Tribunal appears to be that it failed to consider evidence relating to her sexual orientation, a matter raised in the grounds of appeal to the First-tier Tribunal. That appears to me to be a 'new matter' for the purposes of section 85 of the Nationality, Immigration and Asylum Act 2002 .... I note that Judge Thorne does not appear to have considered whether a 'new matter' has been raised"
6. The Secretary of State's written response to the grant of permission, drafted on the 18<sup>th</sup> December 2020 by Senior Presenting Officer Ms Willocks-Briscoe, offers a defence to the omission by pointing to the Secretary of State's advice to the Appellant (given at an earlier unspecified time) that if she was worried about being gay in Jamaica, she should claim asylum. Before me Mr McVeety did not pursue that line of reasoning. He realistically accepted that being gay in this

context would also be relevant to a consideration of whether there are “very significant obstacles to integration” and as such if the point was raised, it was incumbent on Judge Thorne to have at least considered whether it was a new matter.

7. I have seen the grounds of appeal that were before the First-tier Tribunal. Mrs Henry clearly therein raised fears about returning to Jamaica and being able to integrate there as a gay woman. This was not a matter considered by Judge Thorne. I am satisfied that the omission to consider whether this was a ‘new matter’, and therefore whether it should be permitted to form part of the Article 8 case, was material to the Tribunal’s decision. I therefore set the decision, insofar as it relates to paragraph 276ADE(1), aside.
8. Upon remaking I need not consider any of the matters which concerned the parties before the First-tier Tribunal. That is because, as of today’s date, Mrs Henry has spent in excess of 20 years continually resident in the UK and as such *prima facie* qualifies for leave to remain under paragraph 276ADE(1)(iii). It was accepted that she arrived in the UK on the 11<sup>th</sup> June 2001, and there is no suggestion that she has ever left; the Secretary of State has not identified any ‘suitability’ issues under 276ADE(1)(i). The fact that Mrs Henry today qualifies for leave to remain under the Rules means that the public interest imperative in the original refusal falls away, and in the absence of any countervailing factors, I allow the appeal on human rights grounds.

### **Decisions and Directions**

9. I note that the application for permission to appeal was two days out of time. Mrs Henry explained that she had been hampered in preparing her appeal because she was shielding as a result of the pandemic. This application to extend time was not expressly addressed by Judge Rintoul when he granted permission. Although it is implicit in his grant that he accepted that time should be extended, for the sake of completeness I am satisfied that it would be in the interests of justice to extend time and admit the application.
10. The decision of the First-tier Tribunal contains an error of law and it is set aside.
11. I remake the decision in the appeal by allowing it on human rights grounds.
12. There is no order for anonymity.



Upper Tribunal Judge Bruce,  
Date 14<sup>th</sup> June 2021