IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003871
First-tier Tribunal No: HU/08000/2017

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 September 2024

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JG
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms S Rushforth, Senior Home Office Presenting Officer
For the Respondent: Mr S McTaggart, instructed by RP Crawford & Co Solicitors

Heard at Royal Courts of Justice (Belfast) on 4 September 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Grimes, promulgated on 24 April 2023, allowing his appeal against a decision of the Secretary of State made on 11 July 2017 to refuse his human rights claim, having concluded that he is a foreign criminal as defined by Section 32(1) of the UK Borders Act 2007. JG is a citizen of China. On 7 July 2016 he was convicted of possessing a class B controlled drug with intent to supply for which he was sentenced to three years' imprisonment. In addition to the index offence, he has three previous convictions.

2. JG has a partner in the United Kingdom and two children born in 2007 and 2016. Although the Secretary of State accepted that it would be unduly harsh to expect the older child to go to live in China, she concluded that it would not be unduly harsh for the younger child to do so; nor, for them to remain in the United Kingdom if he were deported as they were cared for by their mother. The Secretary of State was accordingly not satisfied that it would be unduly harsh and thus they did not meet the requirements of Exception 2. The Secretary of State did not accept that it would be unduly harsh for his partner to live in China and did not accept that he came within the private life exception. The Secretary of State was not satisfied either that there were very compelling circumstances such that deportation would be disproportionate.

3. JG's case is that it would be unduly harsh on both of his children were he deported given the effect that would have on them as described in psychiatric reports obtained in 2017 and 2022 and which were presented to the First-tier Tribunal. In addition, it is submitted that it would be unduly harsh to expect his wife to relocate to China as she could not be expected to do so and leave their children behind.

4. There is a long procedural history to this case set out in the decision of the First-tier Tribunal at paragraph 10. In summary, although the appellant's first appeal was dismissed on 24 November 2017, this was eventually set aside by the Northern Ireland Court of Appeal on 6 June 2019, the case being remitted to the First-tier Tribunal. As the main reason behind that was a conclusion that the Secretary of State had failed to discharge her duty pursuant to Section 55(3) of the Borders, Citizenship and Immigration Act 2009, the Secretary of State provided a supplementary refusal letter dealing with that issue. The terms of that letter are summarised in the decision at [11].

5. The judge heard evidence from the respondent and his partner. He also heard submissions from both representatives and had before her four bundles as described in her decision at [3].

6. Having directed herself according as to the applicable law [7] and [17], the judge concluded having had regard to the reports from Belfast Health and Social Trust, Dr Bratten and Dr Devine, that the effect of the deportation was such in the light of what happened in the past would it be

unduly harsh and thus Exception 1 applied [25]. The judge considered also with respect to JG's wife also fell within the relevant exception [30].

7. The Secretary of State sought permission to appeal on three grounds:-

(i) the judge had failed to consider the appeal in accordance with the principles set out in Devaseelan in respect of the first Tribunal Judge's decision from 2017;

(ii) had failed properly to apply the "unduly harsh" test, there being no evidence that the circumstances in this appeal went beyond the established threshold set out in the case law, having had regard to the psychological reports;

(iii) in failing to give due weight to the public interest given the seriousness of the appellant's offending.

The Hearing

8. I heard submissions from both representatives. Ms Rushforth accepted that there was no merit in ground 1 given that the decision of the First-tier Tribunal from 2017 – Judge Gillespie – had been set aside. She did not pursue ground 3 with any vigour and accepted, in respect of ground 2, that this was in effect a rationality or perversity challenge.

9. Mr McTaggart submitted that the judge had properly applied the test and had reached conclusions open to her having had regard in particular to the medical reports which set out in detail the effects that there would be on the children were JG to be deported.

The Law

10. In assessing the grounds of appeal, I bear in mind that in Ullah v SSHD [2024] EWCA Civ 201 the court held at [26]:

> 26. Sections 11 and 12 TCEA 2007 Act restricts the UT's jurisdiction to errors of law. It is settled that:
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> (i) the FTT is a specialist fact-finding tribunal. The UT should not rush to find an error of law simply because it might have reached a different conclusion on the facts or expressed themselves differently: see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49 [2008] 1 AC 678 at paragraph [30];
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> (ii) where a relevant point was not expressly mentioned by the FTT, the UT should be slow to infer that it had not been taken into account: e.g. *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49 at paragraph [45];
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> (iii) when it comes to the reasons given by the FTT, the UT should exercise judicial restraint and not assume that the FTT misdirected itself just because not every step in its reasoning was fully set out: see *R (Jones) v First Tier*

Tribunal and Criminal Injuries Compensation Authority [2013] UKSC 19 at paragraph [25];

(iv) the issues for decision and the basis upon which the FTT reaches its decision on those issues may be set out directly or by inference: see *UT (Sri Lanka) v The Secretary of State for the Home Department* [2019] EWCA Civ 1095 at paragraph [27];

(v) judges sitting in the FTT are to be taken to be aware of the relevant authorities and to be seeking to apply them. There is no need for them to be referred to specifically, unless it was clear from their language that they had failed to do so: see *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296 at paragraph [34];

(vi) it is of the nature of assessment that different tribunals, without illegality or irrationality, may reach different conclusions on the same case. The mere fact that one tribunal has reached what might appear to be an unusually generous view of the facts does not mean that it has made an error of law: see *MM (Lebanon) v Secretary of State for the Home Department* [2017] UKSC 10 at paragraph [107].

11. I also bear in mind what was said in Volpi v Volpi [2022] EWCA Civ 464 at [2]. I bear in mind also what was held in HA (Iraq) [2022] UKSC 22 at [72], and that the decision must be read sensibly and holistically. Justice requires that the reasons enable it to be apparent to the parties why one has won and the other has lost: English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605, [2002] 1 WLR 2409 at [16]. When reading the decision, I am entitled to assume that the reader is familiar with the issues involved and arguments advanced. Reasons for judgment will always be capable of having been better expressed and an appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.

12. In a careful and considered decision, the judge set out her conclusions as to whether the unduly harsh test was met, having directed herself properly as to the law. She set out in detail her analysis of the psychiatric evidence and in particular the very disturbing behaviour of the older child when faced with the absence of the father. Contrary to what is averred, there is clearly sufficient evidence of quite serious effects that there would be on the children. There was sufficient evidence in the expert's reports for concluding that it would be unduly given the very serious behaviour tht was likely to reoccur. Similarly, there is sufficient evidence of serious difficulties for the younger child who had not been aware of her father's imprisonment given her age but was now in a position to be more significantly affected. Contrary to what is averred, this is sufficient evidence for which it was open to the judge to conclude, having properly directed herself as to the law, that those circumstances would be unduly harsh were their father to be deported. Contrary to what is averred, it is sufficiently clear that she did apply a high "elevated" standard to the particular facts of this case. What is averred in the grounds of appeal at

[15] is simply cherry-picking information taking it out of context and omits the full context of that report. Accordingly, ground 2 is not made out.

13. With regard to ground 3, it is not at all clear why there is reference to the public interest given that that does not form an assessment as to whether Exception 2 is met. What is averred at [20] is hopeless; it makes little or no sense. It was open to the judge to observe [24] that the appellant had not been reconvicted and there was no indication of any further reoffending in which case it was open to note that separation of JG and his children was unlikely to occur. References to rehabilitation make little or no sense in this context.

14. Accordingly, for these reasons, I conclude the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Notice of Decision

(1) The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed Date: 18 September 2024

Jeremy K H Rintoul
Judge of the Upper Tribunal