



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: DA/00633/2012

THE IMMIGRATION ACTS

Heard at Birmingham
On 24 March 2014

Determination Promulgated
On 27 March 2014

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

Appellant

SS

(ANONYMITY ORDER MADE)

Respondents

Representation:

For the Appellant: Mr Smart, Senior Home Office Presenting Officer
For the Respondents: Ms Norman, instructed by J M Wilson

DETERMINATION AND REASONS

The Appeal

1. This is an appeal by the Secretary of State against a determination dated 2 November 2013 of First-tier Tribunal Judge Nixon and Ms V Street which allowed the

respondent's appeal on Article 8 grounds against a decision to make a deportation order against her.

2. Ms S is a citizen of Jamaica and was born on 28 July 1989.
3. For the purposes of this determination, I refer to Ms S as the appellant and to the Secretary of State as the respondent, reflecting their positions as they were before the First-tier Tribunal.
4. This appeal concerns not only Ms S but her 7 year old son, J, a British national. In order to prevent the likelihood of any serious harm arising to J, I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant or other members of her family and thereby J.
5. The undisputed background to this matter is that the appellant came to the UK at the age of 11, was placed in care in 2002 and was granted indefinite leave to remain on 11 April 2003.
6. On 3 October 2006 her son, J, was born. His father is a British national and so J is also British. J's father has a residence order in his favour but with provision for regular contact with the appellant on at least 3 days per week. The respondent's position in the appeal was that J could not be expected to leave the UK and could remain here with his father.
7. In approximately 2011 the appellant formed a relationship with CR, a Jamaican national with indefinite leave to remain. The respondent does not challenge the finding of the First-tier Tribunal that the relationship is genuine and subsisting.
8. The appellant has convictions for shoplifting in 2005, 2007 and 2008.
9. On 2 July 2009 she was sentenced to 12 months' detention in a Young Offenders Institution for unlawful wounding and theft. The circumstances of the unlawful wounding were that she argued with another girl in a nightclub and picked up something that she used to stab the other girl.
10. The respondent commenced deportation proceedings and a deportation order was made against the appellant on 28 October 2011.
11. The appellant received a conditional discharge for 24 months for theft on 26 April 2011.
12. The appellant was cautioned for child neglect on 12 June 2012. The circumstances of that offence were that the appellant's second son, R, born on 11 December 2011, died on 14 February 2012. It appears that her difficulties following his death lead to the conviction for neglect of J and residence order in favour of his father.


13. Notwithstanding this history of offending, in summary, the First-tier Tribunal allowed the appeal as it found that the best interests of and damage to the child were the appellant deported outweighed the public interest in her deportation.
14. Paragraph 1 of the respondent's grounds argues that that the First-tier Tribunal gave inadequate consideration to the public interest in deportation. Paragraph 2 of the grounds maintains that the panel failed to give any or gave inadequate reasons for finding exceptional circumstances that outweighed the public interest in deportation. Paragraph 3 of the grounds maintain that the panel incorrectly assessed the risk of reoffending given the appellant's criminal history.
15. It is not my view that the First-tier Tribunal can be said to have failed to identify and weigh appropriately the public interest factors in this matter. The appellant's offences were set out in full; see [3]. The Tribunal directed itself at [15] to the presumption in favour of deportation and to the need for "compelling" or "exceptional" circumstances in order to defeat the public interest in deportation, MF (Nigeria) v SSHD [2013] EWCA Civ 1192 being cited at [8] and the test from paragraph [43] of MF Nigeria being set out in the determination at [15]. The panel acknowledge at [22] that the index offence was one of violence. It was open to them to place weight on the absence of any further offending of that nature since the offence occurred in 2008, some 5 years earlier, and the panel was clearly astute to the further shoplifting offence following the index offence which received a non-custodial sentence and the neglect of J. The panel again addressed the public interest in deportation at [24]. Having clearly set out the correct approach, it was for the panel to decide on how to draw the balance between the public interest and the family and private life rights of the appellant, her child and her partner.
16. Having taken into account the high threshold for a deportation appeal to succeed, the First-tier Tribunal next addressed the best interests of J at [16] to [21], correctly applying the dicta of ZH (Tanzania) (FC) the Secretary of State for the Home Department [2011] UKSC 4. As indicated at [19], J lived most of his 7 years with his mother and still has contact with her. It did not appear to me to be exceptional that the First-tier Tribunal found it in his best interests that she remain in the UK rather than being deported. Certainly, they had no specific social work reports on the narrow point of his best interests. The family courts, operating with his welfare at the centre of their decision making, however, has found that he should continue to have regular contact with his mother at least 3 times a week. I did not accept that the panel erred in their assessment of J's best interests or in concluding at [20] that her deportation could have a "devastating" effect on him when combined with the loss of his younger brother and concerns he has subsequently expressed about fear of loss of those around him.
17. It appeared to me at [22] that the panel, having considered the relevant law and evidence, set out the crux of the question before it, whether the child's best interests and family and private life of the appellant and J outweighed the public interest in deportation. The appellant's own history, ending up in care herself and losing a child was described by the First-tier Tribunal at [23] as a "tragedy" and it is not suggested

that this was a perverse characterisation. The panel found at [25] that the appellant's own history, combined with the serious impact on J of her deportation amounted to "exceptional" circumstances. I do not accept that the reasons for those conclusions were "inadequate". It was open to this panel on the facts before them to find that the compelling factors weighing in favour of the appellant outweighed the public interest.

18. I did not find that any of the grounds had merit.

Decision

17. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: 
Upper Tribunal Judge Pitt

Date: 24 March 2014