



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/01443/2014

THE IMMIGRATION ACTS

Heard at Field House
On 2 November 2015

Decision & Reasons Promulgated
On 15 December 2015

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

P.D.C.

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Miss A Fijiwala, Senior Home Office Presenting Officer

For the Respondent: In person

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant (the present respondent). This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I make this order because the case turns on the welfare of the respondent's minor children and they are entitled to privacy.

2. It is right to record that the respondent played little part in the proceedings before me. This is unsurprising. He was required to address the Upper Tribunal in a case of great importance to him and his family about a point of law in a matter where the law is in a state of flux. He conducted himself calmly and politely and made it plain that he really wanted to remain with his children. I accept that and have given his submissions appropriate weight. My decision in this case can be expected to impact significantly on the lives of three young children. Ms Fijiwala presented the Secretary of State's case fairly but I find it regrettable that I have had to make this decision without the assistance of professional representation from both parties.
3. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter "the claimant", against the decision of the Secretary of State on 10 July 2014 to make him the subject of a deportation order because he is a foreign criminal. The appeal was expressed to be allowed on human rights grounds. Permission to appeal was granted by First-tier Tribunal Judge Landes who (if I may say so) gave insightful and concise reasons. She found it arguable, firstly, that the First-tier Tribunal had had insufficient regard for the public interest in a deportation case and, secondly, that it had been too easily persuaded that the consequences of deportation would be "unduly harsh".
4. The claimant is a citizen of Grenada who was born in March 1971. He has lived in the United Kingdom since July 2007. He entered the United Kingdom with entry clearance as a husband and his leave was extended by stages. He was refused indefinite leave to remain, possibly as a consequence of having been cautioned and convicted of summary offences, but he had discretionary leave which was due to expire in November 2014.
5. In July 2013 at the Crown Court sitting at Isleworth he was convicted after a trial of an offence of violent disorder and sentenced to eighteen months' imprisonment.
6. Lest there be any doubt that I appreciate the seriousness of his criminal offending I explain in outline at the outset of this Decision the conduct that got him into trouble. The claimant joined in with a group of men who burst into the home of a neighbour who had protested, perhaps in an inappropriate way, against the noise made at an informal party. The main protagonist wielded a machete and was sentenced to seven years' imprisonment. The claimant had relied on self-defence but his defence was rejected by the jury and he was convicted. The sentencing judge distinguished the claimant from the main protagonist but he has clearly committed a serious crime.
7. The decision was explained in a Notice of Decision dated 10 July 2014 and I begin by looking carefully at the decision itself.
8. Little was said about the rights of the claimant's wife. She is a British citizen but the claimant's leave has always been "precarious" (that is to say of limited duration without a guarantee of extension) and for this reason, if for no other, she could not satisfy the requirements of paragraph 399(b)(i) of HC 395.

9. The decision shows that the Secretary of State considered the “family life with children that the claimant enjoyed” and said this consideration was a reference to paragraph 399(a) of HC 395.
10. Importantly, the Secretary of State noted that the claimant had three children in the United Kingdom with his wife. D(1) was born in August 2008; D(2) was born in May 2010 and D(3) was born in April 2013. The children were described as being “in the care of their mother” and are British citizens. The Secretary of State purported to consider the best interests of the children without actually saying what she considers them to be. The Secretary of State did say that in her opinion the seriousness of the offences outweighed the claimant’s desire to remain in the United Kingdom because of the children having regard to “the strength of your relationship with your children and nature of contact and your ability to maintain similar contact from Grenada”.
11. The letter continues:

“Whilst it is considered that your removal from the United Kingdom may have an impact on the children’s emotional welfare we are in the view this would be minimal”.
12. It then states that there was no evidence from professional bodies to indicate that there were concerns about the behaviour of the children or their psychological wellbeing since the claimant’s imprisonment. The letter says:

“There is nothing to suggest that your children’s welfare would be compromised if you were deported”
13. The letter then purports to consider each of the children’s rights individually. In each case the Secretary of State recognised that the British citizen children should not be expected to go to Grenada and conceded expressly that it was “not considered reasonable” to expect the child to leave the United Kingdom.
14. The Secretary of State has never suggested that family life could be continued by the children removing to Grenada.
15. In considering D(1) the Secretary of State simply says that the claimant “could maintain contact with your daughter through modern means of communication and family visits”.
16. The same comment is made in respect of the claimant’s son D(2).
17. In the case of D(3) the Secretary of State says that she was only 3 months old when the claimant was sent to prison. The child had not visited the claimant when he was in prison and the Secretary of State again said that he could maintain contact “through modern means of communication and family visits”.
18. The letter then considered the claimant’s relationship with his wife. She is a British national but the Secretary of State noted that “we received no representations from Mrs C--- and she had not visited you while you were in prison”.

19. The Secretary of State took the view that the claimant's relationship with his wife was not subsisting but she expressly recognised that there was still a relationship between the claimant and his wife (see Notice of Decision under the heading "Family life with Partner").
20. Much space is then devoted to consideration of paragraph 399A although it does not seem to me that anybody thought that the claimant would be entitled to remain by reason of that Rule. He is not.
21. The refusal letter then went on to consider "exceptional circumstances".
22. The Secretary of State noted that the probation service had assessed the claimant as a "MAPPA Level 1 offender who poses a medium risk of harm to the public with risk factors being *"physical harm and intimidation"*. This is true but diverts attention from the probation officer's opinion that the risk of reoffending is low.
23. The claimant responded to a letter dated 9 September 2013 inviting him to raise an exception under Section 33 of the UK Borders Act 2007 so that deportation could be avoided. He said that immediately before going to prison he had lived with his wife and children as a nuclear family and that his children had not visited him in prison because he thought that the old children would find it too traumatising and the youngest was too young.
24. The Secretary of State accepted that the claimant *had* lived with his children and wife as a nuclear family before he went to prison. The Secretary of State also accepted that the claimant has asserted that he was trying to rebuild his family life.
25. I turn now to the decision of the First-tier Tribunal (First-tier Tribunal Judge Chamberlain and Mr M E Olszewski, non-legal member).
26. Before them the claimant was represented by counsel.
27. The claimant and his wife gave evidence and were found to be honest. The claimant was candid about his own criminal behaviour and did nothing to minimise the wrong that he had done. Similar Mrs C--- was "open about her anger with the [claimant] for the circumstances of his imprisonment and did not attempt to hide her understandable anger and disappointment".
28. The Tribunal noted that the claimant had behaved well in prison and was given "red band" status in both prisons where he was kept. He had a supporting letter from his probation officer confirming that he had not misbehaved during his time on licence and noting that although the OASys assessment put him at a "medium risk of harm" there was a "low risk of reoffending". The Tribunal found it significant that the risk of reoffending was low.
29. The Tribunal accepted that the claimant and his family were now living together in the same family home. There has been no prison visits because the parents thought

that they would be harmful to the children and Mrs C--- was angry with the claimant. They had telephone conversations almost every day.

30. Significantly, at paragraph 20 of its Decision, the First-tier Tribunal said:

“We do not find that the failure of [the claimant’s] wife and children to visit him when he was in prison affects our findings that he is in a genuine and subsisting parental relationship with them”.

31. When the claimant was released from custody he did not return immediately to the family home. He stayed with friends who were sureties for the purpose of admitting him to bail. There had been frequent contact between the claimant and his family in that time and on 3 December 2014 (the appeal was heard on 13 January 2015) with the approval of the probation officer the claimant had returned to the family home.

32. Mrs C--- is a nurse. She continues to work when the claimant was in prison. During the time of her husband’s imprisonment she worked three twelve hour shifts every week to reduce child care charges. The evidence was “she had coped with great difficulty and had had to get a nanny to compensate for the time that [the claimant] is not around and able to look after the children”. She had run into financial difficulties while the claimant was in prison. She is now working to pay off the debts.

33. At paragraph 23, the Tribunal found the claimant to be the main carer of the children. The children have a good relationship with their father.

34. At paragraph 24 the First-tier Tribunal dealt with the consequences of the appellant being deported. It said:

“We find that, were the appellant to be returned, the children would be deprived of this care. We find Mrs C--- would be placed in the same position as she was when the [claimant] was imprisoned, only this time the situation would be permanent. We find that she would have to reduce her working hours, thereby causing her financial difficulty which would impact negatively upon her children. Given that the situation would be permanent, we find that although Mrs C--- does not currently rely on public funds, it is likely that she would be forced to rely on public funds as a single mother of the children. Mrs C--- gave evidence that she does not want to become a single mother, and given the fact that she is responsible for three young children with employment as a nurse, this is understandable. We do not find that Mrs C--- and the children coped when the appellant was incarcerated. We find that his incarceration had a negative effect, both financially and psychologically.”

35. The Tribunal found that they couple would not be able to afford visits to Grenada for some time.

36. At paragraph 26 the Tribunal found that the claimant’s absence had affected the children psychologically. It accepted the evidence of Mrs C--- that they were tearful when he was imprisoned. They have been living as a family unit. The children had only known life with their father. The Tribunal accepted Mrs C---’s evidence that the children would not be able to cope with the absence of their father. The Tribunal then

went on to say that found it “unduly harsh on the children to be deprived of their father, and we find that this would not be in their best interests”.

37. The Tribunal then found that the claimant also has a fourth child from another relationship. He has some contact with that child who sometimes stayed with his nuclear family. She was born in 2006. The Tribunal accepted that she enjoyed and benefitted from her relationship with her father.
38. At paragraphs 13-15 the Tribunal set out the relevant parts of paragraphs 399 of HC 395 and Section 117C of the Nationality, Immigration and Asylum Act 2002.
39. The key paragraph is probably at [29] where the Tribunal said:

“We find that the effect of the [claimant’s] deportation on his children would be unduly harsh. We find that their contact with him would be restricted to telephone contact. We find that it would not be possible for them to visit him in Grenada owing to the costs. We find that they would be deprived of physical contact with their father. We find that D(1), D(2) D(3) would be deprived of the care that they currently receive from him. They would be deprived of their primary carer. We find that they would be affected psychologically by the absence of a father figure who has lived with them all of their lives, bar the time he was incarcerated. We find that it is likely that Mrs C--- and the children would be forced to rely on public funds were the appellant to be deported, given that Mrs C--- would then be a single mother of three children on a nurse’s income. We find that to split the family and to cause reliance on public funds in this way is not in the public interest.”
40. The Secretary of State’s grounds extend to some seventeen paragraphs. Some of them are formal and need no particular comment. The rest are of variable quality.
41. Paragraphs 2 and 3 of the grounds seek to challenge the finding that it would be unduly harsh for the children to remain without their father. The Tribunal's findings are described as “wholly inadequate”. The grounds then assert that the appellant is only the main carer because he is not employed and if he took a job he would no longer have such an involvement in their care. They complain that there is “absolutely no independent evidence” to support the findings that the children have been unable to cope without him or would suffer in his absence. They complain there is “absolutely no evidence of any psychological effects on the children and the Tribunal’s findings are simply not supported by any independent evidence.”
42. The paragraph continues in this ilk, asserting the writer’s view that it would not be unduly harsh to expect the wife to change her job or reduce her hours or to carry on as she did whilst the claimant was in prison. Paragraph 3 complains that there is “absolutely no independent evidence” about the relationship with the fourth child.
43. There is, to adopt a phrase that features in the grounds, “absolutely no” reason why there should, as a matter of law, be independent evidence on any of these points. The evidence came from the mother, who is possibly the very best person to know, and the father. Both were found to be credible. It is not an error of law to believe a witness.

44. I also find it disturbing that the Secretary of State should be surprised that there was no evidence that removing a child from a family disturbs the children. The case was not presented on the basis that the children will suffer severe psychological trauma needing support from health professionals. Once the fact of a nuclear family was established, as it clearly was before the First-tier Tribunal, the only remarkable thing about the findings about the effect of the claimant's removal upon the children is that anybody finds them in the slightest bit surprising. The grounds do not challenge the finding that the claimant lived in a nuclear family when the First-tier Tribunal decided the appeal. Common humanity should have informed the Secretary of State that removing a father from a nuclear family where there were small children is an appalling thing to do and can be expected to be harmful and damaging to the children. Rather than commenting, perhaps rather smugly, that there was no expert evidence to support the First-tier Tribunal's findings, a person of ordinary education and experience of life could be expected to find it truly remarkable if removing the father in such circumstances was not a disruptive and harmful and generally undesirable thing to do even if it was necessary to secure the public interest.
45. Paragraph 3 of the grounds is a complete blind alley. The claimant's relationship with his fourth child was not pivotal to the reasoning. Although the ground repeats the assertion that there was no independent evidence about the relationship between the claimant and that child it falls short of asserting that the Tribunal acted perversely in believing it. It does not identify an error of law and Miss Fijiwala wisely did not rely on it before me.
46. The comment that "he may be caring for the children currently, this is only because he is not currently in employment and should this change then he may no longer have such an involvement in their care" is trite, speculative and falls short of suggesting that the Tribunal was not entitled to find that when it decided the appeal the claimant was the primary carer of three small children.
47. Paragraph 4 of the grounds is more troublesome for the claimant. It particularly relies on the decision of the Court of Appeal in "A D Lee" although it does not trouble to give the correct citation. In the case of A D Lee v SSHD [2011] EWCA Civ 348 Sedley LJ said:

"The tragic consequence is that this family, short-lived as it has been, will be broken up forever because of the appellant's bad behaviour. That is what deportation does."
48. Paragraphs 5 and 6 do not assist. They are reminders of the importance of applying the Rules. It does not appear to be the Secretary of State's case that the First-tier Tribunal did not apply the Rules. It is the Secretary of State's case that the Tribunal did not apply them properly.
49. Paragraph 7 argues that the Tribunal failed to recognise the scales were "very heavily weighted in favour of deportation". That is (broadly) a correct statement of the law but I do not find it adds anything of significance to paragraph 4 and, for reasons explained below, the contention that the First-tier Tribunal did not understand this is not made out.

50. Paragraph 9 is a mixture of criticisms. It is now trite law that the law relating to deportation is essentially codified in the Rules. I see absolutely no need for a self-direction that the scales are tipped in favour of deportation. The Tribunal is seized of the case because, and only because, the claimant has done something sufficiently serious to *require* his deportation unless an exception under the rules or the Act applies. The First-tier Tribunal copied out the words of Section 117C at paragraph 15. I see no basis for deciding that it failed to appreciate the significance of the words it wrote down.
51. The ground then moves on apparently seamlessly to at least implicitly criticise the finding that the claimant was remorseful. According to the ground the Tribunal failed to “take into account, or mention that [the claimant’s] claim at the hearing to be acting in self-defence to protect himself from a dog, which was not previously mentioned and suggests that he has not taken full responsibility for his actions.” I find that to be close to unarguable. It is quite clear that the claimant did argue self-defence before the jury. That was the issue in the criminal trial. The circumstances that he advanced as self-defence are not set out anywhere. I see no justification for the assertion that he claimed before the Tribunal for the *first time* that he had been acting to protect himself from a dog. Without a great deal more being said it is impossible to make any sense of the criticism. It may be that the claimant had invented a dog and was telling lies. It may be that a dog was involved and the claimant was acting to protect himself but, the jury found, did more than was reasonably necessary. It may be that the dog added to the general *mêlée*. The fact (if it is a fact) that he explained the outline of his defence before the Tribunal in answer to some undisclosed question is not, without more, evidence that he claimed to have been convicted wrongly or that the rest of his evidence ought not to have been believed.
52. The remaining grounds that have any substance emphasise that deportation is not just about protecting the public from the risk of reoffending. That again is an assertion of trite law but it is trite law that can sometimes be forgotten.
53. The relevant parts of paragraph 399 of Section 117C are incorporated into the Decision. It is plain that the Tribunal understood that the deportation of foreign criminals is in the public interest but where the sentence is less than four years’ imprisonment, as was the case here, an exception exists when there is a genuine and subsisting parental relationship with a qualifying child and the effect of deportation on the child would be unduly harsh.
54. At paragraph 15 of its Decision the tribunal set out most of Section 19 of the Immigration Act 2014 and thereby expressly reminded itself that “the deportation of foreign criminals is in the public interest”, that “the more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal and that “the public interest requires C’s deportation unless...”.

55. I do not accept that the Tribunal lost sight of the uneven nature of the balancing exercise it had to conduct although I am persuaded that it did not carry out that exercise properly.
56. Although I have considered each of the Secretary of State's grounds of appeal, before me Miss Fijiwala mainly put the case on the basis that the finding that removal would be unduly harsh for the children was not sustainable. She relied particularly on the decision of **KMO (Section 117 - unduly harsh) Nigeria [2015] UKUT 00543 (IAC)** which knowingly and deliberately differs from the reported decision of **MAB (Para 399; "unduly harsh") USA [2015] UKUT 00435 (IAC)**.
57. The fundamental difference between these cases concerns the extent, if at all, that the seriousness of the offence is relevant to the assessment of whether the consequence of removal is unduly harsh. This may well make a very important difference in certain cases. For example, it is conceivable that a very serious crime, such as rape, could be punished with less than four years' imprisonment in particular circumstances and it may well be open to the Tribunal, or even required of the Tribunal, to recognise that the public interest in removing a rapist is greater than, say, an offender such as the instant offender who may have attracted a sentence of about twelve months if he had pleaded guilty. Conversely there may be cases (such as, for example, where a child has a particular need for a parent to remain) where the effect of removal will be unduly harsh no matter how strong the public interest in removal. It is a distinction in approach which in some cases will be of fundamental importance but I do not consider it to be important here.
58. This is a case where the criminal sentence is towards the lower end of the range of sentences that required deportation subject to a statutory exception applying. I do not consider the public interest in deportation to be particularly sharpened by the circumstances of the offence. The public interest in the claimant's deportation is established by reason of the conviction and the sentence and by the operation of law. Further, like the First-tier Tribunal, I remind myself expressly that the public interest requires deportation unless an exception applies. Although the claimant's record is not unblemished, he is hardly a persistent offender and has not been in serious trouble apart from the offence that resulted in his being sent to prison. It may well be that the public interest in removing him is lower than in some cases but it is still there and is the reason for the decision that is the subject of the appeal.
59. It is now absolutely clear that the Tribunal is required to apply the law set out in the Rules and the Act. There is no space for independent consideration on Article 8 grounds. The First-tier Tribunal should not have allowed the appeal on human rights grounds and to that extent it erred.
60. However at paragraph 26 the Tribunal found unequivocally that "it would be unduly harsh on the children to be deprived of their father, and we find that would not be in their best interests."

61. The reference to “their best interests” is an acknowledgment of the statutory obligation under Section 55 of the Borders, Citizenship and Immigration Act 2009 which makes their best interest a primary consideration. Children cannot always have their best interests met. I do not doubt that the best interests of these children lie in their father remaining with them and their mother in their home in the United Kingdom.
62. The reference to “unduly harsh” is clearly a reference to Section 117C(5) of the 2002 Act and to paragraph 399(a)(ii)(b), each of which the Tribunal set out in its decision.
63. It is perfectly clear to me that the First-tier Tribunal was very concerned about the impact on this family of deporting the claimant, and those are concerns I wholly understand and share. I am also satisfied that, in the context of recognising that it was in the public interest to remove the claimant, the Tribunal was satisfied that the effect of deportation would be “unduly harsh”.
64. As was correctly identified by Judge Landes when she gave permission, and by Ms Fijiwala in her submissions, the real point of contention in this appeal is whether the First-tier Tribunal was entitled to find the “unduly harsh” test satisfied in this case for the reasons it gave.
65. I must direct myself carefully about the meaning of “unduly harsh” and then see if the First-tier Tribunal’s findings support its conclusion.
66. The phrase “unduly harsh” is a troubling phrase. In a sense no harshness is due to a child. I struggle to think of a case where removing a person in a subsisting parental relationship would not be “harsh” for the child but I do not think that Parliament intended that no person in a subsisting parental relationship could be deported. As far as I am aware the phrase has not been defined authoritatively.
67. In MAB (para 399; “unduly harsh”) USA [2015] UKUT 435 (IAC) the Upper Tribunal (Upper Tribunal Judge Grubb and Deputy Upper Tribunal Judge Phillips) suggested the following in the judicial head note:
 2. Whether the consequences of deportation will be “unduly harsh” for an individual involves more than “uncomfortable, inconvenient, undesirable, unwelcome or merely difficult and challenging” consequences and imposes a considerably more elevated or higher threshold.
 3. The consequences for an individual will be “harsh” if they are “severe” or “bleak” and they will be “unduly” so if they are ‘inordinately’ or ‘excessively’ harsh taking into account of all the circumstances of the individual.
68. In KMO (section 117 - unduly harsh) Nigeria [2015] UKUT 543 (IAC) the judicial head note said:

The Immigration Rules, when applied in the context of the deportation of a foreign criminal, are a complete code. Where an assessment is required to be made as to whether a person meets the requirements of para 399 of the Immigration Rules, as that comprises an assessment of that person's claim under article 8 of the ECHR, it is

necessary to have regard, in making that assessment, to the matters to which the Tribunal must have regard as a consequence of the provisions of s117C. In particular, those include that the more serious the offence committed, the greater is the public interest in deportation of a foreign criminal. Therefore, the word "unduly" in the phrase "unduly harsh" requires consideration of whether, in the light of the seriousness of the offences committed by the foreign criminal and the public interest considerations that come into play, the impact on the child, children or partner of the foreign criminal being deported is inordinately or excessively harsh.

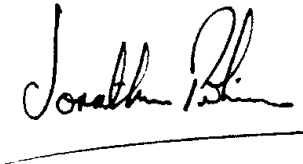
69. I do not have to decide here if the particular circumstances of the offence increase the degree of harshness that is due to the claimant's children. As explained above, although the public interest clearly requires the claimant's deportation, unless an exception applies, the punishment was at the lower end of the qualifying bracket and the offence, although plainly serious, did not have any particularly aggravating features such as sexual violence against women or molestation of children that provoke public outrage.
70. I do, however, find that each of the above cases supports an interpretation of the phrase that makes it a hard test to satisfy and to that extent I follow both of them in the way that they interpret the word "harsh". Whatever the consequence of the adjective "unduly" the noun "harsh" clearly means more than *"uncomfortable, inconvenient, undesirable, unwelcome or merely difficult and challenging"*.
71. The First-tier Tribunal did not allow the appeal because of the claimant's relationship with his fourth child. Clearly she can be expected to miss direct contact with her father but she only saw him occasionally. The disruption to that relationship consequent on deportation could not be described properly as "unduly harsh" within the rules.
72. At paragraph 29 of its Decision the Tribunal found that removing the claimant would deprive the children "of physical contact with their father". They would be "deprived of the care that they currently receive" and they "would be deprived of their main carer". The Tribunal also considered how Mrs C--- would cope in the claimant's absence. It had accepted evidence that in the nine months that he had been away Mrs C--- had run into debt despite her impressive efforts to keep her job and her family. It clearly anticipated further problems for the children as the family descended from self sufficiency to welfare dependency. Although she had tried hard she had not really coped in the nine months that the claimant was away. The Tribunal clearly found the predictable future consequences, taken with the established existing consequences for the three children to be too much, or "unduly harsh".
73. Section 117B explains the application of the public interest when considering article 8 of the European Convention on Human Rights in cases of foreign national parents who have no other right to be in the United Kingdom but who have a "genuine parental relationship" with a "qualifying" (for present purposes "British citizen) child. There the public interest does not require that person's removal. There the mere fact of a "genuine parental relationship" is enough to extinguish the requirement for removal.

74. Section 117C guides the approach to article 8 when considering deportation. In deportation case the existence of a genuine parental relationship is not enough to extinguish the requirement for removal. Before that happens, (unless the parent was sentenced to 4 years or more imprisonment when are still more stringent regime applies) the consequences of the parents removal must be unduly harsh. Read with Section 117B, Section 117C requires something more than the mere disruption of a genuine parental relationship. It defines the additional requirement as “undue harshness”.
75. I cannot agree with the First-tier Tribunal that anything that has been established here can be described properly as “unduly harsh”. All of the pain and upset and potential for long term damage and economic dependency on the state is the ordinary consequence and unless it is Parliament’s intention that parents cannot be deported (I do not think that is Parliament’s intention) I can see nothing in this case that justifies the First-tier Tribunal’s decision. My difficulty is that I do not see what the First-tier Tribunal has found that can be described as “unduly harsh”. The harshness consequent on removal is exactly the harshness that is to be expected when a nuclear family is broken up by deportation. It may even be a paradigm example of what happens. The case concerns an industrious mother who managed, imperfectly and at great personal cost, when her husband was in prison but who suffered a decline in income as she adjusted her work so she could still give the children the care they needed. This is not a case where the unsettling effect on the children was exceptionally severe. Neither is it case where the children have exceptional needs such as might arise if, for example, one of the children was gravely ill. It also seems likely that the effects were minimised as the mother got on with her life. Indeed it is one of the ironies of this case that claimant’s case would be stronger if his wife were not so competent. This does not mean that I trivialise the demands made on her as she organised her working life so that she could cram almost a full working week into three long days. Neither have I lost overlooked the evidence that she incurred and is now paying off debt but the fact is that she managed.
76. As indicated above, the grounds rely on the decision of the Court of Appeal in Lee. They also rely on HA Iraq v SSHD [2014] EWCA Civ 1304 (citation not given in the grounds). Lee emphasises the serious adverse consequences that can be expected to follow deportation and HA Iraq emphasises the heavy weighting in favour of deportation. The cases are not helpful to the Secretary of State as they might appear. In Lee the offender was sentenced to 7 years imprisonment and in HA to 4 years imprisonment. The public interest in deportation was stronger than in the present case here. Nevertheless, they make the point that deportation is a serious matter but the public interest often requires it.
50. I therefore have to rule that the decision of the First-tier Tribunal was unsound in law. Its clear findings did not support his conclusion. I must set aside its decision and substitute a decision dismissing the appellant’s appeal and this is what I do.

Notice of Decision

53. I therefore allow the Secretary of State's appeal. I substitute a decision dismissing the claimant's appeal against the Secretary of State's decision. In my judgement the claimant must be deported.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 11 December 2015