



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/11782/2019

THE IMMIGRATION ACTS

Manchester CJC (remote hearing)
Heard on 30th July 2020

Decision & Reasons Promulgated
On 11 August 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

OPA

(anonymity direction made)

Respondent

For the Appellant: Mr Bates Senior Home Office Presenting Officer

For the Respondent: Mr Adewusi, Crown and Law Solicitors

DECISION AND REASONS

1. The Respondent is a national of Nigeria born in 1975. On the 11th March 2020 his appeal was allowed by the First-tier Tribunal (Judge Chowdhury). On the 6th April 2020 the Secretary of State was granted permission to appeal to this Tribunal against that decision.

Anonymity Order

2. The Respondent is a foreign criminal and as such would not ordinarily benefit from an order for anonymity. This appeal does however concern his children in the United Kingdom. I am concerned that identifying the Respondent could lead to the identification of those children and that this would be contrary to their best interests. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Issues Before the First-tier Tribunal

3. The Respondent is an illegal entrant who has never held leave to remain. He has been in the United Kingdom since the 19th February 2000. He obtained entry using a Dutch passport to which he was not entitled and remained here using that document for some years. In 2009 he contracted what was later found to be a ‘marriage of convenience’ to a Dutch national with a view to obtaining permission to reside under the Immigration (European Economic Area) Regulations 2016 as her family member. On the 4th January 2013 he was convicted on two counts of deception in respect of that behaviour. He was eventually sentenced to serve 58 weeks in prison, that sentence triggering the ‘automatic deportation’ provisions in s32 Borders Act 2007.
4. The Respondent resisted deportation on two grounds. First, he submitted that his deportation would have an unduly harsh impact on his qualifying children in the United Kingdom. Further and in the alternative, he submitted that there are in his case exceptional circumstances why his deportation today would be a disproportionate interference with his Article 8 rights.
5. The First-tier Tribunal found that the appeal succeeded on the first ground. It accepted the evidence that the Respondent enjoys a very close relationship with his two daughters (hereinafter identified as D1 and D2) and that he is in fact their main carer. The Tribunal placed weight on a comment by a social worker, made in a letter dated 27th September 2019, that she was worried about the mother’s ability to “cope” looking after the children. The social worker opined that there would be a significant impact upon the children’s emotional well-being if the Respondent were to be deported. An incident of physical chastisement was noted when the Respondent had been absent from the family home. These factors, considered cumulatively, led the Tribunal to conclude that it would be unduly harsh for the children if their father were to be removed.

6. Having made that finding the Tribunal did not go on to consider the alternative limb of the Respondent's case.

Error of Law: Discussion and Findings

7. Having heard the submissions of both parties I am satisfied that the decision of the First-tier Tribunal is flawed for error of law and that it must be set aside in its entirety.
8. The first error is a failure to take all material evidence into account. In its very brief reasoning between paragraphs 54-59 the Tribunal nowhere considers the opinion expressed by a number of professionals dealing with this family that, contrary to the picture that emerges from the Tribunal decision, it is the *Respondent's* behaviour in the family home that is damaging to his children. Concerns are expressed in particular about the behaviours that he has exhibited in front of his daughters including threatening to kill himself, and them. Such concerns are expressed by a number of the professionals dealing with this family. This is behaviour plainly contrary to his children's best interests and yet nowhere is it considered in the balancing exercise. Instead the decision focuses exclusively on a brief comment to the effect that on one occasion the children's mother may have physically chastised one of them. As such the decision does not reflect a balanced evaluation of the evidence.
9. The second error is the failure to articulate why, on the evidence presented, the impact for these children could be said to be bleak. No consideration appears to have been given to the fact that their mother coped without the Respondent during the period of his incarceration. This was plainly a relevant consideration: instead the social worker's opinion that she "may" find it difficult without him has been interpreted as meaning that she *would* be unable to parent in his absence. That does not appear to be a finding justified on the evidence.
10. I therefore set the decision of the First-tier Tribunal aside.

Directions

Mental Health

11. The bundles before me contain numerous references to the Respondent having been diagnosed with conditions including severe anxiety, depression and PTSD. These references notwithstanding it is not at all clear when these diagnoses have been made and by whom. Nor is it clear whether any investigation has taken place into the Respondent's self-reported auditory hallucinations, nor what treatment he might currently be receiving. If the Respondent wishes to rely on his mental health as a relevant factor in this appeal he is directed to file and serve an

up-to-date medical report setting out in clear terms what his diagnosis is, and what treatment, if any, he is receiving. If the Respondent wishes to obtain medical opinion on the likely impact upon his mental health of deportation, that is a matter for him. **Any new medical evidence must be filed and served within 8 weeks of the sending of this decision.**

Children

12. When Judge Holt heard the Respondent's appeal on protection and human rights grounds in July 2016 she was told that he had two daughters and that he was no longer in a subsisting relationship with their mother. Although that lady is described throughout Judge Holt's decision as the Respondent's ex-wife, it is clear that they were in fact co-habiting at the date of that appeal.
13. In 2018 the Respondent made further submissions and asked for his deportation order to be revoked. In their letter of 6th June 2018 Crown & Law Solicitors refer to D1 and D2 and enclose their birth certificates, praying in aid their best interests. Included with those 'fresh claim' submissions was however a good deal of professional evidence relating to the Respondent's mental health and the children. Included in the documentation was an 'Initial Assessment Tool' used by the Greater Manchester Mental Health team. This records that the Respondent told the person conducting the assessment on the 19th April 2018 (identified only as "Vikki May") that he had been in a relationship with his Nigerian partner for 8 years and that they have four children together. This curious discrepancy caused the Secretary of State to seek clarification on how many children the Respondent had. The Secretary of State appears to have sought information from Manchester Children's Services on the matter because on the 18th March 2019 she wrote to the Respondent, explaining that Children's Services had disclosed that he does indeed have four children and asking him to explain.
14. As of the date of the appeal before me it is clear that the Respondent has at least three children in the United Kingdom. D1 born in 2010 (who has recently been naturalised as a British citizen) D2 born in 2012, and a son born in 2017 (hereinafter referred to as S1). I am told that he also has a stepdaughter born in 2014 (hereinafter referred to as SD1 - recognised as a British national by birth). What is not clear is why neither his son nor stepdaughter were referred to in the 'fresh claim' letter sent by Crown & Law on the 6th June 2018 nor indeed the Respondent's witness statement of the 16th November 2019 where [at §5] he makes express reference to D1 and D2. **The Respondent is to file and serve a clear witness statement explaining why he did not mention SD1 or S1 in either his fresh claim submissions to the Secretary of State, or his witness statement prepared for the appeal before the First-tier Tribunal.** The Respondent may also wish to address the apparent discrepancy in the evidence that he told his mental health worker that he and his partner had been together for 8 years and what I am now told, which is that in fact they had for a period been separated, giving rise to the birth in 2014 of SD1. **This witness statement must be filed and served within 4 weeks of this decision being sent to the parties.**

15. In light of the discrepant evidence outlined above the Secretary of State may wish to consider whether she is content to proceed on the basis that the father of SD1 is, as claimed, a British national and not in fact the Respondent. **If the Secretary of State wishes to make any submissions on this point, or adduce any further evidence, she must do so within 4 weeks of this decision being sent**, so as to put the Respondent on notice of any issues arising.

Decisions

16. The determination of the First-tier Tribunal contains material error of law and it is set aside.
17. The decision in the appeal is to be remade *de novo* in the First-tier Tribunal by any judge other than Judge Chowdhury.
18. There is an order for anonymity.

A handwritten signature in black ink, appearing to read 'C. Bruce', written in a cursive style.

Upper Tribunal Judge Bruce
30th July 2020