



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

Appeal Numbers: DA/00835/2013

THE IMMIGRATION ACTS

Heard at Field House

On 18 June 2014

Determination

Promulgated

On 01 July 2014

Before

The President, The Hon. Mr Justice McCloskey

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SYDONIA ALEXANDER WILLIS

Respondent

Representation:

Appellant: Mr Christopher Jacobs (of Counsel), instructed by J McCarthy Solicitors

Respondent: Mr John Parkinson, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Secretary of State appeals to this Tribunal with permission challenging the determination of the First-tier Tribunal promulgated on the 25 March 2014. By its determination the Tribunal allowed the Appellant's appeal against the Secretary of State's refusal to revoke a deportation order. As my exchanges with the representatives have probably made clear, it seems to me that there are two basic questions for this Tribunal. I preface this with appropriate emphasis on the role of

this Tribunal, which is not to conduct an appeal on the merits but to decide whether, within the compass of the grant of permission to appeal, a material error of law has been demonstrated.

2. Against that background, the first question for this Tribunal is whether the First-tier Tribunal erred in law by failing to identify the correct test. I am satisfied that a consideration of the determination as a whole and, in particular, the passages which have featured in the submissions on behalf the Appellant leads inexorably to the conclusion that the First-tier Tribunal committed no error of law in its formulation of the test to be applied.
3. Secondly, as part of the first question, I am satisfied that the First-tier Tribunal did not err in law by failing to specifically identify deterrence as a legitimate aim or public interest in play. It sufficed to acknowledge the statutory framework which contains and expresses the relevant public interest and, secondly, to recognise how weighty that is. This is particularly clear from paragraph 51 of the determination where the Tribunal refers to significant and weighty countervailing factors.
4. The second question for this Tribunal is whether the First-tier Tribunal having, as I have found, identified the correct test erred in law in its application of the test to the facts found by it. There is no complaint about the Tribunal's approach in law to the question of the best interests of the children. Rather the Secretary of State's disagreement is with the choice which the Tribunal made having identified the correct test. In my judgment, the barometer to be applied to this part of the determination is that of rationality, giving effect to the well established Wednesbury principle and a long line of authority beginning with the decision of the House of Lords in Edwards v Bairstow. In other words, the question for this Tribunal is whether the choice which the First-tier Tribunal made in the second stage of its exercise, which was to allow the appeal for the reasons given, lay within the range of options reasonably available to it in the particular factual matrix. In answering that question it is not for this Tribunal to substitute its opinion for that of the First-tier Tribunal. Equally, it is not for this Tribunal to ask itself what it would have decided having applied the correct test and having made the relevant findings of fact and having identified those facts which did not require to be found because they were not controversial.
5. I conclude that the answer to the second question also is that the First-tier Tribunal did not err in law. Accordingly, the appeal is dismissed and I affirm the decision of the First-tier Tribunal.

Signed:



THE HON. MR JUSTICE MCCLOSKEY

UPPER TRIBUNAL

PRESIDENT OF THE
IMMIGRATION AND ASYLUM CHAMBER
Date: 26 June 2014