



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

Appeal Number: HU/16071/2016

THE IMMIGRATION ACTS

Heard at Field House

On 2 October 2017

**Decision & Reasons
Promulgated**

On 31 October 2017

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**LINDON BRYAN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Deller, Home Office Presenting Officer

For the Respondent: Ms J Bond, Counsel instructed by Freemans Solicitors

DECISION AND REASONS

1. It was the conclusion of First-tier Tribunal (FtT) Judge Ferguson in a decision sent on 28 April 2017 that the appeal of the respondent (hereafter “the claimant”), a citizen of Jamaica, against a deportation order of 9 June 2016, should be allowed. The judge noted the SSHD’s acceptance that the claimant had a genuine and subsisting relationship

with his British citizen partner, Mrs Bryan and with his two British citizen children aged 17 and 12. At paragraph 44 the judge stated:

“Based on that assessment of the evidence, and bearing in mind the concessions in the Reasons for Decision Letter, I find that the Appellant has been a stable presence in the lives of Mrs Bryan and their two children since being granted bail in February 2013. It was noted in the earlier Determination that the Appellant’s and Mrs Bryan’s renewed commitment to each other had not really been tested, but it clearly has been now. They have been in a stable relationship, living together in a genuine marital relationship, since February 2013. The Appellant has not reoffended, has complied with immigration law and has been the primary carer for the children, in particular for B, whilst Mrs Bryan works full time. B is at a vulnerable age and I agree with the comments made by the earlier Tribunal that there is likely to be a long-term adverse impact on him if the Appellant were deported.”

2. Having noted that the appellant (hereafter “the SSHD”) did not actively pursue any argument that it would be reasonable to expect the partner and their children to relocate to Jamaica, the judge considered whether it would be proportionate to separate the claimant from them, given the strong public interest in his deportation. In addition to having overstayed between June 2002 and 9 September 2009 (when he was granted Discretionary Leave (DL)) the claimant had been convicted in May 2011 for supplying a controlled drug of class A (heroin), possessing a controlled drug of class A with intent to supply (heroin and crack cocaine) and was sentenced to four years’ imprisonment. A deportation order had been made against him in 2012 but he was successful in his appeal before Judge Colvin and Mrs Schmitt JP sent on 4 February 2013. Nevertheless the SSHD in a decision letter of 2 February 2016 concluded that “there continues to be significant public interest in deporting you”. The subsequent decision of 9 June 2016 set out more detailed reasons.
3. In deciding to allow the claimant’s appeal FtT Judge Ferguson noted, inter alia, that the SSHD could have sought to appeal the earlier FtT decision, but instead extended his initial grant of DL and then took eighteen months to determine his application for further leave. In Judge Ferguson’s view that has the effect of “solidifying” the claimant’s position in the UK. Although his immigration status was always “precarious” in that his leave to remain was limited, the fact that he had been successful in his first appeal on family life grounds and then granted two further periods of DL without any further offending, meant that “he could have had some reasonable expectation that he would be allowed to remain in the UK while his family circumstances remained the same and provided that he did not commit any further offences”. At paragraphs 50-53 the judge continued:

“50. I also agree with Mr Waheed that the Appellant’s relationship with his wife and children has, if anything, strengthened since

the earlier Determination. He has provided real support to Mrs Bryan and has developed a particularly strong bond with B. The Respondent has put forward no evidence or other reason to suggest that the family ties are weaker than they were in 2013, other than the unsupported assertion in the Reasons for Decision Letter that A, at the age of 17, would be becoming more independent from any parental figure and that her dependency upon the Appellant would diminish over time. In fact the Appellant has spent considerably more time with A in the period since the Determination in 2013, when she would have been 14, than he had in the few years before then. I accept A's evidence that they are now close and she relies on him for support. The fact that she is now 18 is of limited relevance when there is still a 12-year-old boy in the family who needs considerable parental support.

51. Adopting the approach suggested by Jackson LJ in NA (Pakistan) [2016] EWCA Civ 662, I have considered whether the effect of the Appellant's removal on his wife and/or children would be 'unduly harsh' and I find that it would be. Notwithstanding the Appellant's criminal conduct in or around 2011 and the time spent in prison as a result, the family is now a strong unit and they depend on the Appellant for childcare, as well as emotional and practical support. In light of the findings of the earlier Tribunal as to the best interests of the children which, at least in B's case, must still apply with equal force, it would be unduly harsh for them to be separated from the Appellant indefinitely.
52. As to the second stage of the assessment, I also find that there are very compelling circumstances in this case that outweigh the public interest. I fully accept the strength of the public interest in the Appellant's deportation as set out in the earlier Determination. However, the Appellant successfully appealed the first deportation decision on family life grounds, and since then he has not committed any further offences and his family ties have significantly strengthened. The effect on B of the Appellant's deportation would be potentially devastating. The position is somewhat complicated by the fact that there has been a change in the law since the earlier Determination, or at least a change in the courts' understanding of how the law should be applied, but the Respondent did not take any action on that basis at the time and indeed that was not the basis of the deportation decision made on 2 February 2016 or the refusal of the human rights claim on 9 June 2016. I consider that that background, together with the impact on the family, constitutes very compelling circumstances.
53. In the unusual circumstances of this case I find that the interference with the Appellant's Article 8 rights is

disproportionate to the strong public interest in his deportation and therefore the appeal must be allowed.”

4. The SSHD’s grounds of appeal contend firstly that the judge erred by failing to indicate that he had attached weight to the strong public interest and the failure to understand that the scales are heavily weighted in favour of deportation; and secondly that the judge failed to give clear reasons as to why it was concluded that there were very compelling circumstances, particularly in the context that the judge recognised that there had been changes to the law and the Immigration Rules affecting deportation cases since the decision of the First-tier Tribunal in 2013.
5. I heard clear and concise submissions from both representatives, Mr Deller accepting that it was difficult to say that the judge’s findings were not properly open to him given the factual circumstances, Ms Bond underlining that the SSHD raised no perversity challenge.
6. I am not persuaded that the SSHD’s grounds are made out.
7. It is clear that the judge was fully aware of the changes to the law and the Rules effected in 2014 and he set out the key cases reflecting the new position, especially in relation to very compelling circumstances.
8. The judge did not seek to allow the appeal by automatic application of the findings of fact and positive evaluation of the previous Tribunal, but rather paid full regard to the developments in the claimant’s circumstances since that time, as well as changes in the law.
9. The judge clearly attached considerable weight to the strong public interest in deportation: see paragraph 47. It was open to the judge to assess that the claimant had nevertheless established very compelling circumstances. There was: the fact that the claimant at sentencing was described by the sentencing judge as of previous good character and to have shown genuine remorse; the fact that he had not committed any further offences since the positive decision of the first tribunal; the fact that subsequent to the first tribunal decision the SSHD had seen fit to grant him not one but two periods of DL (May-November 2013, February-August 2014); the fact that since the positive decision of the first tribunal the claimant had strengthened his family life ties with his wife and children; and the fact that the evidence indicated that the impact on his two British citizen children (for whom he was currently their “primary carer”) of his deportation would be potentially devastating (the SSHD’s grounds raise no challenge to that finding). In light of the Supreme Court guidance in **Hesham Ali**, [2016] UKSC 60 it is clear that family life can be a compelling circumstance, especially when children are born here and have British citizenship.
10. I remind myself that I am not entitled to interfere with the decision of the FtT unless it is vitiated by legal error and its assessment of the particular

circumstances is outside the range of reasonable responses. The decision of Judge Ferguson may have been generous, but it was not infected with legal error.

11. The SSHD's grounds made reference to "grounds previously submitted to FtT Judge Andrew (who refused the first application for permission). After I adjourned to allow Mr Deller time totality rack down these grounds (they were not in the UT file), he confirmed they added nothing substantial to the renewed grounds.

Notice of Decision

12. For the above reasons I conclude that the FtT judge did not materially err in law. Accordingly his decision to allow the claimant's appeal must stand.
13. No anonymity direction is made.

Signed

Date: 29 October 2017

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Dr H H Storey
Judge of the Upper Tribunal