Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08668/2017

THE IMMIGRATION ACTS

Heard at Newport	**Decision & Reasons Promulgated**
On 9 January 2018	**On 7 February 2018**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

JC (AKA IFF)
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K Parker instructed by J M Wilson Solicitors
For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Jamaica who was born on [ ] 1975. He entered the United Kingdom in 1996 as a visitor. After his leave expired, the appellant overstayed.

3. On 31 March 2011, the appellant was convicted on fourteen counts of supplying a class A drug and was sentenced to five years' imprisonment. After he was released on licence, and during the period of his licence, the appellant again offended. On 25 April 2016, he was convicted at the Southwark Crown Court, following a jury trial, of a money laundering offence arising out of the supply by him of class A drugs. He was sentenced to 54 months' imprisonment on 27 May 2016 but that sentence was subsequently reduced on appeal to one of 30 months' imprisonment.

4. On 21 June 2016, the appellant was notified that he was liable to be deported as a result of his offending. Although, it would appear, the appellant did not respond to the invitation to submit representations why he should not be deported, the Secretary of State treated him as having made a human rights claim. On 28 July 2017, the Secretary of State refused the appellant's human rights claim based upon Art 8 of the ECHR.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. His appeal was heard by Judge Lal on 18 September 2017. Before the judge, the appellant and his partner ("NH") who is a British citizen gave oral evidence. The evidence included that the appellant and NH had four children who were British citizens born respectively on [ ] 2003, [ ] 2006, [ ] 2010 and [ ] 2016.

6. The judge made a number of findings. First, at para 18, he found:

> "the Appellant to be overall a poor witness of truth and the Tribunal was under the distinct impression he was actively misleading the Tribunal when he described the various reasons why he wanted to stay in the UK".

7. Secondly, the judge noted (at para 22) that:

> "The best interests of the children have at all times to be considered and the usual starting point is that it is in the best interests of the child to be brought up by both their parents".

8. Then, at paras 25–27, the judge gave his reasons for finding that the appellant's deportation would not breach Art 8 as follows:

> "25. The Tribunal finds that the Appellant has a limited family life in the UK. The evidence suggests that he is actually a drug dealer mainly based in London but with children and a partner in Birmingham. The Tribunal noted the letters from his children but it also noted that he has not seen them in the previous 17 months. The Tribunal finds that in all probability he is a fairly 'hands off' father and he has spent large parts of time from 2011 in custody in any event.
>
> 26. The Tribunal noted the remarks of the sentencing judge that the Appellant had travelled to London to deal in drugs while still on licence. The Tribunal is satisfied that the convictions represent the serious end of offending behaviour. The Tribunal finds that taken at its highest the Appellant only has the potential of establishing a family life in the UK on the basis that he indicated a

commitment to be involved with his children but that he has in fact no meaningful family life at present.

27. In the alternative, removal would be arguably proportionate in light of the fact of the Appellant's appalling immigration history in the UK and the serious offences for which the Appellant has been convicted of. He has never enjoyed any sort of relationships where it could be said currently that his removal would have a disproportionate impact on him or others. In fact, it is arguable that removing him from the UK will lessen the risk to society in general from a man who has serious convictions for offences that have a negative impact on society at large, namely the supply of Class A drugs. The public interest in this case clearly out weighs any negative impact to his partner or their children. The Tribunal has seen no evidence to suggest that contact could not be maintained by visits and phone calls as it has been when the Appellant has been living in London prior to being sentenced. The Appellant is apparently an electrician and he could presumably do this in Jamaica. He is in good health. The Tribunal dismisses the Article 8 appeal".

The Appeal to the Upper Tribunal

9. The appellant sought permission to appeal to the Upper Tribunal. On 13 October 2017, the First-tier Tribunal (Judge Keane) granted the appellant permission to appeal in essence on the basis that the judge had failed to accord "adequate or indeed any weight to the hardship which the appellant's children might experience consequent upon his removal from the United Kingdom".

10. On 10 November 2017, the Secretary of State filed a rule 24 response seeking to uphold the judge's decision.

The Submissions

11. On behalf of the appellant, Ms Parker submitted that the judge had failed properly to consider the best interests of the appellant's four children with his partner, NH. She submitted that the judge had failed to accord any or any adequate weight to the effect his deportation would have upon them and had made no relevant findings of fact. Ms Parker relied upon the case of MK (best interests of child) India [2011] UKUT 00475 (IAC) at [19] and [20] emphasising the importance of considering and reaching findings on the best interests of any children. In her oral submissions, Ms Parker, relying upon her skeleton argument (in particular at para 9), contended that it was an insufficient consideration of the children's best interests simply:

    (a) to make a general statement about the best interests of the children to be brought up by both parents at para 22;

    (b) to comment that "in all probability he is a fairly 'hands off' father" at para 25;

    (c) to note at para 27 that contact could be maintained by visits and phone calls; and

(d) to conclude at para 27 that the public interest outweighed any negative impact on the appellant's partner or his children.

Ms Parker submitted that the judge had only made a passing reference to letters written by the children and it could not, therefore, be said that he had properly taken into account their views. Ms Parker also submitted that the judge had not given any detailed reasons for finding at para 26 that there was "no meaningful family life" at present.

12. On behalf of the respondent, Mr Richards submitted that the judge had reached a sustainable conclusion. He submitted that there was an absence of a protracted analysis of the "best interests" of the children for good reason. First, the judge had found the appellant to be a poor witness of truth at para 18 of his decision and that the appellant had actively misled the Tribunal when he said why he wanted to stay in the UK. Secondly, the judge had recognised that it was generally in the best interests of children to be brought up by both parents but that was not what had happened in the case of the appellant's children. He relied upon the judge's finding at para 25 that the appellant was a "'fairly hands off' father" and at para 26 that there was "no meaningful family life at present". Mr Richards submitted that was a conclusion properly open to the judge and was adequately reasoned. He submitted that there could be no circumstances where the judge could find that the appellant's deportation, given his offending and the public interest reflected in that offending, would be outweighed by the children's best interests or could, if s.117C(5) of the Nationality, Immigration and Asylum Act 2002 was applied, be said to be "unduly harsh". Mr Richards submitted that although the judge's determination was brief, it was brief for a reason, namely, given the stark findings of fact made by the judge there was only one conclusion that could be reached that the appellant's deportation was proportionate.

Discussion

13. The appellant's claim to remain in the UK was firmly and exclusively based on Art 8 of the ECHR. At para 24 of his determination, Judge Lal set out the five-stage test in R (Razgar) v SSHD [2004] UKHL 27 at [17]. Reading Judge Lal's reasons at paras 25–27, he made two principal findings. First, he appears to find, in para 26, that Art 8.1 is not engaged because there was "in fact no meaningful family life at present". That factual finding, though questioned by Ms Parker in her oral submissions, was not challenged in the appellant's grounds of appeal which are restricted to a challenge to the judge's assessment and findings in respect of the children's best interests. Secondly, in any event, the judge went on in para 27 to find that the appellant's deportation would be proportionate.

14. As I have indicated, the appellant has not formally challenged the judge's finding in para 26. The actual finding is that there is "no meaningful family life at present". Whether this should have led the judge to find that Art 8.1 was not engaged is, as I have already noted, not challenged in the grounds.

15. The factual findings concerning the appellant's involvement with his children made at paras 25 and 26 cumulatively are, in my judgment, ones properly open to the judge on the evidence. The judge simply did not believe the appellant's evidence concerning his reasons for wanting to stay in the UK. That, in my judgment, reflected on the appellant's claimed relationship with his children. He had not, in fact, seen them for the previous seventeen months. During that time he had, of course, been in prison or immigration detention. I was told that he had been released from his custodial sentence on 24 July 2017 but had, thereafter, been in immigration detention until December 2017. The fact of the matter was that during that time he had not been visited by his children and had not seen them. He and his partner gave the explanation that this was due to their finances or due to the cost. She had, however, visited him three times during the most recent sentence. The evidence was also that the appellant had been living in London previously where, as the sentencing judge found, he had been a drug dealer. His denial of that in cross-examination in this appeal ran counter to the basis upon which he was sentenced following his conviction for money laundering.

16. Although the judge does not set out the letters provided by the appellant's children, and indeed his mother-in-law, he made reference to them at paras 12 and 18 of his determination, in the latter instance stating that they "do not assist" the appellant in showing that his deportation would be proportionate. I have read the letters and they cumulatively, perhaps not unexpectedly, contain pleas that the appellant be allowed to remain in the UK. I do not accept Ms Parker's submission that the judge failed adequately to consider these letters simply because he did not set out their detail. It is clear to me that he did take them into account. However, looking at the evidence overall, it was not irrational for the judge to find (particularly given his adverse view as to the appellant's veracity) that his relationship with the children was "hands off" and that any relationship was not "meaningful" at present.

17. In the light of this, I accept Mr Richards' submission that, despite the lack of detailed reasoning, it is plain that the judge took the view that he had not established that his deportation would have a sufficient negative impact on his children (or indeed his partner) which would outweigh the clear public interest demonstrated by the seriousness of the appellant's offending arising out of his 2016 conviction for money laundering of funds whilst supplying class A drugs. That was a very serious offence that entailed a significant public interest in his deportation (see, e.g. s.117C(2) of the NIA Act 2002). There was, before the judge, little or no evidence of any impact upon the children of his deportation beyond the 'limited' relationship with them and the heart-felt pleas contained in their letters.

18. In my judgment, it was not only reasonable, but was in fact inevitable, that the judge would conclude that the best interests of the children (given his findings) could not outweigh the public interest in the appellant's deportation.

19. In substance, therefore, I accept Mr Richards' submissions and reject those of Ms Parker that the judge materially erred in law by failing properly to take into account the children's best interests in reaching his finding that the appellant's deportation was proportionate. That is sufficient in itself to dismiss the appellant's appeal to this Tribunal on the basis of the grounds.

20. One final matter, which I raised during the course of the hearing, concerns s.117C of the NIA Act 2002. Section 117C(3) provides that in the case of a foreign criminal who has not been sentenced to a period of four years or more (which includes the appellant), the public interest requires that individual's deportation unless Exception 1 or 2 in s.117C(4) or 117C(5) applies. The latter (Exception 2) applies where the individual has a:

> "... genuine and subsisting parental relationship with a qualifying child, and the effect of [the individual's] deportation on the ... child would be unduly harsh".

21. Judge Lal made no reference to this provision which, on the face of it, may have applied to the appellant. Certainly, his four children are each a "qualifying child" because they are all British citizens (see s.117D(1)). It may be, however, that the judge did not consider s.117C(5) because, on the basis of his findings in paras 25 and 26 as to the nature of the relationship between the appellant and his children, he took the view that there was not a "genuine and subsisting parental relationship" with them. However, even if s.117C(5) did apply, the requirement to demonstrate that the effect upon the children would be "unduly harsh" imposed a high threshold requiring consideration of the public interest (see MM (Uganda) v SSHD [2016] EWCA Civ 450). If it did not apply, then the appellant would have to establish "very compelling circumstances" over and above those in Exception 1 to outweigh the public interest (see NA (Pakistan) v SSHD [2016] EWCA Civ 662). In both instances, the children's 'best interests' would again be relevant although not determinative. Given the judge's findings, even if s.117C(5) applied, I see no possibility that a rational conclusion could have been reached that the impact upon them would be "unduly harsh" or, alternatively, that there are "very compelling circumstances" to outweigh the public interest.

22. For these reasons, the judge did not materially err in law in dismissing the appellant's appeal under Art 8 of the ECHR.

Decision

23. The decision of the First-tier Tribunal to dismiss the appellant's appeal did not involve the making of an error of law. That decision, therefore, stands.

24. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed

A Grubb

Judge of the Upper Tribunal

5 February 2018