Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: DA/00385/2013
DA/00387/2013
DA/00388/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
Oral judgment given at hearing On 27 June 2014	**On 16 July 2014**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LS
KS
QS
(ANONYMITY ORDER MADE)

Respondents

Representation:

For the Appellant: Mr G. Jack, Home Office Presenting Officer
For the Respondents: Ms M. Knorr, Counsel, instructed by Wilson Solicitors

DETERMINATION AND REASONS

1. The appellant in these proceedings is the Secretary of State. However, for convenience I refer to the parties as they were before the First-tier Tribunal.

2. The first appellant is a citizen of Jamaica who was born on 15 July 1984. She is the mother of the two other appellants who are minors who were born on 23 September 2004 and 19 October 2005 respectively.

3. The first appellant arrived in the UK on 21 February 2000 as a visitor when she was about 15 years of age. She arrived with her mother. On 7 January 2011 she was convicted of an offence of possession with intent to supply a Class A drug, namely 27.3 grammes of cocaine, that offence having been committed on 9 September 2010. On 3 February 2011 in the Crown Court at Cambridge she received a sentence of eighteen months' imprisonment.

4. On 13 February 2013 a decision was made to deport the first appellant under the automatic deportation provisions of Section 32(5) of the UK Borders Act 2007, with corresponding deportation decisions in respect of the minor appellants. The appeals came before a panel of the First-tier Tribunal which allowed the appeals of each appellant, the appeal of the first appellant being allowed under the Immigration Rules and that of the minor appellants under Article 8 of the ECHR. The Secretary of State having applied for permission to appeal against those decisions, permission to appeal was ultimately granted.

5. I should mention at this stage that this appeal came before me initially on 11 April 2014 whereby an issue arose in relation to the grant of permission. I can deal with that issue very shortly at this stage. In a 'Rule 24' response to the Upper Tribunal's grant of permission, it was contended on behalf of the appellants that because the application made to the First-tier Tribunal was out of time, the First-tier Tribunal should have "not admitted" that application.

6. It was contended that in consequence, the renewed application to the Upper Tribunal should have provided an explanation for the lateness of the application to the First-tier Tribunal.

7. I heard submissions from both parties in relation to that issue, as I say, on 11 April 2014. In a written decision promulgated on or about 20 May 2014, I concluded that the decision of the Upper Tribunal granting permission to appeal was a valid decision and did confer jurisdiction on the Upper Tribunal to consider the appeal.

8. I now deal with the substantive challenge by the Secretary of State to the decision of the First-tier Tribunal whereby the appeals of the appellants were allowed. The grounds of appeal before the Upper Tribunal concern, not necessarily in order of preference advanced on behalf of the Secretary of State, the lack of any reference by the First-tier Tribunal to risk of reoffending, and the First-tier Tribunal's conclusions under the Immigration Rules in terms of the reasonableness of the minor appellants being required to return to Jamaica with the appellant.

9. It is also said in the grounds that the Tribunal failed to give adequate consideration to objective evidence in relation to the special educational needs of one of the children, Q, who was born on 19 October 2006, and that there was a failure to give adequate reasons for finding that the circumstances in that child's case are exceptional.

10. With reference to various parts of the determination, Mr Jack on behalf of the Secretary of State submitted that there was a lack of adequate or sufficient reasons given for finding that it was not reasonable to expect the minor appellants to return to Jamaica. I was referred to a decision of the Court of Appeal reported as EV (Philippines) and others [2014] EWCA Civ 874. That was a decision concerning a Philippines national who came to the United Kingdom with a work permit as a skilled care worker and was given leave to remain until 8th February 2011. She arrived on 12th June 2007. She was later joined by her husband in 2008 and three children in July 2009.

11. Mr Jack in particular referred me to [60] of that decision which stated that in that case none of the family is a British citizen and none has a right to remain in the UK. It further stated that if the mother is removed, the father had no independent right to remain and that if the parents are removed it is entirely reasonable to expect the children to go with them. The court went on to state that as the Immigration Judge found, it was obviously in their best interests to remain with their parents and

> "Although it is, of course a question of fact for the tribunal, I cannot see that the desirability of being educated at public expense in the UK can outweigh the benefit to the children of remaining with their parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world."

Mr Jack relies on that passage as being a factor relevant to the question of reasonableness of their return.

12. Ms Knorr points me to the factual background of the appeal of these appellants, in particular the history of the first appellant. That history is set out extensively at [3] and [4] of the First-tier Tribunal's determination. I do not consider it necessary to refer at this stage to the particular details but they include a claim of physical and sexual abuse by her stepfather.

13. Ms Knorr submits that the appellant's background must have informed the judge's assessment of the facts, and the determination reflects the matters that were in issue before the First-tier Tribunal.

14. The First-tier Tribunal's findings of fact are set out from [10] of the determination. It was noted that the Secretary of State "unequivocally conceded" that there was no other family member who was able to take care of the minor appellants in the UK given that their father, I understand being a Mr S, is a Jamaican national who has not settled in the United Kingdom and merely had limited leave to remain until at that stage, at least until 11th March 2013. In the findings the First-tier Tribunal also made

reference to the lack of any challenge to the factual basis of the appeal, stating at [10] that the Secretary of State's representative in closing submissions did not refer to any evidence or otherwise put in issue the evidence of Ms H who is the appellant's stepsister or half-sister, and whose evidence was relevant to the background to the appeal.

15. The judge made many findings of fact. He referred to the private lives of all the appellants in the UK. In relation to the minor appellants, he said that their private lives comprise the period of their residence in the UK, the development of friendships and personal ties which were set out in the witness statement, and their attendance at a particular school. The judge noted that those private lives, in particular I suppose the first appellant's private life, was embarked on during a time during which the first appellant resided in the UK as an overstayer and the minor appellants as illegal residents.

16. At [15] the judge referred to the question of reasonableness, again in relation to the child Q born on 19 October 2006, but who had not lived continuously in the UK for at least seven years. The daughter of the first appellant, K, having been born on 23 April 2004, had resided in the UK for at least seven years.

17. At [16] it was recognised that K was not a British citizen and there was again reference to her immigration status. The Tribunal stated that she was an illegal resident although again stating that she is not responsible for that status, of course having been the responsibility of her mother. The Tribunal concluded that K had no meaningful contact or connection with Jamaica, that the first appellant's relationship with her mother is remote and that her mother suffers from difficulties with her health, not being able to provide meaningful assistance to the appellants if they were to settle in Jamaica. The Tribunal noted that K had resided in the UK for the entirety of her life and that that was a period just in excess of nine years at the date of the hearing.

18. It was also concluded that she had been anglicised "to a very considerable degree" and that she had community ties and affiliations, not least those which she has derived from her continuous attendance at the school that she attends. The First-tier judge went on to state that her life and aspirations are inextricably linked with the United Kingdom and that it would be "harsh and cruel to uproot her".

19. With reference to the decision in EV, Mr Jack referred to [35] of that decision which sets out a number of factors which could be taken into account, and maybe ought to be taken into account, in an assessment of the best interests of a child. Mr Jack submitted that those considerations are equally applicable in a reasonableness assessment as required by the Immigration Rules in a deportation case.

20. I am however, satisfied that the First-tier Tribunal did take into account a wide range of factors in the assessment of whether it would be reasonable

to expect K to leave the United Kingdom. Those factors are set out in the determination and include the length of time that she has been here, the strength of her connections to the UK and the connections, or lack of them, to Jamaica, as well as what support could be expected for the family as a whole on return to Jamaica. Again it is important to refer at this point to Ms Knorr's submissions in terms of the factual background to the appeal which was the platform from which the judge's conclusions were reached.

21. As I observed during the course of submissions, it does seem to me that the First-tier Tribunal did to some degree conflate considerations under Article 8 and under the Article 8 Immigration Rules, seemingly at [11] starting or embarking on the consideration of Article 8 proper and then at [14] moving on to consider the Article 8 Immigration Rules. But again, I think there is some merit in the observation made in turn by Ms Knorr to the effect that the state of the authorities at that point was not clear in terms of the inter-relationship between the Rules and Article 8.

22. In any event, notwithstanding that possible conflation between Article 8 and the Immigration Rules, I am not satisfied that that gives rise to any error of law, and indeed it was not a point relied on on behalf of the respondent.

23. The grounds, as I have already suggested, take issue with the fact that the First-tier Tribunal made no mention of the risk of reoffending. The argument, it seems to me, seems to have moved on from the assertion that there was no mention of it in its own terms, to the contention that it should have been factored into the reasonableness assessment under the Immigration Rules. It was accepted on behalf of the appellants that in many cases the risk of reoffending would be a factor to be taken into account in the reasonableness assessment but this is not one of those cases, it was contended.

24. It is true that the First-tier Tribunal made no reference to the risk of reoffending and in many cases it would amount to an error of law to have failed to have done so.

25. However, if it is an error of law in this case it is not one that is material, either to considerations under the Immigration Rules or to the pure Article 8 consideration. That is because, firstly, it does not seem to me that that was a matter relied on behalf of the respondent before the First-tier Tribunal. More importantly, in a forensic psychiatric assessment by Dr A Basu dated 3 June 2012, the appellant's risk of reoffending is expressed to be low. That assessment is confirmed in a report by the probation officer, Julia Bateman, in her letter dated 22 August 2012.

26. I do not believe that it has ever been contended that there is anything wrong with those assessments of the appellant's risk of reoffending. In the circumstances of this appeal, if there is an error of law in that regard it is not one that could have affected the outcome of the appeal.

27. Insofar as the grounds suggest that the First-tier Tribunal failed to take into account the public interest in deportation, that is not a contention which in my view has any merit. The First-tier Tribunal referred to the important public interest in the prevention of disorder and crime at [12] of the determination, indicating that "very significant weight" needed to be accorded to the public interest and the desirability of non-national criminals being deported. The same was again referred to at [15] of the determination.

28. In conclusion, I am satisfied that the First-tier Tribunal took into account everything that it should have taken into account and did not leave out of account anything that ought to have been taken into account. Accordingly, I am not satisfied that there is any error of law in the decision of the First-tier Tribunal, either in relation to the Immigration Rules or in relation to Article 8 of the ECHR.

Anonymity

Given that these proceedings involve children, I make an order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Consequently, this determination identifies the appellant's children, and the adults associated with them, including the appellant, by initials only in order to preserve the anonymity of those children.

Upper Tribunal Judge Kopieczek

14/07/14