



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/08618/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 21 November 2017**

**Decision & Reasons
Promulgated
On 16 March 2018**

Before

**THE HONOURABLE LORD MATTHEWS
(sitting as a Judge of the Upper Tribunal)
UPPER TRIBUNAL JUDGE PERKINS**

Between

**A--- N--- R---
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Limbrey, Counsel instructed by BIDS

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

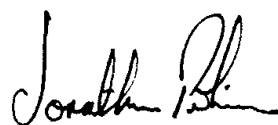
1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 we make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. Like the First-tier Tribunal which made a similar order, we make this order because the case touched on the welfare of children and there is invariably a risk in cases of this kind that publicity will create problems for them.

2. This is an appeal by a citizen of Fiji against the decision of the First-tier Tribunal dismissing his appeal against the decision of the Secretary of State to refuse him leave to remain on human rights grounds consequent on his being the subject of a deportation order under Section 5(1) of the Immigration Act because his presence in the United Kingdom is not conducive to the public good.
3. The Appellant's criticisms of the First-tier Tribunal's decision are not entirely without merit but they do not become material.
4. There is criticism of the Judge's finding that the Appellant knew that his leave to remain had been extinguished. We do not see that anything turns on this. He was discharged from the army in 2003 and as a matter of fact he no longer had any right to remain in the United Kingdom. There is an argument to be made that the endorsements on his passport taken on their own are equivocal. It is right there was no evidence directly before the First-tier Tribunal Judge about what the Appellant was advised when he left the army but we do not criticise the Judge for saying it was so obvious that he would have been given advice that he did not accept that the Appellant did not realise his leave would come to an end. We make no further comment on that criticism because it is not material. The fact is he had no leave.
5. The offence that got the Appellant into trouble was an offence of sexual assault by intentionally touching a female. It is right to say that this is not the worst example of its kind. The touching was not penetrative but the offence was sufficiently grave to attract a ten-month sentence of imprisonment and was clearly a serious matter.
6. We find it significant that the Appellant has got into further trouble on two occasions in 2015 when he failed to honour his notification obligations under the Sexual Offences Act 2003 (so called sex offences registration) and again for a similar offence in January 2017. Such offending, we find, is persistent. Importantly it is the conduct of somebody who keeps on offending.
7. It is right that our attention was drawn to the decision in **Chege ("is a persistant offender") [2016] UKUT 187 (IAC)** as was the attention of the First-tier Tribunal and it is right to say that the tests listed there are not entirely precise. It follows that there is always room to *argue* that the offences are not sufficiently proximate or not sufficiently persistent to be a persistent offender within the meaning of the Rule but such submissions do not necessarily have any merit. We find the Judge was perfectly entitled to reach the conclusion that he did. The important things here are not simply the number of offences but the frequency. The Judge was entitled to find, as he did, that the Appellant is a man who keeps getting into trouble. He is a persistent offender within the meaning of the Rule.
8. However such a finding was not strictly necessary because there was a further finding by the Judge that the Appellant's removal is conducive to the public good. Given the nature of the offence coupled with the failure to honour his obligations as a sex offender we just do not see how there can be any objection to the finding that the Appellant's removal is

conducive to the public good. It follows that even if the Judge was wrong in other respects he gave a proper and lawful reason for the Appellant's deportation.

9. We know that it is the Appellant's case that he claims not to have understood his obligations under the Sexual Offences Act. These claims are inconsistent with his guilty pleas and inconsistent with the repeat nature of the offending. We see no basis for criticising the Judge for rejecting that evidence.
10. The fact that the Appellant's removal is conducive to the public good is not the end of the matter. What this Appellant did was to rely on his relationship with his children but the Judge concluded that there was no meaningful relationship at all. That might be going too far. There was evidence that there was contact and there was evidence of support from the former partner but this is not a nuclear family. This is not a case of a man living with the children from whom he would be separated. The Judge was perfectly aware that he was applying a test of undue harshness. He refers to it expressly in paragraph 79. Although the best interests of the children may very well involve a close relationship with both parents the children are not entitled to their best interests being served by decisions of this kind and we see no basis for criticising the Judge's finding that the consequences of removal in this fractured family would not be unduly harsh.
11. It follows therefore in our judgment that although we have been assisted by carefully presented and thoughtful criticisms of the Decision and Reasons, they fail to show any material error and they particularly fail to make any impact at all on the finding that removal is conducive to the public good and that the harshness consequent on removal would be no more than the harshness that the law requires.
12. It is for these reasons that we dismiss this appeal.

Signed



Jonathan Perkins, Upper Tribunal Judge

Dated: 15 March 2018