



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

Appeal Number: DA/01451/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 5 December 2014  
Oral judgment**

**Determination**

**Promulgated  
On 2 January 2015**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**CHRISTOPHER KARAMA  
(Anonymity direction not made)**

Respondent

**Representation:**

For the Appellant: Ms J Isherwood, Senior Home Office Presenting Officer.

For the Respondent: Ms H Short, Counsel instructed by Turpin & Miller Solicitors  
(Oxford)

**DETERMINATION AND REASONS**

1. This is an appeal by the Secretary of State against a determination of First-tier Tribunal Judge Petherbridge promulgated on 7 October 2014 following a hearing at Taylor House on 24 September 2014 in which the Judge allowed the appeal of the applicant before him, Christopher Karama, against the decision of the Secretary of State that he should be deported from the United Kingdom as a result of his acts of criminality. The Judge

set out the correct self-direction in law in paragraphs 7 and 8 onwards, up to paragraph 18 of the determination, including reference to the provisions introduced by Section 19 Immigration Act 2014 which inserted Sections 117A to D into the 2002 Act.

2. Mr Karama finds himself in the position he is now as a result of his acts of criminality. The Judge records that on 2 November 2012 he was convicted at the Basildon Crown Court of two counts of possession or control of identity documents with intent for which he was sentenced to fourteen months' imprisonment. Judge Petherbridge set out the Sentencing Judge's comments which I do not need to refer to verbatim other than to the fact that Mr Karama was convicted, notwithstanding his not guilty plea, by a jury and the Sentencing Judge's reference to the fact that one of the convictions related to the use of a passport relating to a Mr Otuko who is deceased, in order for Mr Karama to obtain a driving licence. The Sentencing Judge found that to be an aggravating feature as were other features within the case involving a degree of planning. The Sentencing Judge considered that he had to pass a deterrent sentence for offences of this nature as a result of which there would be no discount as it was a 'not guilty' plea. Mr Karama was sentenced to fourteen months' imprisonment and subsequently made the subject of an automatic deportation order under UK Borders Act. He appealed on the basis that his deportation from the United Kingdom will breach his rights under Article 8.
3. As stated, the method by which courts and tribunals are required to assess the Article 8 issue has been set out in statutory form. The importance of that, as indeed Ms Short mentioned in her submissions, is that Parliament has set out and approved the way that such matters must be assessed which may also have a potential impact upon earlier case law decided prior to the introduction of the statutory provisions. Section 117A states that in considering the public interest question the court or the tribunal must in particular have regard in all cases to section 117B and in cases concerning the deportation of foreign criminals, to the considerations listed in Section 117C. It is accepted that 117B does not in isolation allow Mr Karama to succeed and in relation to Section 117C, Section 117C(3) states that in the case of a foreign criminal who has not been sentenced to a period of imprisonment of four years or more the public interest requires the foreign criminal's deportation unless Exception 1 or Exception 2 applies. Section 1 does not apply to this case and the relevant consideration was to Exception 2 to be found in Section 117C, (5). That provision applies where the criminal has a genuine and subsisting relationship with a qualified partner or a genuine and subsisting parental relationship with a qualifying child and the effect of the criminal's deportation on the partner or child would be unduly harsh.
4. As stated, the First-tier Judge set out in detail the correct legal framework and the nature of the written and oral evidence that was made available to the First-tier Tribunal. The Judge's findings are set out from paragraph 123 onwards of the determination in the first part of which the Judge

records a number of occasions when Mr Karama has committed criminal acts within the United Kingdom referring at paragraph 132 to the fact that as a result of the final conviction, he is now the subject of an automatic deportation decision. The Judge analyses the family members involved thereafter before turning to the relationship Mr Karama has to his children and to his wife from whom he was separated. The Judge notes a social worker's reports of 23 April 2014 and the update of 8 August 2014. It is clear the Judge considered the material before him with the required degree of anxious scrutiny. The Judge notes there have been very serious problems in the relationship Mr Karama has with his wife who he married in June 2011 although they have been in a relationship since at least 1996. The Judge notes that in April 2014 his wife told a social worker she was no longer in an active relationship with Mr Karama and at the original hearing of the appeal his wife did not attend. The social worker was able to interview Mr Karama on 9 April 2014 in which he admitted he had not seen his children for some time and that his wife had placed his possessions in the garage in their former home. At the moment he is bailed from immigration detention and is living at his sister's home in Chingford along with a niece Rachael. Those factors appear not to be disputed.

5. The Judge noted the content of the social worker's report, the findings of which were not challenged by the Presenting Officer according to paragraph 144 of the determination. The Judge heard oral evidence from Mr Karama's boys with whom he was impressed, although noting some discrepancies in the material before him. In paragraph 149 the Judge did not accept that Mr Karama had no relatives in Uganda and in paragraph 150 that whilst noting the comments regarding Mr Karama's wife's application for discretionary leave made by the Respondent, it was noted there was no reference made to Mr Karama; although things had now changed since the application was made and the Judge was satisfied there was now a meaningful relationship between Mr Karama and his wife. The Judge, however, went on to consider the statutory provisions and found that Exception 1 could not apply and then addressed Exception 2 before concluding "I do consider that the Appellant's deportation would be unduly harsh insofar as the three children are concerned".
7. The grounds on which permission to appeal were sought and granted challenge the balancing exercise undertaken by the Judge in relation to the criminality and the weight that should be given to that factor by reference to case law that preceded the introduction of the 2014 Act, and effectively submits that insufficient weight was given or indeed little weight was given to the case relied upon by the Secretary of State. While the Secretary of State has now set out how she considers when the need to deport a person arises, how the public interest should be assessed in statutory provisions, the question is whether it has been established that it was unduly harsh for Mr Karama to be removed. If that was the case the Secretary of State's own statutory provisions seem to indicate that his removal from the United Kingdom would not be required. Unduly harsh consequences or unjustifiably harsh consequences for the children will

mean the deportation or the requirement to deport Mr Karama would not be proportionate.

8. The Upper Tribunal discussed with Ms Short at some length earlier in the hearing what findings the Judge made regarding circumstances that were unduly harsh. It is my primary finding that the first error made by the Judge is that he failed to define within the body of the determination what the circumstances were that were harsh and why they were unduly harsh, i.e. that having considered the impact of the removal upon the children why that made the decision disproportionate when everything was properly taken into account.
9. Ms Short accepted that no specific reference was made to such circumstances in the determination but submitted that I could infer from a reading of the findings that the Judge had found the circumstances were unduly harsh based upon his acceptance and lack of challenge to the conclusions of the social worker. In relation to the social worker's report I have considered the response set out at paragraph 31 and in particular at pages 77 and 78 of Mr Karama's appeal bundle.
10. In paragraph 31 the social worker states:

“What effect Chris's removal to Uganda would have on each of the children. If he was returned to Uganda he would not be able to visit here so would not see the children at all. If possible could you comment on how his time in prison affected each of the children. The statements refer to Emmanuel struggling in school, Peter becoming very withdrawn and Annabelle really missing her father.”

That is in fact the question of the scope or a summary of the instructions to the expert that she was asked to comment upon in response to which the expert says:

“As I commented in my first report, when I had met with the boys, they had found it almost impossible to contemplate that their father might be returned to Uganda. Without doubt Annabelle who is close to her father would miss him. Whilst it is one prospect for him to be living here at her Aunt Barbara's house, it would be quite another for him to be in Africa. At 7 years of age, I am not sure that she would necessarily understand the complexities of this situation, but the fact that she would not be able to see him at all if he were in Africa would be detrimental to her emotional health, in my professional opinion. They have a close relationship and she clearly dotes on her father, enjoying special attention, being the youngest child and the only daughter. It would be unlikely that Annabelle would see him until she was much older if he returned to Uganda and she would thus in effect lose her father. Chris has played a significant part in her life since her birth even when he has not been living at home.”

The expert continues:

“I cannot comment on Emmanuel’s situation”

and then as follows in relation to Peter and Trevor:

“Both Peter and Trevor are apparently doing well at school and on the football field, which is a shared passion with their father. In spite of the family difficulties and no doubt because of the tenacity and determination of their mother over the last 18 months, they are making excellent progress. Like their sister, whilst their father is more a visitor to the home these days because of the parent’s relationship, they clearly are seeing him more regularly than they did when I made my first visits, as attested by both Annabelle herself and indeed her mother. Chris continues to be a significant figure in their lives and at some point will no doubt be quizzed by his sons as to how he managed *not* to sort out his immigration status and his subsequent actions.”

In paragraph 32 the expert continues:

“Annette and Chris’s commitment to the welfare of the children, despite the difficulties in their marriage” which is another issue addressed where she states:

“As I commented in my first report, ‘there is clearly a desire by both parents to focus on the welfare of the children – Annette at the present moment trying to protect them from the uncertainties around their father’s legal status in the UK, which in my professional opinion is the basis for the present conflict between those parents’. Subsequent to my visit in the spring, I have noted that Chris is spending more time at the family home constrained by the bail conditions and by the impact of these proceedings on the family. This is the beginning of a positive healing process and the sooner Chris can have his status ratified and so be able to work and contribute financially to the household expenditure, the sooner the possible improvement in the parents’ marriage.”

11. The First-tier Judge did not find that the impact of deportation would result in unduly harsh consequences so far as the adult relationship was concerned and although the Rule 24 response raises various points it is not a cross-appeal pleaded in time in relation to which Mr Karama has been granted permission to proceed. It is a response to the Secretary of State’s grounds of challenge to the determination.
12. Ms Short submitted that this is not a situation on the evidence of the children just becoming upset if their father is removed by way of deportation. It is submitted that Annabelle in particular would suffer detriment to her emotional health. Notwithstanding this, it was important

for the Judge to have considered all the available evidence. The first point is that the primary carer of the children is their mother and has been since separation and during their father's imprisonment. If the father was deported the children will remain with their mother and so their primary needs will be met by her both on a physical and emotional level. It has not been shown on the available material before the Judge that the mother will be incapable of meeting such needs. It has not been shown on the evidence that the impact of father's imprisonment or loss of contact or separation has caused or led to any form of irreparable harm to the children. There was no evidence before the First-tier Judge to show that if Annabelle suffered harm to her emotional health that this could not be met and managed by her mother undertaking the valuable parenting role that she has undertaken to-date.

13. The second point of interest is that the social worker makes a statement "it would be detrimental to her emotional health in her professional opinion" and then stops. There is no detailed analysis in what way emotional health would be impacted or what affect that would have upon the child in relation to her general day-to-day functioning, emotional and physical development, or education. The child is 7 years old, is in a settled stable environment with her mother and her father visits, albeit that father and daughter are very close as indeed many fathers and their daughters are. Separation occurs in families on divorce and separation but this does not necessarily mean that the impact on the child will be such that the unjustifiably unduly harsh test can be said to be satisfied per se.
14. It is interesting to note that Peter and Trevor are doing well at school in relation to their social matters, the football that they undertake, and are making excellent progress. This indicates that the separation of their father from their lives has had no adverse impact upon them that could be classified as being unduly harsh. I accept that they want to live in a home with their father and that was the evidence they gave to the First-tier Tribunal but it was necessary for the Judge to consider, if their father was deported, what the consequences of that will be in relation to the impact upon the boys. There is no evidence to suggest an impact sufficient to satisfy the definition of unduly harsh. It appears these are two balanced young men, and credit to their mother for that fact, who are getting on with their lives, who love spending time with their father, and who may at some point in the future demand an explanation.
15. In relation to Emmanuel there is no evidence of any undue impact upon the child and one assumes the three children the Judge was referring to are Annabelle, Peter and Trevor.
16. A bold statement that deportation would be unduly harsh without a proper analysis of the impact and consequence of the deportation is insufficient. I find in that respect the Judge has materially erred such that the finding made on that basis under Article 8 must be set aside.

17. Ms Short was asked to address the Tribunal, in the alternative, on the basis the decision reached was as set out above and the decision needed to be re-made on the basis of the evidence before the First-tier Tribunal, and how she submits unduly harsh consequences will arise. Ms Short submitted that the unduly harsh consequences relied upon by Mr Karama are the impact upon the welfare of the children and the fact the children, with their fathers presence, appeared to be taking a more optimistic rather than pessimistic view of life and its outlook for the future. That may be the case but what needs to be considered is the consequence of their father's removal, if their view changes, upon the children. The difficulty Mr Karama faces in relation to this matter is that the Tribunal can only make the decision on the basis of the information provided to it. That information indicated that the children wanted to live in a household with their mother and father. I do not dispute that, that is what most children wish. The evidence indicated that their mother and father, to their credit as parents, put their children's best interests first. That again is not disputed. The Judge found that there was a meaningful relationship between their mother and father and indicated there could be better prospects for their future. That is not disputed. What the Judge was required to find and what I am required to consider in re-making this decision is whether on the basis of the information available Mr Karama has established to the required standard that the consequences of his deportation upon his partner and children will be unduly harsh, i.e. will result in consequences such that the refusal cannot be said to be proportionate. In this respect, when one considers the nature of his offending and the fact Mr Karama is subject to an automatic deportation order, the fact that a deterrent sentence was passed and the argument the deterrent element of deportation is very strong in a case of this nature involving the use of documentation for purposes for which Mr Karama intended, and balancing this against the case relating to the family members set out above including the lack of sufficient material to establish long term harm or consequences that materially impact upon the children's development and welfare or needs that cannot be met by their mother, that the correct finding to make on the evidence is that Mr Karama has not discharged the burden upon him and accordingly the appeal is dismissed.

### **Decision**

18. The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is dismissed.

Anonymity.

19. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I

make no such order pursuant to rule 14 of the Tribunal Procedure  
(Upper Tribunal) Rules 2008.

Signed

Date 31<sup>st</sup> December 2014

Upper Tribunal Judge Hanson