



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
DA/00898/2012

Appeal Number:

DA/00900/2012

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination**

**On 29<sup>th</sup> July 2014**

**Promulgated**

**On 26<sup>th</sup> August 2014**

**Before**

**THE HONOURABLE MR JUSTICE LEWIS  
UPPER TRIBUNAL JUDGE GOLDSTEIN**

**Between**

**MR G A**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer  
For the Respondent: Mr G Lee, Counsel, instructed by Lawrence & Co Solicitors

**DETERMINATION AND REASONS**

1. This is an appeal against a decision of the First-tier Tribunal promulgated on 9<sup>th</sup> May 2014. By that decision the First-tier Tribunal allowed an appeal by a father and a daughter whom I will refer to as GA and JA, effectively

against refusal to revoke deportation orders made in respect of both GA and JA.

2. The facts are these. GA is a national of Ghana. His daughter was born in the UK and has lived here all her life. She was born on 13<sup>th</sup> May 2007. Although born here the daughter is not a British national. She is a national of Ghana. However eight months after JA was born her mother ceased to care for her and has had no contact with her since that time. JA was brought up by her grandmother and her father. They all three live together. The grandmother has been in the United Kingdom for 33 years or so and is now over 60 and has other adult children living in the United Kingdom.
3. On 15<sup>th</sup> November 2007 the father GA was convicted at Northampton Crown Court of using a false instrument with intent. He was sentenced to fifteen months' imprisonment. By reason of that conviction GA is a foreign criminal within the meaning of Section 32 of the United Kingdom Borders Act 2007. That Section provides for the deportation of a foreign criminal that is a person who is not a British citizen and who has been convicted of an offence in the United Kingdom and been sentenced to at least twelve months' imprisonment. Parliament requires the Secretary of State to make a deportation unless one of the exceptions apply. The exceptions include situations where removal of a foreign criminal would breach a person's rights under the European Convention on Human Rights.
4. On 21<sup>st</sup> February 2008 the appellant, Secretary of State for the Home Department, decided to make a deportation order against the father, GA. An appeal against that decision was dismissed. On 16<sup>th</sup> September 2009 a request that the deportation order be revoked was refused. Further representations were made asking the Secretary of State to revoke the deportation order. She declined to do so. Her reasons are set out in detail in a carefully reasoned letter dated 27<sup>th</sup> September 2012 addressed to GA. The appellant also decided to make a deportation order in relation to JA as she was a family member of a person who was to be deported and was herself liable to be deported by virtue of Section 3(5) of the Immigration Act 1971. Again the reasons for doing so are set out in detail in a carefully reasoned letter dated 27<sup>th</sup> September 2012 and addressed to JA. That letter, too, should be read in full.
5. The respondents appealed to the First-tier Tribunal. The First-tier Tribunal summarised the facts. As the Tribunal noted in paragraph 9 of its determination the thrust of the appeal was that JA had been born in the United Kingdom and had only ever lived in the United Kingdom. She had been cared for by her father and by her grandmother. Her mother had played little part in her life and had left JA with the grandmother at a young age. If JA was to leave the United Kingdom she would lose the close bond she has with the grandmother. If GA, the father, alone left the United Kingdom she would then be separated both from her father and she

is already separated from her mother and would have only her grandmother.

6. We note that a joint residence order was applied for from the County Court which would require the daughter to reside with her father and her grandmother. In fact no order was necessary as all the parties were in agreement that that was what should happen and as no order was necessary none was made.

7. The First-tier Tribunal set out its findings of fact and its conclusions. It set out references to the CAFCASS report prepared for the family proceedings. It also had regard to the findings of fact made by the District Judge in those proceedings. He said this:

“In my judgement it is in the best interests of the child to reside with the applicant father and the second respondent, the grandmother and I see no reason to depart from the view of the CAFCASS officer. It is plain to me that the appellant and the second respondent jointly are able to meet the physical, emotional and educational needs of the child. I consider it likely that either could do so in the absence of the other, disregarding the possibility that the applicant may be deported. In my judgement it would have a deleterious effect on Janice’s development to be separated from either her grandmother or her father.”

8. That of course was a finding on best interests and it was not a finding in the context of deportation where you have to weigh the best interests of the child against the very important public interest of removing foreign criminals from these shores.

9. The First-tier Tribunal placed weight on the findings of the District Judge. Then at paragraph 19 it addressed the nature of the offence. Crimes for which people are sentenced to more than twelve months are by their nature serious. It is understandable that Parliament has said that when somebody commits a crime for which such a long sentence is imposed they should be removed. However it is also right to bear in mind that some crimes are even more serious and the existing case law recognises that crimes may be serious or even more serious and the Tribunal at paragraph 19 noted that this particular offence did not involve violence or drugs and was not a sexual crime, all of which are even more heinous. But they noted at the same time the seriousness of the offence of using a false instrument and the impact upon society of doing so. They also noticed that there was nothing to suggest a risk of reoffending and in fairness to the father he has not reoffended since his release from custody since 2008 and has not committed a further offence.

10. Next, the Tribunal turned to the law. It referred to **MF (Nigeria) v Secretary of State for the Home Department [2014] 1WLR 554** and

also the Court of Appeal in **SS (Nigeria) v Secretary of State for the Home Department**. It then said this:

“Our conclusion is that there are compelling or exceptional circumstances in this case which require the revocation of the deportation orders made against the two appellants. We place weight upon the specialist Family Court as to the best interests of the child and the impact of removal on her either of the appellant alone, or with the appellant and away from her grandmother. There are clear findings of fact that it would have a deleterious effect upon her development and it is in her best interests for the status quo to be maintained and for her to be brought up by both the appellant and her grandmother.

11. Paragraph 22 and following says this:

“22. We are fully aware of how the mother left her in the care of the grandmother when she was 8 months old. This care has continued and the child has lived with her ever since. The child was born in the United Kingdom and has lived in the United Kingdom for just over seven years now. The appellant has lived in the UK since he was 17 years old.

23. We have fully considered the importance to the public for criminal offenders to be removed from the United Kingdom but against this we must consider whether it is proportionate now that we have found there are exceptional circumstances. We place weight upon the observation by the District Judge that the only reason for not making a residence order is because he elected not to consider the immigration situation as such, and applying the principles under the Children’s Act 1989 there was no reason to make such an order on the basis the parties are remaining in the UK.

24. However, the judge made it clear that he would have made a residence order. Clearly the impact of the removal of the appellant either alone, or with the second appellant is disproportionate to the best interests of the second appellant and the deleterious impact upon her and this outweighs the public interest in the case.”

12. The Tribunal therefore allowed the appeal.

13. The Secretary of State has appealed and there are effectively three grounds of the appeal which have been advanced ably this afternoon by Mr Wilding on behalf of the Secretary of State. The first is effectively that the panel had not properly engaged with the relevant Immigration Rules and with the Court of Appeal’s judgment in **MF (Nigeria)**. The second is that the First-tier Tribunal have failed to recognise the particularly pressing public interest in deporting foreign criminals. The third

submission was that the Secretary of State had failed to balance the best interests of the child against the wider interests of the public and Mr Wilding focused on that in his submissions this afternoon. Mr Wilding's essential case is that there has not been a proper weighing of the best interests of the child against the wider public interest in deportation. Rather the Tribunal, so says Mr Wilding, simply took the assessment of the best interests of the child by the District Judge and assumed that that took precedence over the wider public interest.

14. When granting permission to appeal the judge granting permission also indicated that the Tribunal may not have reached its own decision but may simply have applied the findings of the district judge.
15. Turning then to the law, Section 32(5) of the UK Borders Act 2007 places an obligation on the Secretary of State to deport a foreign national criminal unless one of the exceptions in this case, Convention rights, applies. The Immigration Rules provide as follows. Paragraph 396 of the Rules says that where a person is liable to deportation the presumption shall be that the public interest requires deportation. It is in the public interest to deport where the Secretary of State must make a deportation order under Section 32 of the UK Borders Act 2007.
16. Rule 397 records that a person's deportation will not be ordered if that would be contrary to the United Kingdom's obligations under the Refugee Convention. Where that does not arise it would only be in exceptional circumstances that the public interest in deportation is outweighed.
17. Rule 398 deals with a situation where as here a person relies on Article 8 of the Human Rights Act and the Secretary of State in assessing that Article 8 claim will consider whether paragraph 399 or 399A applies and if it does not it will only be in exceptional circumstances that the public interest in deportation will be outweighed by other factors. Rule 399 deals with a situation when the child has lived in the UK continuously for at least the seven years immediately preceding the date of the immigration case and either it would not be reasonable to expect the child to leave the United Kingdom and there is no other family member is able to care of the child in the UK.
18. **MF (Nigeria) [2014] 1WLR 544** says at paragraph 44 that the new Rules are a complete code governing the deportation of foreign criminals and at paragraph 43 says this:

"The general Rule in the present context is that in the case of a foreign prisoner to whom paragraph 399 and 399A do not apply very compelling reasons will be required to outweigh the public interest in deportation. These compelling reasons are the exceptional circumstances."
19. First, considering the decision here the First-tier Tribunal did address the correct test. They referred expressly to **MF (Nigeria)** at paragraph 20.

They then moved on at paragraph 21 to say that their conclusion was there are compelling or exceptional circumstances. It is clear in our judgment that the Tribunal had concluded that the father and the daughter did not fall within Rule 399. They did not have the benefit of the protection accorded by Rule 399. It is correct that the Tribunal does not say whether that was because they did not think that the child should go to Ghana or whether they thought that the grandmother could look after the child in the United Kingdom if they ordered simply that GA go to Ghana. But what is clear is that those situations did not apply and the benefit of the Rules did not apply. That is why they went outside the Rules to consider whether there were compelling or exceptional circumstances.

20. Secondly, it is, in our judgment it is clear what those compelling or exceptional circumstances are. The Tribunal spells them out, albeit briefly, at paragraph 21. They placed weight upon the assessment of the specialist Family Court as to the best interests of the child and the impact of removal either GA alone or JA with GA the appellant and away from her grandmother. They considered, would be deleterious upon her development. They are saying there no more than if you send the father back on his own that is going to be disadvantageous to the child. If you send the child back with the father then she loses the contact with the grandmother who has brought her up since the age of 8 months, and that is going to be deleterious in terms of the effect on the development of the child.
21. We bear in mind that this is not a case where a grandmother is having the sort of regular access to a grandchild that often happens. This is a case where the grandmother has effectively brought up the child since the age of 8 months and the mother has played no part in her upbringing and the exceptional circumstances so far as this Tribunal was concerned was that whichever way they approached it, if they simply deported the father the child would not see her father. If they sent the child back with her father she would not see the grandmother who had brought her up since the age of 8 months. Those were the exceptional circumstances.
22. Thirdly, then, we consider whether or not they properly took into account the very pressing interest in removing foreign offenders from the United Kingdom. In our judgment they did so.
23. At paragraph 23 they say “We have fully considered the importance to the public for criminal offenders to be removed from the United Kingdom”. However they had to weigh up the difficulties in separating the child from either the father or the grandmother and weighing that against the very real public interest in deportation bearing in mind that this was a serious crime but not the most serious crime in the list of criminal offences that could have been committed.

24. In those circumstances and in our judgment the First-tier Tribunal did not misdirect themselves or failed to apply the approach recognised by the Court of Appeal in the case law to which we have referred. They did consider the public interest in removing criminal offenders from the United Kingdom. They did not simply rely on the assessment of the District Judge in the family proceedings although they gave very great weight to that. But they did weigh that against the interests of the public in deportation. We are very conscious that the fact that there is a child on the scene does not amount to a trump card and it not determinative. We bear in mind the decision of the Supreme Court in **Zaumbas**.
25. We recognise that many tribunals might have come to a different decision. We recognise that many tribunals might well say they were not satisfied about the role the father had played and would send the father back to Ghana, leaving the child with the grandmother. We recognise that many tribunals would regard the decision in the present case as generous, given that we are dealing with a foreign national criminal.
26. However, the question for us is whether or not the First-tier Tribunal has erred in law. In our judgment it has not erred in law. It has identified the relevant law. It has applied the relevant law. It has weighed the interests of the child and in particular the interests of not splitting the child from either her father or the grandmother who has brought her up against the public interest in deportation of foreign criminals. It reached a conclusion which is within the range of decisions it could reach and we therefore conclude that there was no error of law on the part of the First-tier Tribunal and we therefore dismiss the appeal of the Secretary of State.

Signed

Date

Mr Justice Lewis