



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/02579/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 23 November 2017**

**Decision & Reasons
Promulgated
On 24 November 2017**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MA

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms K Pal, Senior Home Office Presenting Officer
For the Respondent: Mr D Seddon, counsel instructed by Farani Javid Taylor Solicitors

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge RL Walker, promulgated on 19 June 2017. Permission to appeal was granted by First-tier Tribunal Judge Page on 14 July 2017.

Anonymity

2. An anonymity direction is made owing to the age and particular vulnerability of the respondent's grandchildren.

Background

3. The respondent arrived in the United Kingdom during 1989 and was, ultimately, granted indefinite leave to remain during 1995 owing to his marriage to a British Citizen (MF). He was convicted of conspiracy to defraud on 27 February 2004 and was sentenced to 3 years' imprisonment. MF and the respondent divorced in 2006. A deportation order was made against the respondent on 28 August 2007, at a time when his whereabouts were unknown. He came to light during 2012 and appealed, out of time, against the deportation order. That appeal was dismissed in a decision promulgated on 5 December 2012. The respondent was granted permission to appeal to the Upper Tribunal but his appeal was dismissed on 19 July 2013. His appeal rights were exhausted as of 7 April 2014.
4. The respondent made a series of further submissions. To summarise, he stated that he had resided in the United Kingdom for 25 years; recommenced a relationship with MF; had further family life with his adult daughter, adult stepdaughters and minor step-grandchildren; he provided substantial practical and financial support to his daughter and MF who each had severe ongoing medical problems; he also provided occasional financial support to his stepdaughter (N) as well as childcare for his step-grandchildren. In addition, the respondent was suspected of having bladder cancer, had an operation to remove his kidney stones and had been referred for tests relating to seizures. He was also a successful businessman. These submissions were supported by the report of an independent social worker and medical evidence. The Secretary of State refused to accept these further submissions as a fresh claim. The respondent was granted permission for a judicial review of the said decision, which was, ultimately, settled on the basis that his submissions would be considered as a fresh claim.
5. The Secretary of State's reasons for refusing to the appellant's human rights claim are set out in a letter dated 31 January 2017. No consideration was given to the respondent's family life with his daughter or stepdaughters because they were adults and as such did not come within paragraph 399(a) of the Immigration Rules. It was accepted that the respondent had a genuine and subsisting relationship with MF and that it would be unduly harsh for her to live in Algeria. While the Secretary of State also accepted that the respondent was MF's primary carer it was considered that as a British citizen, she could seek support from the NHS and other government bodies and it would not be unduly harsh for her to remain in the United Kingdom while the respondent was removed to Algeria. The Secretary of State did not accept that the respondent met any of the limbs of paragraph 399A of the Rules. Nor was it accepted that his business involvement was as claimed. The respondent's circumstances were not accepted as amounting to very compelling circumstances which would outweigh the public interest in his deportation.

6. The respondent's submissions as to his health were considered in the context of Articles 3 and 8 ECHR, with the Secretary of State noting that he was entitled to medical treatment in Algeria and that there were no illnesses which could not be treated there.

The hearing before the First-tier Tribunal

7. At the hearing before the First-tier Tribunal, the respondent gave evidence along with MF, his step-daughter J and his business partner. The judge took the Upper Tribunal's consideration of the respondent's case on 19 July 2013 as the starting point but based on the unchallenged report of the social worker, he concluded that it would be unduly harsh for MF and the step-grandchildren to remain in the United Kingdom without the respondent.

The grounds of appeal

8. The grounds in support of the appeal argued that Judge Walker failed to give clear reasons as to why the appeal had been allowed in that he had, firstly failed to acknowledge or consider the provisions of section 117B of the 2002 Act; or, secondly, to indicate what part of the Rules were satisfied; thirdly, it was said that the judge failed to explain what made the case compelling enough to outweigh the strong public interest in deportation. It was emphasised that the Upper Tribunal had not found the respondent's case sufficiently compelling on very similar facts. Fourthly, it was contended that insufficient reasons had been given by the judge for the appellant to succeed as a carer for his family members; BL (Jamaica) v SSHD [2016] EWCA Civ 357 applied.
9. Permission to appeal was granted on the basis that all the points made by the Secretary of State were arguable.

The hearing

10. There was no Rule 24 response filed because, as Mr Seddon explained, those representing the respondent did not receive the Secretary of State's grounds of appeal until 21 November 2017. Instead, he handed up a brief skeleton argument at the outset of the hearing which, in summary, he argued that there was no material error of law in the decision of the First-tier Tribunal.
11. Ms Pal argued that other than a reference to the Rules and section 117C of the 2002 Act at [34] of the decision, there was otherwise a complete failure by the judge to make any findings in respect of the Rules or statutory provisions. She described the complexity of the respondent's circumstances, arguing that the judge made no reference in the decision to the applicability of Rule 399a and furthermore did not consider whether it applied to the step-grandchildren. Instead the judge had quoted from the independent social worker's report and did not assess whether the respondent had a genuine and subsisting parental relationship with his grandchildren.

12. Ms Pal went somewhat further than grounds in arguing that it was established that when a deportation order had originally been made against the respondent, he had gone to ground and as such little weight should have been attached to his family or private life. Ms Pal further contended that the judge made no findings on whether the grandchildren's mother had abdicated responsibility and that there was no consideration of whether the respondent was fit to be a carer; as someone facing deportation, either by the independent social worker or social services.
13. Ms Pal criticised the judge's findings at [42-43] to the effect that the respondent had not continued to offend and was working; arguing that these findings were made in ignorance of the signing of the deportation order in 2007 following which the respondent had worked unlawfully in defiance of the order. She argued that the judge made no reference to the public interest anywhere in the decision. Developing an earlier point, Ms Pal suggested that the respondent put down further roots from 2007 in that he had gone to ground knowing that there was a deportation order in existence and had been arrested at work in 2012. She argued that none of these features were considered by the judge and that the Secretary of State could not see where the judge balanced the competing interests. She submitted that the judge failed to take into account the role of social services and the assistance they would provide in the respondent's absence. Lastly, she said that the judge was wrong in finding that the passage of time diluted the public interest. The latter would only be the case after the respondent had been excluded for 10 years.
14. Mr Seddon began by emphasising that decisions in deportation hearings are fact sensitive and factual findings should be difficult to overturn on grounds of perversity. Furthermore, he reminded me that the Secretary of State initially found that the respondent's further submissions did not amount to a fresh claim, but had conceded the point upon the respondent being granted permission for a judicial review of that decision. He argued that it was implicit in that concession that this was a case which the First-tier Tribunal were entitled to decide positively, in that it was a case which was capable of succeeding.
15. Addressing the first ground as to the judge's failure to consider section 117B, Mr Seddon took me to multiple places in the decision to argue the reverse. He did the same for the second ground, where it was said that the judge did not explain the basis either under the Rules or section 117C, upon which the appeal was allowed.
16. Mr Seddon contended that contrary to Ms Pal's submissions, the judge explained why he considered that it was unduly harsh for the respondent's grandchildren to remain in the United Kingdom without him, in that he had cited the social worker's report, whose conclusions were not questioned nor disputed by the respondent at the hearing. He argued that those expert findings spoke for themselves and that the Tribunal was entitled to quote from them. Furthermore, the judge had ample undisputed medical evidence before him; expert evidence that there would be a deterioration in the mental health of all the respondent's family members if he is

deported and evidence that the grandchildren were already vulnerable and would be likely to end up in care. He argued that these matters adequately explained the judge's conclusions as to undue harshness at [40] of the decision.

17. On Ms Pal's submission as to the ongoing parental relationship, Mr Seddon argued that this was simply not in dispute and drew my attention to the previous findings of the Upper Tribunal, which the judge used as his starting point at [36]. Indeed, the Upper Tribunal had previously made findings of family life between the respondent and his step-grandchildren.
18. Mr Seddon disputed the Secretary of State's third ground that the judge did not sufficiently identify the public interest, with multiple references to the decision and, in relation to the fourth and last ground distinguished the facts of the respondent's case from that of the claimant in BL(Jamaica). Addressing additional matters incorporated by Ms Pal into her submissions, he argued that the judge had in no sense overlooked the role of social services in this case. The social work report referred to individual long-term care involving practical and emotional support provided by the respondent to his family members, which could not be replicated by social services. It was owing to the respondent's presence that the state had not had to step in as the judge had found at [42]. With regard to Ms Pal's comments on the respondent's immigration history, he drew my attention to the findings of the Upper Tribunal that the respondent took no positive steps to frustrate immigration enforcement. Lastly, in relation to the passage of time, the judge's comments went to the reduction of the weight to be attached to public interest owing to the decline in the risk to the public in the time that had passed.
19. In reply, Ms Pal simply wished to state that the presenting officer before the First-tier Tribunal did not concede the issue of parental responsibility. Mr Seddon accepted this, but reiterated that the presenting officer had not challenged the findings and conclusions of the independent social worker.

Decision on error of law

20. At the end of the hearing, I announced that the First-tier Tribunal made no error of law and that its' findings would be upheld. My reasons, which address only the grounds for which permission was granted, are as follows.
21. The judge adequately directed himself as to the considerations in section 117B of the 2002 Act. At [7] on page 4 of the decision, the judge states; "*Consideration also has to be given to the relevant parts of 5A of the Nationality, Immigration and Asylum Act 2002 and which contains sections 117A, 117B, 117C and 117D.*" As Mr Seddon argued, referring to paragraph 15 of the reasons for refusal letter, no issue was taken with the factors in section 117B. Indeed, consideration of section 117B would reveal that the respondent gave evidence in English, converses with his family in English, is economically independent in that the Tribunal accepted his business was doing well. In terms of immigration history, it is accepted that the respondent was granted indefinite leave to remain on

the basis of his relationship with his current partner and that prior to that he had been a visitor and a student. Thus, the respondent's family life was established at a time when he was lawfully in the UK. The first ground is simply not made out.

22. The second ground suggests that there was insufficient focus on which part of Rules the judge found that the respondent satisfied. As well as referring to section 117C at [28], there is a clear reference by the judge to it being unduly harsh for both the step-grandchildren and the respondent's partner to remain in the United Kingdom without him, therefore both limbs of 117C(5) are made out. At [29], the judge made an alternative finding that section 117C(6) was satisfied.
23. At [34], under the heading of "Findings of Fact and of Credibility," the relevant Rules are set out as well as a reference to section 117C. There is a further reference to both the Rules and the statute at [35]. At [40] the judge clearly states that it would be unduly harsh, evidently a finding under section 117(C). At [42] he considers other factors relied upon in relation to section 117C(6) as part of exceptional circumstances, including the passage of time since the offence was committed, the low risk of reoffending and that the state will not have to provide for the family if the respondent remains in the United Kingdom. Given the multiple references to the statute and the Rules both in the judge's self-direction as well as his reasons, there is no merit in the second ground.
24. The third ground contends that the judge did not sufficiently identify the public interest. Again, this is not the case. As indicated above, at [7], the judge cited sections 117A-D and given the many subsequent references to section 117C, it cannot be seriously contended that the judge did not have specific regard to section 117C(1) regarding deportation being in the public interest and section 117C(2) as regards the level of offending. Furthermore, at [35] the judge considers the nature of the offending and sentence imposed and rightly finds, with reference to Ali v SSHD [2016] UKSC that it does not fall within the highest level of offending. at [42] the judge overtly acknowledged the statutory criteria and described the public interest element as strong owing to the seriousness of the respondent's offending. The judge made no error in considering that the risk of reoffending was the most serious factor in the public interest but at the same time, being cognisant of the fact that the offence took place in 2002, that there had been only one offence, there was no further offending in the fifteen years since conviction and the pre-sentence report had indicated a low risk of reoffending, a prediction which had come to pass.
25. The final ground argued that the judge was required to give clear reasons for the respondent to succeed as a carer, given the judgment in BL Jamaica. The judge did so and in any event the respondent's circumstances are easily distinguished from that of the claimant in BL where there was another carer available in circumstances where the claimant was not available when imprisoned. The extract from [53] of the judgment relied upon does no more than say that it is necessary to provide evidence that care is needed. In the respondent's case, this evidence was provided in the form of the undisputed social workers report

where the absence of an alternative carer was explored as was the conclusion, quoted at [39] that there had been no improvements in the physical and mental health of the respondent's family members and that their degree of dependency (with particular reference to the partner and step-daughter N) on the respondent had increased significantly

Conclusions

The making of 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 is upheld.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 11 December 2017

Upper Tribunal Judge Kamara

