



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

Appeal Number: HU/00126/2015

THE IMMIGRATION ACTS

Heard at Field House

On 9 January 2018

Decision & Reasons

Promulgated

On 12 January 2018

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**M P
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Haywood, instructed by Irvine Thanvi Nata solicitors

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge A M Black promulgated on 3 March 2017 to dismiss his appeal against a decision of the respondent made on 8 May 2015, refusing his human rights claim on the basis that he is a foreign criminal who must be deported as he did not fall within any of the exceptions to deportations.
2. The appellant is a citizen of Ecuador who was on 9 February 2012 sentenced to 21 months' imprisonment for the possession of possessing material for making false identity documents. After his release he was also

convicted of assaulting his wife and received a community order with a supervision requirement for 12 months

3. It is accepted that the appellant is married, and that the couple have a child, M who is on the autistic spectrum. There are also two older children of the family who are the appellant's wife's children from a previous relationship. It is the appellant's case that the effect of his deportation would be unduly harsh on his wife and each of the children.
4. M has significant care needs and there is an Education Health and Care Plan ("EHCP") in place. His situation is summarised at [17] of the judge's decision which Mr Haywood accepted omits nothing material. The judge also set out at [50] - [57] further details of M's circumstances.
5. The judge found that:
 - (i) The appellant's offences were serious [78];
 - (ii) The best interests of the children overall was to remain in the family unit [81];
 - (iii) The effect of the appellant's deportation on the children would not be unduly harsh as they could remain in the United Kingdom with their mother [84] - [87];
 - (iv) The respondent's decision did not required the children, who are British Citizens, to relocate outside the EU [86], and they were not deprived of the genuine enjoyment of their rights as citizens of the EU;
 - (v) Deportation of the appellant is a proportionate interference with the appellant's and his family's article 8 rights [88];
6. The appellant sought permission to appeal on the grounds that the judge had erred:
 - (i) in her assessment that the appellant's two offences as serious [78], the second offence (assault on his wife) not resulting in a custodial sentence [grounds, 14 (a), and 14 (b)] had wrongly concluded he was involved in the production of false passports, his involvement being low level;
 - (ii) in concluding that the "mere fact of change" in M's life would not lead to unduly harsh consequences, as that was contrary to all the evidence, given the appellant's central role in his care; and, in concluding that requiring the children to live without him in the United Kingdom was not unduly harsh [grounds, 15 (a) to (c)];
 - (iii) in failing properly to engage with the submissions made in respect of Sanade et al v SSHD [2012] UKUT 00048

7. Permission was granted on all grounds by Upper Tribunal Judge Clive Lane on 26 August 2017.
8. I address the grounds in turn.

Ground 1

9. Despite Mr Haywood's submissions to the contrary, I do not consider that the judge could be said to have erred in characterising the appellant's second offence as "serious". There is no indication, nor was it submitted, that in this context "serious" had any specific statutory meaning nor do I consider that the judge intended the word to bear anything other than its ordinary meaning. While the type and length of the sentence are relevant in assessing the seriousness of an offence, that is not necessarily determinative.
10. In this case, as the judge noted at [70] the offence was committed in the family home which should be a safe and secure environment for his wife and children [78]; caused physical harm to his wife in the presence of children [78]; and, as a result of the appellant drinking too much. She also found, which is not disputed, that there was a discrepancy in whether the appellant had or had not ceased drinking since then. It is not disputed either that the appellant's probation officer had assessed him as posing a medium risk of harm to his partner [71], which the judge accepted. She also found [72] that the risk of harm arises in the home, and that the offending was not at the more serious end of the spectrum [73].
11. I conclude that on these findings of fact which are not disputed, the judge was manifestly entitled to conclude that the assault was a serious offence when viewed in the context.
12. The challenge to the judge's assessment of the index offence is without merit. As was noted in the sentencing remarks quoted at [67], the sentencing judge did not believe that the appellant was just a courier, but was not satisfied they were intimately involved in the production of false passports, but that they played a role in the process of passport making. In the light of those comments, Judge Black was manifestly entitled to conclude, and gave proper reasons for so doing, that the appellant was involved in the production of counterfeit passports [72]. To suggest that when the judge stated at [78] that the appellant was "engaged in the production of false passports" is somehow an indication of a finding of more significant involvement is fanciful. There is no basis for suggesting that "engaged" entails any greater participation in an activity than "involved". The judge was also clearly entitled to note that false passports would enable others to commit crimes; that is self-evident.
13. In the circumstances, it cannot be argued that the judge did not properly appraise the nature of the appellant's offending, or attach to it impermissible weight.

Ground 2

14. The core of the challenge to the judge's assessment of the impact of deportation on the children, primarily M, is in effect as to weight. The passages cited in the grounds at [10] form part of a what is in any view a detailed, careful and meticulous consideration of the evidence relating to M, his condition, the support he receives from father and school, and the views of professionals concerned with supporting him.
15. The judge cannot be criticised for attaching less weight to the views of the inclusion leader [56] as to the possible outcomes; she was entitled to take the absence of evidence as to qualifications into account at that point, and it is evident that the judge did attach weight to what the inclusion leader had observed.
16. While the judge does at [64] accept that it is in M's interest for him not to have change, it cannot be argued that this is inconsistent with the finding that the effect of change taking it together with the other factors would not be unduly harsh. Merely because something is undesirable does not make it unduly harsh.
17. Viewed in isolation, it is arguable that the sentence [80] "I am unable to find that mere fact of changed would be such as to suggest that it would lead to unduly harsh consequences for M" when combined with the conclusions at [87] indicates that the judge equated and minimised the effect of change.
18. Mr Haywood's submissions on this issue are to the effect that the judge appears to have equated and minimised the effect of change on M, having observed [80] that change is inevitable. But that is to consider those passages out of context.
19. At [55] to [57], the judge summarises the evidence of the likely effect on M of the change precipitated by the appellant's deportation. She also summarises and analyses at [61] the evidence of the independent social worker and concludes at [80] that "none [of the possible outcomes resulting from deportation] can be described as "unduly harsh" for M." That is in itself an indication that the judge did consider a range of possible outcomes capable of having different effects. It is also evident from the decision at [83] that the judge had regard to the effect of changes, and also that M would get support from the school and a number of other professionals.
20. It is evident also at [85] that the judge considered the difficulties inherent in separation from the appellant and the difficulties in communicating.
21. While I note Mr Haywood's submission that the situation has now changed since the appellant's wife was able to cope with M while the appellant was in prison, equally she now, as the judge notes, has the support of

professionals involved in supporting M subsequent to his diagnosis, and the issuing of the EHCP.

22. In conclusion, I am satisfied that the judge gave proper consideration to all the evidence put before her, and reached a conclusion which is sustainable and was open to her on the facts as found. As Mr Wilding accepted, another judge may have reached a different conclusion, as indeed might I; that does not mean it involved the making of an error of law.
23. Mr Haywood did not place much reliance on the Sanade point. It is, in any event, in the light of *SSHD v VM (Jamaica)* [2017] EWCA Civ 255 unarguable, given that the children would remain in the United Kingdom with their mother.
24. In conclusion, for the reasons given above, I consider that the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.
2. The anonymity order made by the First-tier Tribunal is maintained.

Signed

Date 10 January 2018

A handwritten signature in black ink, appearing to read 'Jonathan Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul