Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: HU/18137/2016**
HU/18138/2016

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 3 July 2017	**On 7 July 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

and

S S
P S
(ANONYMITY DIRECTION MADE)
Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Mr Worthington, Parker Rhodes Hickmotts, Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and to the respondent as the appellants (as they appeared respectively before the First-tier Tribunal). The appellants, S S and P S are mother and daughter; the second appellant was born in 2015. The first appellant has another child (K) with whom she does not live but with whom she has contact in the

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United Kingdom who is also a British citizen. The first appellant has a long history of offending in the United Kingdom. The full particulars of that offending are set out at [11] of Judge Hindson's decision which was promulgated on 6 December 2016 and by which he allowed the appeal of both appellants on human rights grounds (Article 8 ECHR). It against that decision the Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The grounds of appeal largely concern the apparent failure of the judge to make reference to either the Immigration Rules (in particular, paragraph 399(a)) and also the statutory provisions under Section 117 of the 2002 Act (as amended). The grounds also assert that the judge elevated the best interests of the children in this appeal to a paramount consideration rather than one of primary interest. The grounds assert that the judge failed to apply *MM (Uganda)* [2016] EWCA Civ 450 and did not consider insufficient detail or give sufficient weight to the appellant's criminal and immigration history.

3. In his submissions to the Upper Tribunal, Mr Worthington, for the appellants, submitted that the judge had not been required to refer in terms to any particular item of case law or to statutory provisions or the Immigration Rules. However, the important issue was whether or not he had considered all the relevant evidence and also had applied any relevant legal provision to the facts as he found them.

4. It is true that the judge does not refer in terms to the "unduly harsh" test which is set out in paragraph 399(a) of HC 395 (as amended). Likewise the judge did not refer that in terms to any part of Section 117 of the 2002 Act. I agree with the principle submitted by Mr Worthington that it is not necessarily an error of law for the Tribunal to fail to refer to particular legal provisions; what is important is that the judge applies the law correctly.

5. In the present instance, I am satisfied that he has done so. I say that for the following reasons. First, the judge has conducted a proper analysis of all the evidence which was before him, which included evidence which had not been before previous Tribunals (whose decisions had been reversed on appeal). It was open to the judge to find, on the evidence, that K's best interests require that she continue to have a relationship with her mother, the first appellant. At [48], the judge wrote, "I am satisfied that removing the appellant to Jamaica will fragment the family in a way that would be damaging to the children." It was correct for the judge to take account of the inter-relationship between the two children of the first appellant, namely K and the second appellant. Secondly, I am satisfied that the judge, although he did not refer to it in terms, did address his mind to the correct test (that of "undue harshness") and further that it was possible, on the evidence, for the judge to reach the finding that it would be unduly harsh for the second appellant to go to live in Jamaica. The judge took account of the fact that K is a British citizen who would not be required, even by the respondent's own policy guidelines, to leave the European Union.

6. Thirdly, I am satisfied the judge has paid proper regard to the public interests in this appeal. He has left no doubt that he has considered the appellant's lengthy and appalling criminal history and he has provided reasons (albeit brief) for finding that, notwithstanding the public interest concerned with the appellant's removal, she should be allowed to stay on human rights grounds. Fourthly, I am not satisfied, as the grounds assert, that the judge has elevated the best interests of the children to the status of paramountcy. He has dealt with it first as he was required to do so (*ZH (Tanzania) [2011] 2 AC 166)*

7. Ultimately, the judge has reached a conclusion based upon sound findings of fact which were, in turn, achieved following a proper analysis of all the relevant evidence. In such circumstances, the Tribunal should hesitate before interfering with the conclusions of a First-tier Tribunal Judge. I am aware that, by reference to the same facts, a different Tribunal may have reached a different outcome; however, that is not the point. I should only interfere with the conclusion of Judge Hindson if I am satisfied that he has perpetrated an error in law and, for the reasons I have given above, I find that he has not done so.

Notice of Decision

8. This appeal is dismissed.

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 Date 5 July 2017

Upper Tribunal Judge Clive Lane