



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

Appeal Number: HU/09251/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 12th March 2019**

**Decision & Reasons Promulgated
On 22 March 2019**

Before

**THE HONOURABLE MR JUSTICE DINGEMANS
UPPER TRIBUNAL JUDGE BLUM**

Between

**MR DANOVAN [B]
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Lindsay, Home Office Presenting Officer

DECISION AND REASONS

1. This is an approved transcript of an extempore decision and reasons given on 12 March 2019. This is the hearing of an appeal by Danovan [B] against the decision of First-tier Tribunal Judge Andrew. The judge dismissed Mr [B]'s appeal against the decision of the Secretary of State for the Home Department to refuse Mr [B]'s human rights claim and ordered his deportation from the United Kingdom.
2. Permission to appeal out of time was granted on 15th January 2019. This was on the basis that it was arguable that there had been a procedural

irregularity because it was arguable that Mr [B] was not aware of the date of the hearing before the judge. Mr [B] prepared his own notice of appeal and he set out his reasons for applying for an extension of time in that document saying:

“I did not receive the letter from the court as I was in prison, I would like to apply for an extension of time. I was not in court when they made the hearing. I was unaware the hearing took place. Therefore happened in my absence.”

The reasons given for appealing by Mr [B] were:

“The judge made the wrong decision to refuse my appeal. The judge did not consider the rights of the child, humanitarian protection, Article 8 European Convention on Human Rights.”

And when requesting an oral hearing of the appeal Mr [B] wrote:

“I would like the chance to get a fair hearing and being present in court will help me better convey in person my grounds.”

3. In other parts of the form Mr [B] explained that he was in prison which explains why he did not receive correspondence about the appeal and he said that he had last seen his children on a prison visit. He completed the notice of appeal on 22nd November 2018 and he said he hoped to get out of prison either on 30th November which was his birthday or Christmas.
4. The relevant background is taken from a judgment which was dated 15th February 2018. I am not in a position to make findings of fact in relation to those matters but they represent the best information about what has happened to date. It appears from that judgment that Mr [B] arrived as a visitor from Jamaica in 2002 and it appears that he had other family members in Jamaica. He was granted indefinite leave to remain on 9th October 2003 as a spouse and it appears that that marriage ended in 2007. Mr [B] then formed a relationship with Miss [DF], and we are grateful for her attendance and assistance this morning, with whom he had twin boys who are British citizens.
5. Mr [B] and Miss [F] separated in 2009 and it appears that Miss [F] has subsequently remarried. Ms [F] also has an elder child. Mr [B] was reported to have said that he was fully engaged with the twins and picked them up from school each day and then took them to his flat while Miss [F] worked a later shift. Mr [B] had said in evidence at the previous hearing that the academic progress of the twins had suffered when he was in prison and Miss [F]'s mother had assisted but Mr [B] said that Miss [F] was barely managing and it was noted that Miss [F] lived about an hour from Mr [B] and that he had the twins for a couple of hours each day and he would see them at weekends and on holidays. It appears from a previous judgment that Mr [B] had begun a relationship with [RR] in 2010 an Italian national who came to the United Kingdom to study and she lived with her mother while Mr [B] lived on his own and they saw each other twice a week.

6. On 12th August 2016 Mr [B] was convicted of importing 22 kilograms of cannabis into the United Kingdom from Jamaica and was given 27 months' imprisonment. The sentencing remarks show that Mr [B] had not been involved in the planning of the drug importation, that he was not going to derive a direct profit from the sale of drugs and had performed a relatively limited function under direction.
7. The Secretary of State made a decision to deport Mr [B] but his appeal was allowed by First-tier Tribunal Judge Parkes following a hearing on 31st January 2018 in a decision promulgated on 15th February 2018. It appears that at that hearing Mr [B] and Miss [DF] gave evidence and this showed that Mr [B] had assisted Miss [F] so that she was able to work.
8. The Secretary of State appealed against the decision of First-tier Tribunal Judge Parkes and permission to appeal was granted on 21st June 2018 and it is then that the missing part of the picture which has been provided today comes into play. It appears that Mr [B] was accused of an incident involving his former partner and was then remanded into custody at Wormwood Prison. That was because he was already on licence and therefore was liable to be recalled if there was any part of the sentence still to be served at the time that he was accused of this further crime. Mr [B] was then kept in Wormwood Scrubs Prison until he says about November 2018. There is a slip of paper in the papers before us which shows that Mr [B] was released from Her Majesty's Prison Birmingham on 23rd August 2018. Doing the best we can on the information before us it appears that that must have been at the time at which Mr [B]'s original sentence had expired meaning that his recall from licence ended and he was then remanded in custody awaiting the charges of which he was then tried at the Magistrates' Court. I should as a matter of fairness to Mr [B] say that the information before us shows that he was then not convicted of the charge, but this explains where he was when the first appeal was heard in his absence in August 2018.
9. The appeal hearing was on 6th August 2018 before Upper Tribunal Judge Finch and on 13th August 2018 the appeal was allowed and the appeal was remitted to the First-tier Tribunal Judge for a de novo hearing. That is significant because it is important to the disposal of this hearing today to note that it was recognised that it was necessary to have a full and fair hearing of all the points raised by Mr [B]'s case. The Upper Tribunal Judge had found that the First-tier Tribunal Judge had made an error in law in failing to apply the relevant test about the meaning of unduly harsh and it is not necessary for the purposes of this judgment to set out the relevant jurisprudence.
10. This was the background leading up to the hearing before the First-tier Tribunal Judge in October 2018. It appears that Mr [B] was sent a notice of the hearing on 21st August 2018 for the hearing in October 2018 but as is now apparent from the further information he was still at that time in Wormwood Scrubs Prison. It appears that Mr [B] was at some stage, probably after the trial in the Magistrate' Court, released from Wormwood

Scrubs Prison and taken directly to Hatton Cross hearing centre where he was remanded into custody at Colnbrook immigration removal centre. That detention explains his continuing absence for the period of time when the remitted hearing took place. The reasons for the refusal of immigration bail were that Mr [B] had apparently not attended his last hearing. That was not particularly surprising because he did not know about the hearing. Mr [B] was then granted bail at some stage just before Christmas 2018.

11. The remitted appeal before the First Tier Tribunal took place on 24th October 2018 at Priory Court Birmingham. As noted above Mr [B] did not appear and was not represented, and Ms Mepstead appeared on behalf of the Secretary of State. The reasons and decisions were promulgated on 30th October 2018 and then came to the attention of Mr [B] when he was in detention in the circumstances that I described.
12. So far as is material there is an entitlement to hear proceedings in the absence of a party. If a party fails to attend the hearing the Tribunal may proceed with the hearing if satisfied that the party has been notified of that hearing or that reasonable steps have been taken to notify that party and it is in the interests of justice to proceed with the hearing. In circumstances where it is now apparent that Mr [B] did not receive notice of the hearing because he was in detention and in circumstances where it is apparent that there was proper material for Mr [B] to advance at that remitted hearing it is plainly necessary to set aside the judgment of the First-tier Tribunal.
13. So far as disposal is concerned it is common ground between the parties, and we agree, that this matter must be remitted back to the First-tier Tribunal Judge so that that judge can approach fairly all the matters in the light of the submissions and the relevant governing law.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside.

The case is remitted to the First-tier Tribunal to be heard afresh.

No anonymity direction is made.

Signed Mr Justice Dingemans

Date 20th March 2019

Mr Justice Dingemans