



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

Appeal Number: HU/11289/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30 May 2017**

**Decision & Reasons Promulgated  
On 1 June 2017**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**HN  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Collins, counsel instructed by Bureau 4 Migrant Advice & Policy

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge CA Parker, promulgated on 31 October 2016. Permission to appeal was granted by First-tier Tribunal Judge Parkes on 21 April 2017.

## Anonymity

2. A direction was made previously, and is reiterated below.

## Background

3. The appellant entered the United Kingdom on 20 February 2003 with limited leave. His attempts to extend that leave, out of time, were unsuccessful and on 25 January 2007 he was served with form IS151A. Shortly thereafter he applied for asylum. On 18 May 2007, the appellant was convicted of three counts of possession of a false identity document with intent and sentenced to 12 months' imprisonment with a recommendation for deportation. The appellant's asylum claim was refused and his appeal against that decision as well as a decision to make a deportation order was dismissed in 2008. The deportation order was signed on 23 June 2008 but not signed as the appellant absconded.
4. The appellant next came to light on 15 July 2011 in the context of making representations relying on family life. On 28 May 2012, the respondent refused to revoke the deportation order. The appellant's appeal against that decision was allowed, to the limited extent that the respondent was to properly consider the provisions of section 55 of the UK Borders, Citizenship and Immigration Act 2009. After a three-year delay and an enquiry by the appellant's Member of Parliament, the respondent decided, on 22 October 2015, to refuse the appellant's human rights claim.
5. In refusing the human rights claim, the respondent noted that the appellant claimed family life with his British spouse as well as two British children and a step-child. Owing to the appellant's 12-month prison sentence, the respondent considered the exceptions to deportation set out in paragraphs 399 and 399A of the Immigration Rules. It was not accepted that the appellant had a genuine and subsisting parental relationship with his daughter, R, from a previous relationship. It was accepted that the appellant had a genuine and subsisting relationship with his son, A but not accepted that it would be unduly harsh for him to live in Morocco or to remain in the United Kingdom without the appellant. It was further accepted that the appellant had a genuine and subsisting relationship with his wife but that it would not be unduly harsh for her to live in Morocco or remain in the United Kingdom.
6. As for paragraph 399A of the Rules, it was noted that the appellant entered the United Kingdom aged 39 and had overstayed. The Secretary of State did not, therefore, accept that the appellant met the family or private life exceptions to deportation. The respondent did not accept that there were very compelling circumstances such that the appellant should not be deported and specifically, it was not accepted that the appellant had a genuine and subsisting relationship with his step-son, Y.

### The hearing before the First-tier Tribunal

7. At the hearing before the First-tier Tribunal, only the appellant and his nephew AN attended and gave evidence. Counsel for the appellant advised the judge that the appellant's wife was not present because she had to collect a child from school that afternoon. Judge Parker noted the absence of the appellant's wife and offered to put the hearing back in the list to enable her to attend as she lived nearby. That offer was declined by the appellant because his wife was worried about the consequences of attending the hearing. Those same consequences prevented the provision of an up to date witness statement from the wife. The judge concluded the appellant had failed to establish that he enjoyed a genuine and subsisting relationships with his wife and children and thus there was no evidential basis for a consideration of whether there may be an exception to deportation.

### The grounds of appeal

8. The grounds of appeal were twofold. Firstly, it was argued that the judge was not entitled to go behind the "findings" reached by the respondent in the decision letter and secondly that the judge failed to make any finding as to the public interest in deporting the appellant, after consideration of part 5A of the Nationality, Immigration and Asylum Act 2002.
9. Permission to appeal was granted on the basis sought.
10. The respondent's Rule 24 response, received on 4 May 2017, indicated that the appeal was opposed; that it was open to the judge to consider issues based on documentary and oral evidence at the hearing and the grounds failed to establish how, if this was an error, this would make a material difference to the outcome.

### The hearing

11. Mr Collins informed me that the appellant was present with his wife, child and step-son. He did not seek to fully rely on the grounds of appeal, which he described as going too far, but emphasised that the respondent had accepted that the appellant had a genuine and subsisting relationship with his wife and his child from that relationship. Mr Collins accepted that minimal up-to-date evidence was before the First-tier Tribunal but that the appellant had provided a statement in which he said that he visited V every 2 months; resided with his wife, A and Y and treated Y as his own son given that Y's biological father had no contact with him. While conceding that the judge was not obliged to accept the respondent's view of the relationships, Mr Collins submitted that the judge had written off the entire claim because the wife did not attend the hearing. It would have been open to the judge to give limited or minimal weight to the appellant's evidence. Furthermore, once the judge considered there to be no family

life, she had given no further consideration to a case which deserved more.

12. Mr Jarvis had little to add to the Rule 24 response and argued that the judge made no procedural error in addressing the issue of the wife's non-attendance.
13. In closing, Mr Collins stated that he would not advance the proposition that the judge behaved inappropriately, on the contrary she gave counsel the chance to call the wife. He accepted that the appellant did not have the strongest private life claim and that the relationship with the wife was the strongest point but had been developed when the appellant was in the United Kingdom precariously and his wife was also from Morocco. Nonetheless, he argued that the balancing exercise had gone awry in this case.
14. At the end of the hearing I advised the parties that the judge made no material error of law and I was upholding her decision.

#### Decision on error of law

15. As accepted by Mr Collins, and as set out at [8-10] of the decision and reasons, the judge was scrupulously fair in the process she followed. The judge, being aware of the consequences of the absence of the wife and the dated witness statement before her, gave the appellant the opportunity to give instructions to his counsel as well as the opportunity for the wife to attend. The appellant did not seek an adjournment and stated he wished to proceed without his wife's attendance.
16. At [33] the judge explained that she drew an adverse inference from the failure of the wife to attend and gave reasons for that. Essentially she did not accept the explanation put forward by the appellant for her non-attendance. There is no challenge to that finding. Mr Collins is not right to say that the judge wrote off the appellant's written and oral evidence as to the relationship with his wife and the children. At [35], the judge acknowledges that there was evidence of genuine and subsisting relationships as of 2012; she considers the evidence from the appellant, his witness and the statement from Y and records that she "*placed some weight upon*" them. The judge nonetheless concluded that the evidence before her was insufficient to establish the claimed relationships at the time of the hearing. This was a finding that she was entitled to make, given the scant evidence before her.
17. The second ground does not advance the appellant's claim further, given that he plainly cannot meet Exception 1 given his overwhelmingly unlawful residence in the United Kingdom which falls considerably short of half of his life and his failure to show that Exception 2 applied regarding his wife or the children. Thus, owing to the content of section 117C (3) of the 2002 Act, the public interest required the appellant's deportation.

## Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I uphold the decision of the First-tier Tribunal.

## **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: T Kamara

Date 19 July 2017

Upper Tribunal Judge Kamara