



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: HU/05143/2017

THE IMMIGRATION ACTS

At Royal Courts of Justice, Belfast
on 25.07.2018

Decision signed: 25.07.2018
sent out: 02.08.2018

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Wilfredo [B]

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: Mr Abed Natur, solicitor, Dungannon

For the respondent: Mr Miles Matthews

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Francis Farrelly), sitting at Belfast on 21 July 2017, to dismiss a deportation appeal by a citizen of Chile, born 1984.

2. The appellant had arrived in Northern Ireland from the Republic of Ireland in 2008, but did not come to the notice of the UK authorities till met with by immigration officers at the port of Liverpool in 2016, when he was detained as an illegal entrant. He told them about his family life over here, which I shall come back to; but further inquiries showed he had been convicted of robbery in Chile in 2004, and sentenced to five years and a day's imprisonment. On 5 July 2016 he was served with a decision to deport him, as someone whose presence was not conducive to the public good. As the judge was well aware, his foreign conviction did not make him a 'foreign criminal'. The appellant made a human

NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.

(2) persons under 18 are referred to by initials, and must not be further identified.

right claim in response to the deportation notice, which was refused in another decision, served on him on 14 April 2017.

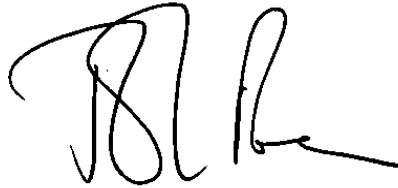
3. Meanwhile the appellant had met a British/Irish citizen called [AM], and they had had two children, C in 2012 and L in 2013: already had R, born 2004, by a previous relationship. By the date of the hearing before the judge, the appellant and [AM] and the children were living apart; but in his witness statement he asserted their intention of getting back together. Both C and L had problems, C with chronic asthma and L with speech difficulties. The judge also had a 'grounding affidavit' by [AM], sworn in January 2016 in the judicial review proceedings which followed the appellant's detention.
4. On 20 July 2017, the day before the hearing, the appellant's solicitors e-mailed the Tribunal to say that [AM], who had previously told them she would be there, had sent them a text to say that she couldn't, as her mother was ill and her sister-in-law on holiday. Mr Natur repeated this application before the judge, who dealt with it at paragraphs 9, 10 (where he dealt with *Nwaigwe* (adjournment: fairness) [2014] UKUT 418 (IAC) and the Procedure Rules, and 11, where he gave his reasons as follows:
 - (a) the children could have been brought to the hearing;
 - (b) there was no evidence that [AM]'s mother was critically ill;
 - (c) it was not clear that [AM] would come to give evidence at any adjourned hearing; and
 - (d) her evidence was not essential to the appellant's case.
5. Mr Matthews conceded at the start of the hearing before me that, while points (a) and (b) were, as he saw it, perfectly valid, the same was not the case with (c) or (d), and in his view the appeal must be allowed, with a direction for a fresh hearing. I take the same view, for reasons which I shall explain.
6. [AM] had supported the appellant's case in the judicial review proceedings, and her affidavit from those was before the judge: she had been in touch with the appellant's solicitors in advance of the hearing, and, whatever the judge thought of her reasons for not coming this time, there was no real basis for taking the view that she would not come to an adjourned hearing.
7. So far as the importance of her evidence is concerned, the judge was perfectly justified, in this case of an overseas sentence, in considering by way of analogy the provisions of s.117C of the Nationality, Immigration and Asylum Act 2002 about those sentenced to imprisonment for four years or more. On the other hand, he was not obliged by those provisions, since this appellant was not a 'foreign criminal' in their terms, to require him to show 'very compelling circumstances over and above those described in Exceptions 1 and 2' if his deportation were not to be in the public interest.
8. Both the appellant and [AM] had expressed the intention of getting back together again: their children had some significant health problems, and, if this appeal were to be meaningful, then the judge needed to take a view, on her evidence as well as his, about

the likelihood and necessity of his providing significant support for her and them, and to weigh it against his Chilean conviction from 2004 in the light of the relevant law.

9. For these reasons there will need to be a fresh hearing.

Appeal allowed: first-tier decision set aside

Fresh hearing in First-Tier Tribunal at Belfast, not before Judge Farrelly

A handwritten signature in black ink, appearing to be 'J. Farrelly', written in a cursive style.

(a judge of the Upper Tribunal)

Date: 25 July 2018