



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000678

First-tier Tribunal No: HU/51103/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 4 June 2023

Before

UPPER TRIBUNAL JUDGE KEITH

Between

ASD (JAMAICA)
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr B Adekoya, legal representative, instructed by Atlantic Solicitors

For the Respondent: Mr S Tufan, Senior Home Office Presenting Officer

Heard at Field House on 24 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court. The reason is that the appeal concerns the appellant's child, a minor, who might otherwise be identifiable if the appellant were named.

DECISION AND REASONS

1. These written reasons reflect the reasons which I have to the parties orally, at the end of the hearing.
2. This appeal concerns the appellant's human rights claim in the context of a deportation order against him, following repeated criminal convictions, such that he has been treated as a "persistent offender" and therefore a "foreign criminal,"

pursuant to section 117D(2)(iii) of the Nationality, Immigration and Asylum Act 2002. There is no appeal on his status as a foreign criminal. Rather, the questions considered by Judge Blackwell of the First-tier Tribunal, in his decision promulgated on 14th February 2022, were whether, for the purposes of section 117C(5) of the 2002 Act, the appellant had a genuine and subsisting parental relationship with a qualifying child, and if he did, whether the effect of the appellant's deportation on that child would be unduly harsh.

The Judge's decision under appeal

3. The Judge took a previous decision of Judge Grimmett as his starting point, which was based on a similar factual matrix. The new evidence before Judge Blackwell related to the appellant's claimed relationship with his daughter. It was agreed that the appeal could only succeed if the Judge found there to be a genuine and subsisting relationship between the appellant and his daughter and if there were, that the effect of deportation would be unduly harsh. Judge Blackwell heard evidence from the appellant who claimed that despite his previously acrimonious relationship with his daughter's mother he had continued to be involved in his daughter's life. He produced a letter from his daughter, which said that the appellant provided care for her and helped her with her schoolwork and that she would be devastated if he were returned to Jamaica. The daughter said in her letter that she was happy and joyful when she saw him, but would not feel able to travel to Jamaica, because of negative news of abductions and killings of young girls in Jamaica. Judge Blackwell also considered correspondence from the daughter's mother, which referred to the daughter struggling when the appellant had been imprisoned and her view that the appellant could be a good father and great role model.
4. At paragraphs 34 to 37 of his decision, (which I recite below), the Judge did not accept the reliability of the evidence presented, or the appellant's oral testimony, as to the subsistence of the relationship. On that basis, he rejected the appeal at paragraph 38.

The appellant's appeal

5. The appellant appealed against Judge Blackwell's decision, on the basis that the Judge had applied an impermissibly high standard of proof and had failed to decide particular facts on the balance of probabilities, particular in the reasoning at paragraph 36. The Judge had erred in placing emphasis on the absence of oral evidence from the daughter's mother.
6. Judge Lawrence of the First-tier Tribunal granted permission on all grounds, on 16th March 2023.

Discussion and conclusions

7. I set out below the relevant paragraphs of the Judge's conclusions.

"34. I view this documentary evidence with some caution. AD is almost 15 and so still a child. There is no mention of how this letter was obtained. Given her age it is reasonable that she has not come to the tribunal to give evidence: that would not be expected.

35. *However the absence of CR makes me approach this documentary evidence with great caution. She has chosen not to come and give evidence in person and be cross-examined. If she really thought that the deportation of the appellant would cause significant adverse effect on her daughter, it would be reasonable to expect that she would come and give evidence in person. I therefore approach this evidence with the greatest caution.*

36. *Further the evidence is extremely high level. There is no granularity or detail, such as a diary detailing recent visits or discussions of the activities that the appellant does with AD, or photographs or perhaps even videos. All of these could be easily obtained if AD had a genuine and subsisting relationship with the appellant. Similarly, if he did have such a relationship one might expect that he might attend events at her school and we would have evidence from her school to that effect. Again we might expect to hear from other adults, such as the appellant's mother or parents of AD's friends as to relationship between AD and the appellant. If a genuine and subsisting relationship existed, such additional evidence would be reasonably obtainable and it would be therefore reasonable to expect it. The absence of any such supporting information leads me to believe that no relationship exists between the appellant and AD.*

37. *I simply do not accept that, at the date of the hearing, the appellant has a subsisting relationship with AD."*

8. I do not recite the representatives' submissions, except to explain why I have reached my decision, but I have considered them in full. I accept Mr Adekoya's submission that the case was based not only on documentary evidence, but the appellant's oral evidence. I do not, however, accept his submission that the Judge focussed solely on the lack of attendance by the appellant's former partner. It is plain from paragraph 36 of the Judge's reasons that he had considered a number of gaps in the evidence which could be expected, such as videos, photographs, diaries, school correspondence, witness evidence from the appellant's mother or parents of his daughter's friends. By way of example, photographs had been produced in respect of a child before Judge Grimmett. I accept Mr Tufan's submission that a specialist Judge can be expected to be aware of the correct standard of proof, and the reasoning, particularly at paragraph 36 does not, contrary to Mr Adekoya's submission, support an inference that the Judge had applied a standard of "beyond reasonable doubt." The appellant's relationship with his child had previously not been accepted. The Judge was entitled not to accept the appellant's oral testimony as sufficient, and to consider that in the round, with the very limited documentary evidence. There was no error in the application of an impermissibly high standard of proof.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal stands.

The anonymity directions continue to apply.

J Keith

Appeal Number: UI-2023-000678

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24th May 2023