



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/01848/2013

THE IMMIGRATION ACTS

Heard at Columbus House, Newport
On 18 February 2014

Determination Promulgated
On 27 February 2014

Before

UPPER TRIBUNAL JUDGE N POOLE

Between

MICHAEL EVERTON HIBBERT
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Oliver Manley instructed by Gloucester Law Centre
For the Respondent: Mr Irwin Richards, Home Office Presenting Officer

DECISION AND REASONS

1. In this document I shall refer to the parties in the style in which they appeared before the First-tier Tribunal. The appellant is a citizen of Jamaica born 11 May 1991. On 29 August 2013 the respondent made a decision to make a deportation order by virtue of the UK Borders Act 2007 and Section 3(5)(a) of the Immigration Act 1971. This

decision followed the appellant's conviction at Gloucester Crown Court for possessing controlled drugs with intent to supply. The appellant was sentenced to a total of three years and three months' imprisonment. The appellant claimed that his removal to Jamaica will be a breach of his, and his family's, rights protected by Article 8 of the Human Rights Convention and that therefore he is exempt from automatic deportation.

2. The appellant's appeal came before Judge of the First-tier Tribunal Davidge and Ms V S Street ("the panel") sitting at Newport on 23 October 2013. Mr Manley again represented the appellant and the respondent was represented by a Presenting Officer. An oral hearing was conducted wherein the panel heard evidence and noted documents submitted by the parties. In a written determination prepared on 24 October the panel allowed the appellant's appeal on Article 8 grounds. In reaching its conclusions the panel made findings with regard to the effect of the appellant's deportation on his daughter.
3. The respondent sought leave to appeal. Only one ground is suggested but that ground contains five paragraphs. It is suggested that the panel made a "material misdirection of law". The allegation is that they reached a conclusion without giving adequate consideration of the public interest in removal. Reference is made to the case **SS (Nigeria) [2013] EWCA Civ 550** and it is suggested that that case provided that a very strong claim was necessary in respect of a child given the pressing public interest in removal of a foreign criminal. Paragraph 3 of the grounds suggests that the appellant's mother could continue to care for the child as she is currently doing and that the appellant had not shown any concern in the past for his daughter's best interests, given allegations of violence and the supply of drugs.
4. It was submitted that had the panel taken full account of all the issues they would have found that deportation was proportionate.
5. The application came before another Judge of the First-tier Tribunal. Permission to appeal was refused. I consider it appropriate to set out the reasons given for that decision.

"1. Permission is sought to appeal against the determination of a Panel consisting of First-tier Tribunal Judge Davidge and a Non-legal Member, issued on 5th November 2013, allowing the Appellant's appeal against the decision of the Respondent made on 29th August 2013 to make a deportation order pursuant to Section 32(4) and (5) of the UK Borders Act 2007 and s.3(5) of the Immigration Act.

2. It is submitted in the grounds of application that the Panel misdirected itself in law in its assessment of the proportionality of removal of the Appellant in that they failed to give adequate consideration to the public interest in the removal of criminals. It is submitted that they failed to give proper consideration to the decision in **SS (Nigeria) [2013] EWCA Civ 550**

when considering the effect of removal of the Appellant's young daughter and failed to take proper account of all the circumstances which include the fact that the child is looked after by her grandmother.

3. The Panel clearly thoroughly considered all the factors relevant to this appeal. They correctly found that the Appellant could not succeed under the Immigration Rules. Having determined that it is in the best interests of the child that the Appellant be allowed to remain in the UK, and having given adequate reasons for this, including the evidence of child professionals that the removal of the Appellant would in all the circumstances have a very serious effect on the child, they went on to find that the Appellant had committed a serious crime and that the public interest in his deportation weighed heavily against him in the balancing exercise. They placed little weight on the length of time the Appellant has been in the UK. They considered all the evidence before them relative to the Appellant's rehabilitation and to the risk of re-offending. They concluded that 'in the very particular facts of the case', deportation is not proportionate. It seems to me that although there is some merit in the grounds, the decision of the Panel that the best interests of the child in this case outweigh the public interest in deporting the Appellant was open to them on the evidence before them for the reasons given.

4. The grounds disclose no arguable material error of law."

6. The respondent renewed that application to the Upper Tribunal.

7. In a notice of decision dated 11 December 2013 a Judge of this Tribunal granted permission to appeal and gave the following reasons.

"This appellant faced automatic deportation, following a sentence of 3 years 3 months for possession of class 'A' drugs with intent to supply; according to the sentencing judge, this had been reduced from a tariff of 6 years, because of his youth and guilty plea. However, despite the date of the hearing, the panel considered the case on the basis of *MF (Article 8 - new rules) Nigeria* [2012] UKUT 393 (IAC), rather than *MF (Nigeria)* [2013] EWCA Civ 1192, which had come out just over a fortnight before. Arguably consideration of the Court of Appeal decision, and of *SS (Nigeria)* [2013] EWCA Civ 550, even though the presenting officer does not seem to have referred them to either, might have led them to a different result."

8. Hence the matter comes before me.

9. At the start of the hearing I raised with Mr Manley the question of a Rule 24 submission. None was on file. Mr Manley indicated that he had prepared one and then gave me a copy of a letter from those instructing him to the Upper Tribunal dated 23 December 2013.

10. Mr Richards indicated that he relied upon the grounds and referred to the case of **SS (Nigeria)** although he did indicate that a failure to mention that case was not in itself an error. He referred to paragraph 54 of that case and that public interest was paramount. Mr Richards submitted that the panel had failed in considering the public interest in the balancing exercise. I raised with Mr Richards the point mentioned in the grant of leave regarding the case of **MF**. Mr Richards indicated that he was not relying on that case or the point mentioned in the grant of leave.
11. Mr Manley relied upon the Rule 24 response. The panel had clearly fully noted public interest and the appropriate weight that had to be attached. Particularly he referred to paragraphs 37 to 39 of the determination together with paragraph 28. The evidence of the social worker was paramount and Mr Manley said that it was rare to have such a strongly worded response from a social worker. Any improvement with regard to the daughter's situation was "down to Mr Hibbert".
12. Mr Manley submitted that if paragraph 54 of **SS** had been taken into account the panel would have reached the same conclusion so any error would not be material. With regard to the possible history of violence on the part of the appellant there is no suggestion that the child was present during those incidents.
13. Mr Richards made no reply.
14. Having considered the matter I indicated that for the reasons now given the respondent's appeal was dismissed as I had found no material error of law contained within the determination.
15. Dealing firstly with the reasons given for the grant of permission to appeal. The respondent did not seek to rely upon the "**MF** point", either in the grounds seeking leave or at the hearing before me. Mr Richards specifically chose not to rely upon it. In any event I cannot see that the difference between the Upper Tribunal decision in **MF** and the Court of Appeal decision in **MF** would have made any material difference to the outcome of this appeal before the original panel. I therefore find that that panel did not err in law in any material way in reaching the decision that they did by not referring to **MF** in the Court of Appeal.
16. The Respondent does however rely upon the case of **SS (Nigeria) [2013] EWCA Civ 550** and in particular paragraph 54 of that judgment. Mr Manley quite properly makes reference to paragraphs 28, 29, 30, 37, 38 and 39 of the panel's determination. Quite clearly the panel had consideration for the public interest and indeed paragraph 28 includes the words, "we attach significant weight to the strong public interest ...". It is the case that the panel did not refer specifically to the case of **SS (Nigeria)**. However, paragraph 27 of their determination is an indication that they were satisfied that this particular case was sufficiently strong to outweigh the significant weight that would be attributable to public interest. They clearly carried out the appropriate balancing act. Indeed, the panel went to the extent of setting out

very clear areas of consideration in the way that the determination was separated into various sections.

17. The panel had before them a report from the social worker and the panel quite properly drew from that report. Mr Manley is correct in saying that such strongly-worded reports are rare. In this case the report was firmly in favour of the appellant's position.
18. It is also correct to say that at paragraph 35 of the determination, and having weighed up the evidence before it, the panel were satisfied that the appellant's claim to be rehabilitated had been made out. At paragraphs 37 to 39 under the heading "The Public Interest", the panel clearly had in mind the balancing act that they had to undertake. Their conclusion at paragraph 40 made clear reference to the "very particular facts" of the appellant's case.
19. As Mr Richards conceded merely by not mentioning **SS (Nigeria)** is not in itself an error of law. It is not possible to say whether or not the panel had that case in mind but it is quite clear from the determination that they properly directed themselves on the law and if they had considered **SS (Nigeria)** their decision would not have been different.
20. Accordingly there is no error of law and the decision of the panel must stand.
21. No anonymity direction had been made and no application for one was made before me.

Signed

Date

Upper Tribunal Judge N Poole