



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/00109/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at The Royal Courts of Justice

Decision

&

Reasons

On 25 April 2016

Promulgated

On 29 April 2016

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**NICOLA MELISSA ANDERSON
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr K Norton, Home Office Presenting Officer

For the Respondent: Ms F Iveson of Counsel, instructed by J McCarthy Solicitors

DECISION AND REASONS

1. I see no need for, and do not make, an order restricting publication of the details of this appeal.
2. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge M^CDade allowing the appeal of the present respondent, hereinafter "the claimant", against a decision of the Secretary of State to deport her.
3. The claimant does not have a distinguished history. She has been in trouble in the United Kingdom on several occasions for theft, often stealing from shops, and in 2009 she was sent to prison for fifteen months. Significantly, at about that time she was served with a liability to deportation

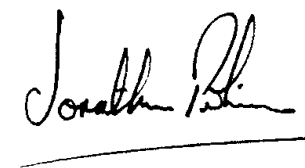
notice and subsequently a deportation order was served. She appealed and then got into further trouble. The appeal was unsuccessful and she became appeal rights exhausted in October 2010.

4. The Secretary of State then recognised that the claimant had made an asylum claim. She refused that claim and appears to have been in a strong position to deport the applicant. However the Secretary of State requested further submissions on human rights grounds and in August 2011 decided *not* deport the claimant but gave her discretionary leave to remain until September 2014.
5. There has been a significant change in circumstance. The claimant was already the mother of three British citizen children and in April 2014 she gave birth to another child who is also a British citizen. No doubt because her leave was running out the claimant made an application for further leave and that application was refused. Her discretionary leave was not renewed but a decision was made to deport her.
6. There is no record that the claimant has reoffended.
7. I asked Mr Norton if he could tell me what had happened since the grant of discretionary leave other than the claimant having behaved herself for longer than she has managed to do for a long time and the claimant producing a fourth British national child. He could not. I was concerned that I had missed something of importance. If I have it is not in the papers.
8. Judge M^cDade clearly erred. He asked himself if it was unduly harsh to separate the children from their mother but asked himself that question in the context of the Immigration Rules rather than the context of Section 117C of the Nationality, Immigration and Asylum Act 2002. The test is exactly the same. He would have given exactly the same answer if he had applied the right test. The mistake is wholly immaterial.
9. I really do not understand why the recent decision to deport the claimant was made. I understand completely why the appeal was dismissed by Judge M^cDade. I find no material error in his decision and I dismiss the Secretary of State's appeal to the Upper Tribunal for the reasons given above.

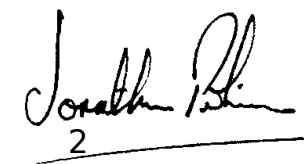
Notice of Decision

10. The Secretary of State's appeal is dismissed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 28 April 2016



2