



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

Appeal Number: DA/00727/2013

THE IMMIGRATION ACTS

Heard at Field House

On 11 December 2013

Determination

Promulgated

On 23 December 2013

Before

UPPER TRIBUNAL JUDGE POOLE

Between

F R

(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Cecilia Hulse

For the Respondent: Mr Peter Deller, Home Office Presenting Officer

DECISION AND REASONS

1. For the purposes of this determination I will use references to appellant and respondent as they appeared before the First-tier Tribunal.
2. The appellant is a citizen of Jamaica born 15 September 1982. He originally arrived in the United Kingdom in April 2001. He has a number of convictions for criminal offences dating back to 2006. In 2009 he was

notified of his liability to be deported. He successfully appealed that decision under Article 8 of the European Convention and was subsequently granted six months' discretionary leave.

3. He reoffended. In December 2010 he made application for leave to remain on the basis of marriage and on 28 January 2011 he was granted three years' leave on the basis of family life until 28 January 2014.
4. He reoffended. In April 2012 he was sentenced to two years' imprisonment for drug offences and following that conviction was served with notice of liability to deport and then in March 2013 the respondent made a deportation order. He appealed against the respondent's decision upon the basis that he fell within one of the exceptions set out in Section 33 of the 2007 Act and that his removal would be a breach of his Article 8 rights.
5. The appellant's appeal came before Judge of the First-tier Tribunal Woodhouse sitting with a non-legal member ("the panel") sitting at Taylor House on 9 September 2013. There was an oral hearing. The appellant attended and both parties were represented.
6. In a determination dated 16 October 2013 the panel dismissed the appellant's appeal "under the Immigration Rules" but allowed the appeal under Article 8 ECHR. In summary the panel found that the respondent's decision would be disproportionate bearing in mind the appellant's wife and two children and the appellant's stepchild, being a child of his wife's previous relationship.
7. The respondent sought leave to appeal. There were two grounds alleged, namely a failure to give adequate or any reasons with regard to views expressed by the panel on the appellant's risk of reoffending and secondly that the panel had misdirected itself in law dealing with the best interests of the children and in balancing the appellant's rights with those of the general public.
8. In a decision dated 8 November, a Judge of the First-tier Tribunal granted leave to appeal and in doing so said as follows:
 - "2. Within the grounds of application it is argued on behalf of the Respondent that the First-tier Tribunal Judge made an arguable material error of law by failing to give adequate reasons for findings on material matters in particular asserting that the panel failed to adequately assess the Appellant's risk of re-offending which in itself amount to an arguable material error of law. It is of note that the Appellant had previously been the subject of deportation proceedings but an appeal in 2009 had been successful. Within months of him being allowed to remain in the United Kingdom after the success of his appeal he had started re-offending again. I find that this is a significant aspect of the

Appellant's background which should arguably have been given greater consideration by the panel.

3. It is further asserted by the Respondent that the panel made further arguable material errors of law in their assessment of the proportionality of the decision of the Secretary of State and had failed to take sufficient account of the judgment in the case of **MF (Nigeria)**.
 4. Having considered the contents of the very lengthy and detailed determination I have come to the conclusion that the issues raised within the grounds of application are arguable and on that basis permission to appeal is granted."
9. Thus the matter appears before me in the Upper Tribunal. Ms Hulse (who appeared below) represented the appellant and Mr Deller the respondent.
 10. At the hearing Ms Hulse produced a skeleton argument which had not previously been lodged with the Tribunal or served upon the respondent. She also produced a bundle of additional documents. These had not been placed before the panel in the First-tier and no application was made for them to be admitted. After time being given for the skeleton argument to be read, Mr Deller then made his submissions.
 11. Mr Deller conceded that the panel's determination was lengthy and there were clearly-made points throughout. The appellant's history showed an escalation of offences, the panel would need to have given careful consideration of the risk of reoffending. Mr Deller emphasised that the appellant had previously been successful in avoiding deportation and his prison sentence should have been a "wake-up call". Mr Deller referred to paragraphs 160 to 163 of the panel's determination as some careful consideration on the material had been conducted. The panel should have undertaken consideration of the interaction between the new Immigration Rules and Article 8. They had mentioned the case of **MF** before the Upper Tribunal. There was nothing exceptional in this case. Whilst the appellant had a solid family and the children would be upset if he left, that is not sufficient. The respondent was not saying that all should relocate to Jamaica. Would the family be "devastated" in the event of deportation. Each case is fact sensitive and the respondent says that in this particular case insufficient analysis had been undertaken and the determination of the panel was thereby flawed.
 12. Ms Hulse relied upon her skeleton argument. There is no requirement on a determination to be perfect. Can it be understood and how has it reached its conclusions? This was a very detailed determination, all points were properly addressed. Whilst drugs are "bad" and this was a serious offence, it was in itself nowhere near the top (nor middle) of seriousness. The panel had found a genuine family relationship which appears to be accepted by the respondent.

13. Ms Hulse emphasised that whilst plans had been discussed for all foreign criminals such as the appellant to be deported, that was not currently the case. Therefore there must be exceptions and in this particular case the panel were correct in allowing the appeal. The panel had gone through everything before them and had given proper reasons. The correct weight had been given to each part of the evidence. It was a very careful determination and was detailed and properly reasoned. They reached findings that were open to them and the respondent's appeal should be dismissed.
14. After consideration I announced my decision that I found no material error of law for the reasons now set out in this determination.
15. I may only set aside a decision of the First-tier Tribunal if I am satisfied that the judge, or in this case the panel, made a material error of law which would have affected the outcome of the appeal. Unless a decision is perverse it is not a question of whether I or another judge agree or disagree with the findings or would have come to a different conclusion. In this case it is certainly not argued by the respondent that the panel's decision was perverse.
16. In summary the respondent's challenge to the panel's conclusion is based upon a contention that the panel were wrong in their assessment of the appellant's likelihood to reoffend (as evidenced by a string of criminal convictions and immigration history) and an incorrect assessment of the best interests of the children. The respondent also submits that the panel failed to properly balance the appellant's circumstances with the public interest and had not properly considered whether or not the appellant's circumstances were exceptional.
17. The panel's determination runs to some 34 pages and 174 paragraphs. Mr Deller conceded that it was a lengthy document containing clearly-made points and the panel had given careful consideration on the material referred to at the original hearing. The panel clearly had taken into account the escalating nature of the offences committed by the appellant. They were aware, and took into account, the fact that the appellant had reoffended on two occasions following his earlier successful appeal. The respondent argues that the panel had not adequately assessed the risk of the appellant's reoffending in the future. In fact the panel had taken this into account. I note from paragraphs 121 through to 126 and in 152 to 157 the panel made findings by drawing in a number of comments from documentation provided to them and in noting the effect of the second sentence of imprisonment imposed upon the appellant. The length of that sentence meant that the appellant's drug misuse could be addressed. The panel clearly realised they had to address the question of risk of reoffending. They came to conclusions in a well-reasoned manner. I do not find that they gave either no or inadequate reasons as the respondent alleges.

18. The grounds seeking leave make the point that the panel have placed weight on the children's best interests but they make the further point that the appellant himself appears not to have placed much weight on those interests. With respect, I do not consider that to be a relevant point. The best interests of the children are in fact their best interests, and it is immaterial what the appellant's previous actions have indicated. From paragraph 159 onwards the panel set out their views on the evidence before them and their conclusions on the children are well reasoned. Contrary to what is said in the grounds, the panel did give adequate consideration of the public interest in removal in the proportionality assessment. Paragraphs 171 and 172 are adequate in explaining the balancing nature of the panel's duty in assessing the evidence.
19. As to the relationship between Article 8 and the "new" Immigration Rules, again I am of the view that the panel adequately addressed that issue. They were clearly minded (paragraph 141) of the views set out in **MF (Article 8 - new rules) Nigeria [2012] UKUT 00393**. Understandably they have not considered the Court of Appeal's views in respect of that case but I am of the view that reference to the Court of Appeal would have had no material effect upon the outcome of the panel in this appeal.
20. I am satisfied that the panel addressed all the issues before them. They took into account all the evidence and they reached reasoned conclusions which were open to them.
21. No error of law exists within their determination and this appeal by the respondent is dismissed.
22. The panel in the First-tier Tribunal made an anonymity direction. No application was made to me in respect of that direction and it is hereby continued and maintained.

Signed

Date

Upper Tribunal Judge Poole