IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022–003858
First-tier Tribunal No: PA/00456/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 March 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY
UPPER TRIBUNAL JUDGE SHERIDAN

Between

SR
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Paramajorthy of counsel
For the Respondent: Ms Norton, a senior Home Office Presenting Officer

Heard at Field House On 09 January 2023

DECISION AND REASONS

Introduction

1. The current appeal is by the respondent but the parties will continue to be referred to by their designations before the First-tier Tribunal (FTT).

2. The respondent appeals the decision of F T T Judge Mill (the judge) to allow the appellant's appeal. The respondent appeals against the judge's decision to allow the appellant's appeal against the refusal to grant leave to remain under article 8 of the European Convention on Human Rights (ECHR).

3. The respondent sought permission to appeal the decision, which was served on her on 18 March 2022. The respondent was initially refused permission by First-tier Tribunal Judge Davidge but on a renewed application on 7 June 2022 was given permission to appeal on 28 June 2022 by First-tier Tribunal Judge Boyes. Judge Boyes was satisfied that the judge's decision, that it was unduly harsh on the appellant's son LR to deport the appellant and contrary to the ECHR, was arguably wrong in law so as to justify the grant of permission.

The hearing

4. The tribunal initially called on Ms Norton, who represented the respondent, but she did not have the correct decision. Time was therefore allowed for her to appraise herself of the contents of the judge's decision.

5. The case was reached later in the list. The decision on undue harshness was criticised by her for not meeting the high threshold. Ms Norton said that the judge ought to have looked more closely at circumstances of the whole family, including LR's siblings, rather than focusing on the undue harshness of the appellant's deportation on the welfare of that child. Judge Sheridan pointed out that undue hardship to any of the appellant's children would suffice for the purposes of the lawfulness of the deportation decision. Nevertheless, Ms Norton submitted that the fact that other children were not alleging that their father's deportation was unduly harsh was material when considering the effect on the whole family. Overall, it was suggested, the removal of the appellant would not have an unduly harsh effect on that family. The children had an attachment to their grandparents here also and were well settled in the education system, which may be able to compensate for the absence of their father. The judge was also criticised for a lack of reasoning. Basing findings on what the social worker had said was unsatisfactory as there were additional factors to look at.

6. Mr Paramajorthy said this was a determination by an experienced judge, who showed he was aware of the test and engaged with that test in coming to his conclusions. He had engaged with all the issues including the earlier findings of fact by the FTT in October 2011 were dealt with at paragraph 40 et seq (see especially paragraphs 43, 44 and 46) and considered all the case law in the decision. The judge has not overlooked anything. He had made a decision which took account of the report of the social worker. The judge had balanced the public interest in deportation with the

appellant and his family's human rights. As to LR's position, there was no viable challenge to the assessment the judge had made. The judge did not have to look into the effect of the appellant's deportation on other two children. But for LR's position the appeal may not have been successful but that did not mean there was any error of law. The respondent appeared to have a policy of appealing all deport decisions, Mr Paramajorthy speculated, including the one by this judge. The judge does not just "adopt the view of the social worker", he accepted the evidence of Dawn Griffiths, the independent social worker. An irrationality argument was not met. The appeal amounted to no more than a disagreement with the judge's conclusions (see paragraph 43).

Discussion

7. The only issue before the UT appears to be: Whether the assessment the judge made, that it would be "unduly harsh" to LR to return the appellant to Sri Lanka, was reasonably open to him on the evidence?

8. It was not alleged before us that the judge was mistaken on the law. At paragraph 16 et seq of his decision the judge set out the legal framework within which he had to decide the appeal. This included section 117 C of the Nationality, Immigration and Asylum Act 2002, which provided that the deportation of foreign criminals is in the public interest. This was subject to "exception 2" which provided that where a claimant has a genuine, subsisting relationship with a qualifying child, the public interest did not require his deportation where it would have an unduly harsh effect on that child.

9. The respondent's arguments are understood to relate to the degree of weight the judge attached to certain factors and in particular the weight he attached to the effect of the appellant's deportation on LR. The respondent rightly contended in her grounds, by reference to the Supreme Court's decision in **KO (Nigeria) and others v Secretary of State for the Home Department 2018 UKSC 53**:

> "… the seriousness and nature of the offending should not be taken into account in assessing whether deportation would be "unduly harsh". However, the Supreme Court also confirmed that the "unduly harsh" test is a high one, going beyond what would necessarily be involved for any child faced with the deportation of a parent."

10. However, if the judge was satisfied that the harm to LR was unduly harsh, this was itself a sufficient reason for allowing the appeal. There was evidence before the judge upon which he was entitled to reach such a conclusion. The assessment may have been generous but it was neither perverse, irrational or wrong in law.

11. The evidence here included that of an independent social worker who carried out an assessment on 7 November 2020. The judge attached significant weight to her report and dealt with its contents at some length in paragraph 48 of his decision. No doubt had he not done so, and being led to the contrary conclusion to that to which he came to in this appeal, there would have been an appeal by the appellant on the basis that he had overlooked a material piece of evidence.

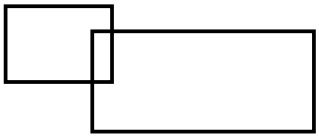
Conclusion

12. The judge's conclusions were reasonably open to him on the evidence and his decision stands.

Notice of Decision

The appeal against the FTT's decision is dismissed.

No anonymity direction is made.

Signed  Date 15 January 2023

Deputy Upper Tribunal Judge Hanbury