Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/03902/2019**

THE IMMIGRATION ACTS

Heard at: Field House	**Decision & Reasons Promulgated**
On: 2 March 2020	**On: 17 March 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

DB
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Cheng, instructed by Topstone Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Jamaica, born on 17 July 1985. He has been given permission to appeal against the decision of First-tier Tribunal Judge Cockrill dismissing his appeal against the respondent's decision of 15 February 2019 refusing his human rights claim further to a Deportation Order issued against him under section 32(5) of the UK Borders Act 2007 on the same day.

Background to the Appeal

2. The background to this case can be summarised as follows. The appellant entered the United Kingdom on 14 August 2002 as a visitor, at the age of 17 years. On 28 March 2003 he applied for indefinite leave to remain as a dependant of his mother and was granted ILR on 28 August 2003.

3. On 30 September 2013 the appellant was convicted of one count of dangerous driving and one count of handling stolen goods and received a sentence for each of four months' imprisonment suspended for 24 months, to run consecutively. On 19 August 2018 he was convicted of conspiracy to supply class A drugs, crack cocaine, diamorphine and heroin, and was sentenced to 69 months' imprisonment. As a result of that conviction the appellant was served with a decision to deport him pursuant to the Immigration Act 1971 and the UK Borders Act 2007, dated 19 October 2018, and was invited to respond to the decision.

4. The appellant responded on 15 November 2018, in a notice under section 120 of the Nationality, Immigration and Asylum Act 2002, in which he made a human rights claim based on his family life with his British partner OF and British children, M (born 5 October 2017) and D (born 27 November 2006) with whom he had had, prior to his detention, a direct and active involvement. The appellant also referred to the fact that his mother had a lot of medical issues and that he was also involved in looking after her in the UK. It was submitted that removal of the appellant would be contrary to the best interests of his children and would be in breach of Article 8 owing to the strength of his family life.

5. The respondent refused the appellant's human rights claim in a decision of 15 February 2019. The respondent considered that the appellant did not have a *Zambrano* derivative right of residence as his children could remain in the UK and be cared for by their mother, as was the case currently. The respondent considered that the best interests of the children were to remain in the UK with their mother and that it would not be unduly harsh for his partner and children to remain in the UK without him. He could not, therefore, meet the family life exception to deportation. Neither could he meet the private life exception since, whilst it was accepted that he had been lawfully resident in the UK for most of his life, it was not accepted that he was socially and culturally integrated in the UK or that there would be very significant obstacles to his integration in Jamaica. The respondent considered that there were no very compelling circumstances outweighing the public interest in the appellant's deportation and that his deportation would not breach Article 8.

6. The appellant appealed against that decision. His appeal was heard by Judge Cockrill in the First-tier Tribunal on 6 September 2019 and was dismissed in a decision promulgated on 17 September 2019. The judge heard from the appellant and his partner, noting that prior to his imprisonment they had been spending five to six nights a week together at his partner's address but that he used his mother's address as his official address to prevent his partner from losing her benefits. The appellant's partner's evidence was that she was a teacher and had not known of the appellant's criminal activities, that their son could not cope if his father was deported, that she could not afford to go to

Jamaica to visit the appellant, that she had been in the UK for 31 years and had no roots in Jamaica and that she had had various medical scares. The judge also heard from the appellant's mother and from his friends. The judge noted that the appellant could not avail himself of the exceptions in paragraph 399(a) and (b) or paragraph 399A of the immigration rules because of the length of his sentence, which was over four years, and concluded that he could not meet the test of very compelling circumstances. He found that the appellant's deportation would not constitute a disproportionate interference with his family and private life and that there would be no breach of Article 8 and he accordingly dismissed the appeal.

7. Permission to appeal to the Upper Tribunal was sought by the appellant on lengthy grounds which I attempt to summarise as follows: firstly, that the judge had made perverse or irrational findings on material matters and that he had failed to apply anxious scrutiny to the independent social worker's report and other evidence concerning the appellant's son as well as to the evidence of the appellant's caring responsibilities for his mother; secondly that the judge had made a misdirection in law, in particular in his consideration of the 'unduly harsh' test; thirdly that the judge had failed to consider the best interests of the appellant's children; and fourthly that the judge had failed to consider the human rights of the applicant and his British born children.

8. Permission was granted on 16 January 2020 in the First-tier Tribunal on the basis that the judge had arguably failed to consider the best interests of the appellant's children.

Appeal Hearing and Submissions

9. At the hearing both parties made submissions. Ms Cheng submitted that the judge made a perverse and irrational decision in concluding that there was nothing exceptional about the relationship between the appellant and his son, particularly in light of the independent social worker's report of the special bond between them. The judge had failed to give proper consideration to the strong relationship between father and son and had failed to give proper consideration to the emotional impact of separation on the appellant's son. He failed to consider that the appellant and his son would not see each other again if he was deported. The judge also failed to consider that the appellant had no links to Jamaica as his family was all in the UK and his brother had been shot dead in Jamaica. There was also a failure to consider that there were no aggravating factors and that the appellant had shown remorse. There was no risk of the appellant re-offending.

10. Ms Isherwood submitted that the appellant's submissions had gone beyond the grounds of appeal and the grant of permission, and in any event were simply a re-arguing of the case. She relied upon the case of RA (s.117C: "unduly harsh"; offence: seriousness) Iraq [2019] UKUT 123 in submitting that the tests for 'unduly harsh' and 'very compelling circumstances' were extremely demanding. The judge had taken all relevant matters into account

and had considered the independent social worker's report and the best interests of the children. Nothing presented by the appellant met the high threshold of showing 'very compelling circumstances'.

Consideration and findings

11. I agree with Ms Isherwood that the lengthy grounds of appeal and submissions were essentially a re-arguing of the appellant's case. I find no merit at all in the assertion that the judge did not consider the strong relationship between the appellant and his son, or in the assertion in Ms Cheng's submissions that the judge focussed on the appellant's son performance in football but failed to consider the emotional impact on his son of separation.

12. On the contrary, the judge clearly gave full and detailed consideration to all the evidence relating to the relationship between father and son, referring to the specific evidence at [16], namely the letter written by the appellant's son, a letter from his son's school referring to some incidents of disruptive behaviour, the appellant's partner's statement and the report from the independent social worker. At [28] to [31] the judge noted the appellant's partner's evidence about the role he played in his son's life and the impact upon the children of his removal from the UK. At [51] the judge took account of the fact that the appellant's son had been able, despite the separation caused by his father's imprisonment, to progress in developing his skills as a footballer and to perform satisfactorily at school, but he also considered, at [49] and [51], the negative and emotionally adverse impact that separation would cause. In so doing he had full regard to the report from the independent social worker as to the situation of the appellant's children, to which he referred at [49], and he went on to apply the social worker's conclusions in his assessment of the children's best interests. Permission was granted on the basis that the judge arguably failed to consider the best interests of the children, a view which I find somewhat surprising when it is plain that the judge had full regard to the children's best interests and considered the matter in the context of the relevant case law.

13. Although the main focus of the grounds and submissions was the judge's assessment of the impact of deportation on the appellant's son, there were also assertions about the judge's failure to consider the appellant's relationship with his partner and mother, his lack of ties to Jamaica, the lack of aggravating factors and the prospects of rehabilitation with his partner's support. However, the judge plainly had regard to all relevant matters, considering at [52] and [53] the appellant's partner and mother and, at [55], his family and other ties to the UK and to Jamaica. At [47] the judge considered the appellant's offending and the strong public interest in deportation in light of the gravity of the offence. As Ms Isherwood submitted with regard to rehabilitation and family support, the appellant's family were all present and supporting him at the time he committed the offences.

14. Accordingly, the judge gave full and careful consideration to all relevant matters and accorded appropriate weight to the appellant's close relationship with his family members, to the best interests of his children and to the impact of deportation upon his family. As Ms Isherwood properly submitted, the test for demonstrating that separation is 'unduly harsh' is a high one. The Upper Tribunal in RA at [17], quoting from [27] of KO (Nigeria) & Ors v Secretary of State for the Home Department (Respondent) [2018] UKSC 53, confirmed that there had to be something more than the outcome being 'severe' or 'bleak'. The test for showing 'very compelling circumstances' over and above undue harshness was particularly high and, as found in RA, at [22], was "extremely demanding". For the reasons fully and properly given by the judge, there was nothing in the appellant's evidence, including his close relationship with his son, which went anywhere near meeting that threshold. The judge was fully and properly entitled to reach such a conclusion. There was nothing perverse in his findings and, on the contrary, his decision was one which was fully and properly open to him on the evidence before him.

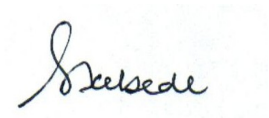
15. For all of these reasons I find no errors of law in the judge's decision and I uphold the decision.

DECISION

16. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The First-tier Tribunal made an order for anonymity. In view of the involvement of children in these proceedings, I continue the order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.



Signed
Upper Tribunal Judge Kebede Dated: 3 March 2020