



IAC-AH-KRL-V1

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

Appeal Number: IA/49929/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 21st January 2016**

**Decision & Reasons Promulgated
On 24th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**DONALD O'NEIL ORDEN CAMPBELL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Tear of Duncan Lewis & Co Solicitors
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Jamaica born on 24th January 1976. He first arrived in the UK on 14th June 1999 when he was granted leave to enter as a visitor. Subsequently the Appellant was granted leave to remain as a student until 28th February 2001. Thereafter the Appellant overstayed. Some time in 2002 the Appellant began to cohabit with a woman known as [Ms S], and [in] 2004 their

daughter [S] was born. The next significant event is that on 28th April 2006 the Appellant was convicted of offences of obtaining property by deception and handling stolen goods and sentenced to fifteen months' imprisonment. As a consequence on 27th October 2006 the Respondent decided to deport the Appellant. The Appellant unsuccessfully appealed that decision, and on 22nd January 2007 the Secretary of State made a Deportation Order against the Appellant. That Order was never effected because from September 2007 the Appellant disappeared.

2. [In] 2010 the Appellant's son [D] was born. [Ms S] then made an application for leave to remain naming the Appellant and their children as dependants. That application was initially refused, but following a successful appeal, the Appellant was granted limited leave to remain until 9th February 2017. Finally on 25th November 2014 the Respondent decided that the Appellant's leave to remain was invalid by virtue of the Deportation Order, and decided not to revoke that Order for the reasons given in her letter of that date. The Appellant appealed that decision, and his appeal was heard by Judge of the First-tier Tribunal O'Malley (the Judge) sitting at Taylor House on 6th July 2015. He decided to allow the appeal for the reasons given in his Decision dated the following day. The Respondent sought leave to appeal that decision, and on 21st October 2015 such permission was granted.

Error of Law

3. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
4. The Judge allowed the appeal because he found the evidence of the Appellant and his partner to be credible, and that the Appellant had a genuine and subsisting parental relationship with his daughter [S] who as a British citizen was a qualifying child for the purposes of Section 117C(5), Nationality, Immigration and Asylum Act 2002. Further, the Judge found that the effect of the Appellant's deportation on his daughter would be unduly harsh. Therefore Exception 2 applied.
5. At the hearing, Mr Whitwell argued that the Judge had erred in law in coming to that conclusion. The Judge had not specifically referred to nor taken into account the particular Immigration Rule relating to revocation of Deportation Orders being paragraph 390 of HC 395 in accordance with the decision in **Chege (section 117D - Article 8 - approach) [2015] UKUT 00165 (IAC)**. Further, the Judge had failed to give adequate reasons for his decision. He had not taken into account the serious nature of the Appellant's offending when considering what weight to be attached to the public interest, and the fact that the Appellant had assumed a false identity in order to work unlawfully after the completion of his prison sentence. The analysis of the Appellant's behaviour between 2007 and 2012 was incoherent. The Judge had also failed to take into account and attach the proper weight to the fact that the Appellant had not kept in regular contact with his daughter's school. Finally, in considering whether the Appellant's deportation would be unduly harsh as regards [S], the Judge had attached insufficient weight to the facts that the Appellant and his partner maintained good relations with their extended family in Jamaica. The

Judge's decision was not in compliance with the decision in **KMO (section 117 - unduly harsh) Nigeria [2015] UKUT 00543 (IAC)**.

6. In response, Mr Tear submitted that there had been no such error of law. The reasons given by the Judge for his decision came nowhere near satisfying the test of irrationality. The Judge had decided the appeal in accordance with the guidance given by the decision in **Greenwood (No 2) (para 398 considered) [2015] UKUT 00629 (IAC)**. In considering the best interests of a child who was a British citizen, the Judge had demonstrated at paragraph 49 of the Decision that he was aware of the appropriate Immigration Rules including paragraphs 398 and 399 of HC 395. The Judge had identified and applied the correct test, which was whether there were any compelling circumstances justifying the Judge's decision. The Judge had given sufficient reasons for his decision.
7. I find no error of law in the decision of the Judge and therefore that decision is not set aside. Mr Whitwell's argument was that the Judge had given insufficient reasons for his decision, not that he had made an irrational decision as referred to by Mr Tear. However, I am satisfied that the Judge gave adequate reasons for his decision. As the Judge recorded at paragraph 64 of the Decision, it was not in dispute that the Appellant had a genuine and subsisting parental relationship with his daughter [S], a qualifying child as a British citizen. Therefore the issue the Judge had to decide was whether the Appellant's deportation would have unduly harsh consequences for that child. This the Judge did find, and his reasons for that decision are given at paragraphs 67 and 68 of the Decision. These reasons in my view are sufficient. The Judge decided that it would be in the best interests of [S] to continue to benefit from the presence of her father, and those best interests must be a primary consideration. Having found that Exception 2 applied, the Judge correctly concluded that the public interest did not require the Appellant's deportation. He was therefore entitled to also find that as regards Article 8 ECHR, the public interest did not outweigh other considerations. In reaching that conclusion, the Judge took into account the serious nature of the Appellant's offending at paragraph 70 of the Decision. In this connection, the Judge also made a finding, which was open to him on the evidence, that the Appellant had not "gone to ground", and that the Appellant had not committed any further offences for a period of eight years.
8. It is true that the Judge made no reference to paragraph 390 of HC 395, and did not make his decision by reference to its provisions. On the face of it, this appears to be an error of law. However, in my view it is not a material error of law. Paragraph 390 says that a revocation decision must be considered in the light of all the circumstances including a short list of circumstances which must be considered. It is apparent from what the Judge wrote that he did make his decision in the light of all the circumstances known to him, and that he took into account the specific circumstances referred to in paragraph 390, including the public interest. Therefore had the Judge specifically referred to paragraph 390 he would have come to the same conclusion which he did come to.

9. It cannot be said that the Judge's decision was not in accordance with paragraph 390A when it was found that Exception 2 contained in Section 117C of the 2002 Act applied.

Costs

10. At the hearing I announced my decision that I found no error of law in the decision of the First-tier Tribunal. Mr Tear then made an application for the Appellant's costs under Rule 10 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The Appellant had not complied with Rule 10(5)(b), but nonetheless I heard the application. Mr Tear argued that the Respondent's conduct of the proceedings was unreasonable because the Respondent had not responded to correspondence from the Appellant's representatives on five occasions pointing out that the Respondent's case could not succeed, and further the Respondent had failed to comply with Directions. The Respondent's conduct fell within that criticised by the Upper Tribunal in Greenwood.
11. I indicated to Mr Whitwell that I did not need to hear from him on this subject. I have taken into account the matters raised in Mr Tear's Skeleton Argument. I have considered the issues of wasted costs and unreasonable costs according to the guidance given by the decision in Cancino (costs - First-tier Tribunal - new powers) [2015] UKFTT 00059 (IAC). It is lamentable that the Respondent did not reply to the correspondence from Mr Tear and has not conducted these proceedings in accordance with the Directions of the Tribunal. However, I do not find that there have been wasted costs nor unreasonable costs in a case where the Respondent decides to pursue to a hearing an argument that there is an error of law in the decision of the First-tier Tribunal when a Judge has already decided that there is an arguable error of law in that decision by granting leave to appeal.

Decision

12. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

13. The First-tier Tribunal made an Order for anonymity. I was not asked to continue it, and find no reason to do so. I therefore make no Order for anonymity and I lift the original Order.

Signed

Dated

Deputy Upper Tribunal Judge Renton