Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/22722/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 November 2017	**On 6 December 2017**

Before

MR JUSTICE JULIAN KNOWLES
UPPER TRIBUNAL JUDGE CANAVAN

Between

AKINO DAMION PAGE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. Chelliah
Counsel instructed by Forward & Youssuf Solicitors
For the Respondent: Mr E. Tufan
Senior Home Office Presenting Officer

DECISION AND REASONS

1. For the sake of continuity, we refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal to the Upper Tribunal.

2. The appellant appealed against the respondent's decision dated 12 July 2016 to refuse a human rights claim in the context of deportation proceedings. First-tier Tribunal Judge Cohen ("the judge") allowed the appeal in a decision promulgated on 18 August 2017.

3. The Secretary of State seeks to appeal the First-tier Tribunal decision on the following grounds:

   (i) The judge failed to give adequate reasons to support his finding that the appellant had a genuine parental relationship with his youngest child, who was born while the appellant was in prison, or to explain why he considered that the appellant played a 'significant role' in the lives of his two children.

   (ii) The judge failed to give adequate reasons to support his finding that it would be 'unduly harsh' for the children to remain in the UK if the appellant was deported. The judge failed to identify any factors that would render deportation unduly harsh on the children over and above the usual impact of deportation on a child. In making the assessment the judge failed to give weight to the public interest in deportation.

Decision and reasons

4. After hearing submissions from both parties, and after carefully considering the First-tier Tribunal decision, we conclude that the decision involved the making of an error of law.

5. The judge had the benefit of hearing evidence from the appellant's mother and his partner (the appellant is in Jamaica). The judge noted that there was evidence to show that the appellant had an ongoing relationship with his daughter over a period of time. He took into account the written evidence given by his daughter's mother stating that she frequently spent weekends and holidays with her father [23]. It was open to him to accept the evidence of the appellant's partner, who explained the nature of his relationship with her and the child. She said that she had visited the appellant in prison [24].

6. The respondent does not seek to criticise the judge's finding that it would be unduly harsh to expect the children to live with him in Jamaica. Clearly that was a sustainable finding given that both children are settled in the UK with their mothers. However, the respondent seeks to challenge the judge's finding that it was 'unduly harsh' to expect the children to remain in the UK without their father. The judge's finding was confined to the following comment at [25]:

> "…I additionally find it would be unduly harsh for the appellant's children to remain in the UK without having access to the appellant particularly noting the significant role that he has played in their lives and upbringing. I find that the appellant's deportation will in effect cease his family life with his children and I find that this

> would be disproportionate in all the circumstances particularly noting the best interests of those children."

7. It was only after the judge came to this conclusion that he went on to consider the criminal offence committed by the appellant. He noted that the appellant had been convicted of "serious criminal wrongdoing involving the sale of class A drugs". He had regard to the fact that the sentencing judge had taken into account "substantial mitigation" and the fact that there was additional evidence indicating that the appellant was "a model prisoner" who had undertaken drugs rehabilitation courses [26]. He concluded at [29].

> "29. I note the public interest and expectation in respect of the deportation of foreign criminals but find that the appellant meets the exception included in the Immigration Rules to deportation and find that it is not in the public interest to deport the father of two British children who has a significant role and parental relationship in their lives and who speaks English and intends to work and support his family in the future. I additionally find that the appellant has reformed and does not pose a future risk to society."

8. While the judge had the benefit of hearing evidence from members of the appellant's family, on the face of it the appellant lived quite some distance from his daughter and his second child was born while he was in prison. His partner confirmed that she visited him in prison, but the contact he had with the child would have been somewhat limited by the circumstances. Although the judge was entitled to conclude that the evidence showed that he had a parental relationship with the children the Court of Appeal has made clear in a series of decisions that the public interest in deportation will often outweigh the interests of the child. The effect of deportation is to separate children from their parent because of his or her criminal actions: see *Lee v SSHD* [2011] EWCA Civ 348.

9. Having read the decision as a whole, we conclude that the judge did not give adequate reasons to explain why he found that the applicant played a 'significant role' in the children's lives such that it gave rise to the kind of circumstances that would outweigh the weight to be given to the public interest in deportation. Nor did he explain adequately how or why the fact of separation, which is the unfortunate consequence of deportation, rendered the decision to deport the appellant 'unduly harsh' on the children on the facts of this case. While it was open to the judge to consider the extent and nature of the offence and the likelihood of reoffending, we are not satisfied that sufficient reasons were given to demonstrate that the public interest considerations were adequately weighed and placed in the balance as part of the assessment of whether it was 'unduly harsh' on the children to be separated from their father: see *MM (Uganda) v SSHD* [2016] EWCA Civ 617. The judge made his finding in [25] before he went on to consider the nature of the offence and without reference to the rest of the appellant's immigration history (he had no leave to remain since 2006 and was therefore liable to removal in any event).

10. For these reasons, we conclude that the First-tier Tribunal decision involved the making of an error of law and the decision must be set aside.

DECISION

The First-tier Tribunal's decision involved the making of an error on a point of law

The decision is set aside

Tribunal for a fresh hearing

Signed  Date 05 December 2017
Upper Tribunal Judge Canavan