



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05626/2020

THE IMMIGRATION ACTS

Heard at Field House
On 22 October 2021

Decision & Reasons Promulgated
On 18 November 2021

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

[E B H]
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Davison, instructed by A-R Law Chambers
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Ghana. He appealed to the First-tier Tribunal against the Secretary of State's decision of 22 April 2020 refusing his human rights claim in which the respondent also maintained a decision to deport the appellant from the United Kingdom. He was notified of the decision to make a deportation order against him on 21 April 2020.

2. The appellant came to the United Kingdom in 2007 and therefore at around the age of 17. On 13 May 2019 he was convicted of cause/incite a girl under 16 to engage in sexual activity – no penetration – offender 18 or over, cause/incite a girl 13 to 15 to engage in penetrative sexual activity – offender 18 or over, for which he was sentenced to three years' imprisonment, ordered to pay a victim surcharge of £170 and placed on the Sex Offenders Register for ten years. It was as a consequence of this offence that the respondent decided that it was appropriate to deport him from the United Kingdom.
3. The judge heard evidence from the appellant, from his partner EA and from his father BH. The appellant and EA have a daughter who was born on 27 October 2019. She and EA are both British citizens.
4. The appellant in evidence said he would be able to keep in contact with his daughter to a certain extent but not as frequently as he could if he was in the United Kingdom. He said the pandemic had made contact very difficult and he had found that video contact was not ideal. He said that since he had been imprisoned he had contact with his daughter and partner two or three times a day by telephone and he had been regularly visited by his partner three times a month prior to the pandemic. Currently visits are suspended but he spoke to his partner every day.
5. He said he had no family in Ghana as his father was in the United Kingdom, having come to the United Kingdom some three or four years before the appellant came in 2007, and his mother had died in April 2019. After his father left Ghana he and his siblings were left with aunts and uncles. He had been back to Ghana on a holiday for three to four weeks in 2012 to 2013. He was asked if the house that he had lived in in Ghana was owned by his father and said he thought his father had owned it and his grandmother was living there with his aunt and they had moved from one aunt to another. Since coming to the United Kingdom he had lived with his father.
6. He was asked whether he had undertaken any courses while he was detained and he said when he came to Wandsworth he was not able to do courses and said that at Littlehey Prison he had never been approved to do a course as he had to be assessed but he never had been assessed.
7. He confirmed that he had a 34 year old sister married and living in Ghana but said he did not know where she lived. He said that he had had contact with her on and off before their mother died and that she had called his partner every now and again. He did not know if his father was in contact with his sister in Ghana. He said his father could not assist him as he had his own responsibilities in the United Kingdom. He had been in the United Kingdom for nearly half his life and had no family other than a sister in Ghana who was struggling on her own and it would be difficult without support.
8. As to whether the family home where he had lived with his grandmother was still available he said he had never returned there when he had gone back to Ghana. His

grandmother and aunt were still alive but he had not spoken to them in a long time and had not kept in touch. His mother had a sister in Ghana who had four or five children and was struggling.

9. In her evidence EA said that she had no family in Ghana as her mother died when she was little and she had no contact with her father. She said she was aged 15 when she came to the United Kingdom and had attended college here. She had discovered she was pregnant in February 2019 and she and the appellant had a traditional marriage in April 2019 before he went to prison. She said the appellant had last seen their daughter in October 2020 (the date of the hearing was 19 January 2021) and they meant to see each other subsequently but that had been postponed due to lockdown. She confirmed that she had attended his trial and was aware of the offences. He believed the appellant had made a lot of effort to change and was a different man and was concerned about his family and had made a lot of effort and was a good father.
10. In his evidence the appellant's father when asked if the appellant were deported and EA wished to continue her nursing course he would be able to look after their daughter and he said he did a bit but he could not do a lot as it was the father who had to look after his children. He said he had not been in contact recently with his daughter in Ghana as she had been depressed about her brother's case and was crying and he had avoided picking up her calls. He said that she lived in Accra with her husband and daughter but they were struggling to make ends meet. He supported her financially but he could not do everything and she was not working and was living by what he gave her.
11. He confirmed that the appellant had lived in a house that he owned in Ghana before coming to the United Kingdom and that he still owned the property and it was in his name. He said he had a sister who was ill and his mother was also very ill. He was asked whether he was saying that his mother and sister lived in his house and he said it was not his house but his brother's house and that he did not own a house in Ghana but that was the family home where his mother and sister lived. The house only had one room, he said. The appellant would not be able to stay there if he returned to Ghana because of the house only having a single room.
12. The judge considered the evidence in the context of the relevant statutory provisions and the relevant provisions of the Immigration Rules. The appellant had submitted that his claim fell under section 117C(5) of the Nationality, Immigration and Asylum Act 2002, the second exception to deportation, on the basis that he has a qualifying relationship with a partner and child who are both British citizens.
13. The judge found that the appellant had resided lawfully in the United Kingdom since his arrival, having been granted indefinite leave to enter and remain on arrival. He had spent most of his life in Ghana being now aged 30 and having come to the United Kingdom at the age of 17. The judge found that the appellant was not estranged from his strong cultural links to Ghana and that he had close family ties in

that country. It was clear from the evidence that his sister continued to live in Ghana and the judge found that the appellant and his father had downplayed the extent of their family connections to Ghana. She found that the appellant had a sister living in Accra who was in contact with the appellant's father and with his partner, and it was also apparent from the oral evidence that the appellant's grandmother and paternal aunt continued to live in the family home. Also the appellant's father had a brother living in Ghana.

14. The judge found that the appellant was in a genuine and subsisting relationship with his partner EA. She accepted the evidence that they had entered into a form of traditional marriage and regarded the evidence of the birth of their daughter as being very strong and supportive evidence of a genuine relationship.
15. The judge saw no reason to doubt EA's claim that she had no close family in Ghana but found that she was likely to have strong cultural links to Ghana through her grandparents with whom she lived for a number of years in the United Kingdom and with whom she was in regular weekly contact. There was evidence from a report from the London Borough of Lewisham, prepared in October 2020. EA was reported as telling the social worker that she would try to speak the local language to her daughter when she was of age. The judge considered that EA had strong cultural and linguistic ties to her country of origin and found that the appellant and she had spent their early informative life in Ghana, attended primary and secondary school there and both had strong cultural links to that country. This was further supported by their having entered into a traditional marriage in accordance with Ghanaian culture.
16. The judge considered bearing in mind that the appellant had never lived with his daughter and had not met her until she was 8 or 9 months old but there was no satisfactory evidence at the date of the hearing that the appellant had developed a parental relationship over and above their biological relationship with his daughter, and it was clear from the report from the London Borough of Lewisham that on his release he would not be able to live initially with his partner and daughter. It appeared that he had only met his daughter on a very limited number of occasions when she had visited him in prison with her mother and there was no satisfactory evidence that he had played any substantial or meaningful parental role or had real involvement in his daughter's life. The London Borough of Lewisham social work report found that her mother was the child's main carer. As at the date of hearing the judge was not satisfied that the appellant had a genuine and subsisting parental relationship with his daughter as he had not had the opportunity to develop one.
17. The judge went on to state that clearly the best interests of the appellant's daughter were that she remained in the care of her mother as the only parent with whom she had lived and who had provided care for her. The decision to deport the appellant would not interfere with the current arrangements in respect of the daughter's care as he would not be permitted to live with his partner and daughter on his release. There was no evidence that the appellant's partner was unable to provide care and

support to the child. The judge accepted that she might be finding it difficult as a single parent but the evidence indicated that she had a strong support network.

18. The judge went on to say that she did not conclude that it would be unduly harsh for the appellant's daughter and partner to remain in the United Kingdom if he were deported to Ghana. The child was only aged 1 and had not developed any private life of her own in the United Kingdom. The appellant's partner could remain in the United Kingdom to complete her nursing degree and rely upon the support of her network of friends within her church and could subsequently join the appellant in Ghana. A brief period of separation would not be unduly harsh given that the couple had not lived together and had always lived separately.
19. The judge did not find that EA was providing care to her grandparents. She accepted that she was visiting them regularly and her evidence was that they had local authority carers who attended them several times a week. The judge also could see no reason why EA could not join the appellant in Ghana with their daughter if she chose to do so bearing in mind her very strong cultural links to Ghana as the country where she had spent her formative life.
20. The judge did not consider that the appellant's relationship to his father disclosed any degree of dependency over and above the normal ties that ordinarily subsist between adult parents and their children. She found that the appellant had the benefit of family members living in Ghana who would be able to provide some initial support as also could his father who was providing support of the kind he was providing to the appellant's sister. The appellant was educated in Ghana and had worked and obtained qualifications in the United Kingdom which would assist him on his return.
21. As a consequence the judge concluded the appellant did not satisfy the family life exception to deportation.
22. She went on to consider whether his circumstances were very compelling over and above the exceptions to deportation that outweighed the relevant public interest. She had regard to section 117B and section 117C of the 2000 Act and said that she took into account all relevant matters. She bore in mind that section 117C(1) and (2) provided that the deportation of foreign criminals is in the public interest and the more serious the offence the greater the public interest in deportation.
23. She went on to consider the offence committed, the remarks of the sentencing judge and the OASys assessment of 30 September 2019 which had assessed the appellant as posing a medium risk of harm to children in the community. There was no evidence before her that the appellant had undertaken courses to address his offending behaviour. She found that he had indicated his willingness to do so but the courses had not been available to him. She went on to say that based on the sentencing remarks all elements of the public interest were engaged in light of the seriousness of

the offences and the length of the sentence and hence the public interest in deportation was high.

24. The two neutral factors set out in section 117B, speaking English and independence financially were satisfied. She had accepted that he had a subsisting relationship with his partner and that he had established a private life in the United Kingdom when he was here lawfully and when his status was not precarious because he had indefinite leave to enter and remain.
25. There was no evidence of any friends or previous employers attesting to the strength of his integration into and connection with the United Kingdom but the evidence was that he had studied and worked in the United Kingdom and he was likely to be integrated.
26. She then went on to identify the factors weighing in favour of deportation, including the public interest in deportation, the seriousness of his offence, noting also previous criminal convictions but noted the fact that these had no impact on the sentencing for the impact offence and they therefore carried little weight.
27. Weighing in his favour were the fact that he speaks English, that he had been living in the United Kingdom for thirteen years and had the capacity to be or has been financially independent. She reminded herself that these were neutral factors. The OASys Report indicated a low risk of reoffending but a high risk of serious harm to adolescent females. The appellant is on the Sex Offenders Register and there are measures designed to manage risk. She said that the assessed low risk of reoffending carried limited weight in light of any lack of any detailed evidence about genuine rehabilitation and the high risk that he is assessed as posing to adolescent females.
28. The judge went on to remind herself that she was not satisfied the appellant could not rely upon the support of family members in Ghana, bore in mind that he had studied and worked in the United Kingdom, and reminded herself she was not satisfied that he was in any way estranged from his Ghanaian heritage and culture. She had not found that he played any substantial or meaningful parental role or had real involvement in his daughter's life. She reminded herself of her findings that it would not be unduly harsh for his partner to remain in the United Kingdom if he were deported or for her to join him in Ghana with their daughter to continue their family life.
29. Considering the evidence in the round the judge did not find that the appellant had established that there were exceptional circumstances which would outweigh the public interest in deporting him. There were required to be very compelling reasons which must be exceptional and these had not been shown. She bore in mind in particular the seriousness of his crime, the need to protect society against crime and the need for a deterrent policy.

30. The appeal having been dismissed, the appellant sought permission to appeal, contending that the judge had not been fair in her assessment of the case, in that he was not able to live with his wife and child because he was in prison and because of the pandemic, the fact that he was unable to do courses because they were not available because of the pandemic, that the judge had failed to take into account his wife's relationship with her grandparents in the United Kingdom and the fact that she sees him so regularly in assessing undue harshness and that though the judge said his wife was not a carer for the grandparents, her evidence was that she did help care for them. He also argued that the judge erred in saying that a brief period of separation would not be unduly harsh while his wife did the nursing course as it would not be a brief time because nursing took a long time and there were placements she would need to do before being fully qualified. All this time his daughter would be growing up without him.
31. A Judge of the First-tier Tribunal granted permission to appeal, concluding that it was arguable that the judge had erred at paragraphs 31 and 42 in considering whether there were very compelling circumstances over and above the exceptions to deportation bearing in mind that the judge had noted that the appellant was sentenced to a period of three years' imprisonment. The grant of permission was not limited in any way.
32. In his submissions Mr Davison argued that the grounds mainly came down to first a contention that the appellant had not had a chance to prove things had changed, in that he had not been able to see his wife and child and he was a changed person and that it was unfair to say he had not done courses in prison when he was not able to do so in the circumstances. It was also argued that insufficient weight had been placed on the positive factors. The argument was that given the positive factors, insufficient weight had been attached to them.
33. It had emerged in conference that the appellant now had supervised contact with his daughter and if he were removed that would not be able to be maintained for obvious logistical reasons. It was relevant to what should happen while the contact developed or did not. It might well be that the correct legal course was for him to make a further application in light of this change of circumstances but if the Tribunal agreed about the error of law argument then that obviated all that being necessary.
34. In his submissions Mr Lindsay argued with regard to the point raised of the judge's own volition that on his reading it seemed to have been thought that the judge did not apply the correct test for a medium category offender and that was clearly wrong bearing in mind the guidance in NA (Pakistan) [2016] EWCA Civ 662 at paragraph 24 and 27. The judge had applied the correct test.
35. As regards the substantive point from the grounds, the argument about insufficient weight being given to the positive aspects was very difficult to sustain. Weight was a matter for the judge and there was nothing that could be said to have been left out of the account. It was a matter of disagreement only.

36. With regard to the practical point raised by Mr Davison of the change of circumstances, if the appellant considered there had been such a change then he needed to put in a fresh claim or if he were removed to apply to have the deportation order lifted on Article 8 grounds. This did not go to show an error of law.
37. Mr Davison had no points to make by way of reply.
38. I reserved my decision.

Discussion

39. I have set out in some detail the findings of the judge and the legal tests applied by her. No error of law in her decision has been identified. As regards the points identified by the judge who granted permission, paragraph 31 simply consisted of the statement that the appellant was convicted of what was acknowledged by the sentencing judge to be a serious offence and that he had submitted that his claim fell under section 117C(5). That is no more than an uncontentious statement of fact.
40. As regards paragraph 42, the judge clearly set out the correct test in this regard in considering whether the claim could succeed outside the Rules having concluded that the appellant did not satisfy the family life exception to deportation. I agree with Mr Lindsay that NA (Pakistan) governs the situation and that the judge who granted permission was wrong as a matter of law to suggest that there was an error of law in this respect.
41. As regards the points made by the appellant in his grounds, with regard to the first point concerning his inability to see his wife and child and to do courses, the judge had to decide the case on the basis of the evidence before him, rather than what it might have been, and she was clearly right to attach such weight as she did to those matters. As a consequence, the findings at paragraph 46 are sound.
42. Likewise, with regard to the argument about undue harshness in respect of his wife's relationship with her grandparents and the time the nursing course would take, these are matters of disagreement only. Weight is of course a matter for the judge, and the judge was fully entitled to attach the weight she did to the matters to which she attached weight. She bore in mind the relationship that the appellant's wife has with her grandparents and it was open to her to conclude that the period of separation were the appellant's wife to join him in Ghana would be brief and would not be unduly harsh. The challenge is a matter of disagreement only. No arguable error of law in the decision has been identified.
43. As regards the issue of the changed circumstances, as Mr Davison again very properly accepted that cannot go to show an error of law since it is a post-hearing matter, and in the light of the fact that I have found no error of law it is a matter if the

appellant wishes to take it further that would have to form a basis of a fresh application.

44. This appeal is dismissed.

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 his 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 November 2021

Upper Tribunal Judge Allen