



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

Appeal Number: HU/00626/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14<sup>th</sup> November 2018**

**Decision & Reasons  
Promulgated  
On 12<sup>th</sup> December 2018**

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**LRC**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Jamaica who entered the United Kingdom as a visitor on 5<sup>th</sup> December 2001. Since 30<sup>th</sup> July 2003 he has remained in the United Kingdom unlawfully.
2. Between 2003 and 2005 he was convicted on thirteen occasions for twenty offences. In particular on 4<sup>th</sup> March 2015 he was convicted at the Inner London Crown Court of drug offences for which he was sentenced to 30 months' imprisonment.

3. On 8<sup>th</sup> October 2015 he was made the subject of a deportation order. Following the end of his custodial sentence he was detained on immigration powers finally being released on 7<sup>th</sup> February 2017.
4. On 25<sup>th</sup> October 2016 his legal representatives made further submissions which were treated as a request to revoke the deportation order. In the refusal decision of 23<sup>rd</sup> December 2016 the respondent refused to do so and maintained the original decision.
5. The appellant sought to appeal against that refusal, which appeal came before First-tier Tribunal Judge Rodger on 21<sup>st</sup> March 2016. In a decision promulgated on 4<sup>th</sup> April 2018 the appeal was dismissed in all respects.
6. The appellant has seven children all of whom are British nationals.
7. The practical focus of the appeal was in respect of M born on 1<sup>st</sup> May 2009 and RR(1) and RR(2) twins born on 6<sup>th</sup> December 2010. These were his children by a former relationship with Ms MA
8. It was the contention advanced on behalf of the appellant, that he was in an existing parental relationship with those three children. By reason particularly of the autism of the twins his presence was much needed to support Ms A and that it would be unduly harsh in any event for those children to be without his care and attention in the United Kingdom.
9. So far as R was concerned she had been made the subject of a special guardianship order until her 18<sup>th</sup> birthday. A special guardianship order also had been made in respect of J, who at the material time was in foster care.
10. The appellant sought to challenge the decision of First-tier Tribunal Judge Rodger on the basis that it had been wrongly concluded by the Judge that there was absence of genuine and subsisting parental relationship and that the Judge had failed adequately to deal with the issue of whether the appellant's absence from the United Kingdom would be unduly harsh upon such children. Leave to appeal to the Upper Tribunal was granted on those grounds.
11. The hearing was initially scheduled to take place on 18<sup>th</sup> July 2018. That was adjourned because it was said that new solicitors had taken on the case on behalf of the appellant and time was needed to be made for preparation.
12. A new hearing date was set for 6<sup>th</sup> September 2018. The appellant and his legal representatives Law Eagles Ltd were so notified.
13. On 2<sup>nd</sup> September 2018 the legal representatives requested an adjournment on the grounds that certain documents were required and that the solicitors had yet to obtain the details of the grounds of appeal

from the previous lawyer. Given that the solicitors had had since July to obtain such evidence the request was refused.

14. At the hearing of 6<sup>th</sup> September 2016 there was no appearance by the legal representative nor by the appellant himself. Enquiries conducted of the solicitor at that stage produced no effective contact.
15. Thus the matter was adjourned with a direction that the appellant's solicitors provide a written explanation as to why they had not attended the Tribunal, to which direction a reply was sent by a letter of 11<sup>th</sup> October 2018 on the basis that the representatives did not attend because it clashed with another case in Birmingham. Further it was said that the appellant was still awaiting particular documentation which he did not have. The letter concluded "we hope that you will be able to consider the above reasons faithfully and issue a new hearing date for our client for which he will be duly prepared for."
16. It was following the receipt of the letter of 11<sup>th</sup> October 2018 that the hearing date of 14<sup>th</sup> November 2018 was set, with notification being given both to the legal representations and to the appellant at his stated address.
17. On 7<sup>th</sup> November 2018 a further letter was received from the appellant's legal representatives requesting a further adjournment on the basis that the appellant's representative would be appearing in another case at a different court on the same day. It was also said that the appellant was yet to receive documentary evidence that would be relevant to the appeal.
18. That application was refused, a copy of which refusal was sent both to the representatives and to the appellant at his stated address.
19. At the hearing of 14<sup>th</sup> November 2018 neither the appellant nor the representative attended. An attempt to contact the solicitors resulted in an answerphone. No explanation had been offered by the appellant for his absence from the hearing. Although it would clearly be desirable for the person facing deportation to be present and or represented at the appeal, it is abundantly clear that every facility had been made by the Tribunal for that to have happened. I am satisfied that the appellant was aware of the hearing and indeed of the refusal to adjourn the hearing. Consequently I considered, in the light particularly of the long delay, that it was in the interests of justice and not unfair to proceed to determine the appeal in the absence of the appellant and or representative.
20. The first issue that is raised is the contention by the appellant that he has a subsisting relationship with his children particularly with RR(1), RR(2), M and R, given that in the decision letter that position was accepted by the respondent. It was submitted that it was wholly wrong for the Judge to go behind that concession.

21. As has been noted R is under a special guardianship order and lives with her aunt.
22. In terms of the other children they live with their natural mother A, who was the former partner of the appellant. It was common ground that he did not live with them. It was noted that both the twins had behavioural and communication difficulties. There were a number of reports which were considered by the Judge including an education, health and care plan for RR(1) issued on 5<sup>th</sup> September 2016; a paediatric assessment clinic report dated 3<sup>rd</sup> June 2016 relating to RR(2); a letter dated 18<sup>th</sup> July 2016 relating to RR(2) and referral to the autism and related disorder service. There were also various other reports which were dated 26<sup>th</sup> July 2016 and 24<sup>th</sup> June 2016. There was an occupational therapy report dated 3<sup>rd</sup> June 2016 relating to R(1) and a further report a social communication clinic report dated 20<sup>th</sup> October 2014. Of significance also, for the conclusions of the Judge, was the social care assessment report of 9<sup>th</sup> May 2017.
23. Although Ms A did not attend the hearing the Judge has made specific reference to an e-mail from her dated 19<sup>th</sup> October 2016. She refers to the twins having autism and maintains that the appellant was always very active with school runs and appointments and that it was hard to look after the children without his help. Given the difficulties with the twins it was very difficult coping particularly when the appellant was in custody. Although she comes from a large family it was impossible for the twins to be left with anyone.
24. In terms of M he misses his father. He likes playing with him and enjoys being with him.
25. This is of course an e-mail written whilst the appellant was in custody and, in one sense, it is the social care assessment report of 9<sup>th</sup> May 2017 which sets out the more current situation so far as the children were concerned. No concerns were raised about the children or the care they were receiving from their mother.
26. Ms A had six sisters who lived locally to her and were all noted to be present in the children's lives and who provided emotional support. The family was very close. Ms A and the appellant were assessed as being attentive and loving parents.
27. In the concluding parts of the report, the author noted that the appellant was focussed on engaging with his probation and drugs services in order to free himself of addiction. He was observed to be a loving, attentive and hands on parent. It was felt that if Ms A had concerns about his presence in her children's lives she would respond accordingly. The appellant's evidence was noted that he and Ms A had a good relationship and communicated well. He indicated that he saw the three youngest children nearly every day as he dropped them at school and at weekends they would come to stay with him. It was an informal arrangement to give Ms A

some respite at the weekend. In support of that particular relationship the appellant relied upon the evidence of a Mr B and Ms B who were next door neighbours to Ms A.

28. Those witnesses gave evidence but the Judge did not accept the credibility of what they had had to say as to the involvement of the appellant with the children. It was observed that it was unfortunate that Ms A had not provided up-to-date information about that relationship. The Judge found Mr B's evidence to be vague and particularly unhelpful as to the extent to which the appellant was currently involved with his children. Though the impression had been given that he observed the appellant take the children to school, that would not seem not to be the case when questioned about the matter. According to Mr B, however, he had visited some three weeks or so before the hearing and the appellant and children had been at the house. He unable to say when pressed when he last saw the appellant take any of the children to the school as his children were no longer at the same school as M.
29. The Judge considered the evidence of Ms B and found her evidence to be vague and not consistent on that same topic.
30. Ms W spoke also of the appellant seeing the three children, regularly. The Judge gave little weight to that evidence, particularly as it did not sit well with the lack of up-to-date supporting evidence from the mother (or guardians) of any of the children.
31. Essentially the Judge, having analysed the evidence on that matter, came to the conclusion that she was unable to rely upon the appellant's account as being truthful and reliable and did not find that there was any significant or current contact with the three younger children.
32. It seems to me that that was a factual assessment which the Judge was entitled to make on the evidence when considered as a whole. It might have been the position, as accepted by the respondent in the original decision, was found not to be quite so at the hearing of the appeal.
33. The Judge found no evidence of subsisting parental relationship with R, T or N and also considered J for who the appellant is not J's main carer. There was no evidence from J's mother or guardian to confirm the ongoing nature of any relationship between him and his father.
34. As the Judge noted, however, whether or not there was a genuine and subsisting relationship another issue that was required to be considered under paragraph 398 was whether or not it would be unduly harsh for the children to remain in the United Kingdom without the appellant's presence and support.
35. Challenge is made to the findings of the Judge in relation to that matter on the basis that the Judge had used best interests rather than unduly harsh

and had ignored the evidence from Ms A in the e-mail of 19<sup>th</sup> October 2016.

36. I find little merit in that challenge. It is clear that the Judge specifically noted in the determination the evidence from Ms A of 19<sup>th</sup> October 2016. What was however particularly relevant was the absence of any up-to-date statement from her as to the current relationship between the appellant, herself and the children or, indeed any up-to-date assessment as to their needs. The Judge found it somewhat undermining of the strong position, as seemingly adopted by the appellant, that Ms A did not attend the hearing to lend her support to him. The Judge could only go on the situation as presented in the various reports that were before her.
37. Although the Judge does, from time to time, refer to the best interests of the children in the analysis, it is entirely clear that the context of that concern is to determine whether or not the absence of the appellant would create difficulties or problems for them. Indeed the Judge at paragraph 45 indicates that it would not be unduly harsh on any of the children were the appellant to be deported. She was not persuaded that the appellant currently had any real input into the lives of any of the children or that contact could not otherwise be made through modern forms of communication. The Judge noted that the contact, even on the basis of the appellant's account, was an occasional contact although the children lived with their mother.
38. The Judge returned the issue of unduly harsh in paragraph 47 of the determination and found that appellant had not shown that his deportation would be unduly harsh on any of his children or that the emotional or mental symptoms suffered by any of them, and particularly RR(1) and RR (2) would be made significantly worse by his absence. The Judge noted the sadness of M when his father was away, but found nothing to indicate that the absence of the appellant would have any duly harsh effect upon the lives of any of the children or in their development.
39. The Judge assessed the evidence in the round including the medical reports and letters and statements. The Judge noted the help of mothers, guardians, external agents or support providers and found nothing to indicate that his absence would be unduly harsh. It is to be noted of course that the appellant had been absent from the lives of his children for some two years whilst in custody. The children were either on special measures or being supported or assisted by others.
40. I find that the conclusion by the Judge that it would not be unduly harsh for Ms A or the children to remain in the UK without the appellant was a conclusion properly reasoned and open to the Judge to conclude. The Judge found no very compelling circumstances within the meaning of paragraph 398

41. The Judge considered also the provisions of Section 117C and 399A of the Rules.
42. Further the Judge considered quite properly whether there were any very compelling circumstances over and above 399(a) and 399(A) that that should be applied in favour of the appellant. In that connection the Judge considered the appellant's mother and her needs, Ms A and her needs and indeed the steps taken by the appellant to address his offending behaviour. No such compelling circumstances were found
43. The determination is a comprehensive and a detailed one addressing all the relevant issues, as such I find there to be no error of law.
44. It has been contended by the solicitors in their various letters that there may be more relevant evidence to come. That can of course be presented by way of an application for a fresh claim. It is a matter of speculation what that evidence is or indeed the relevance of such evidence to an error of law determination.

### **Notice of Decision**

The appellant's appeal before the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal dismissing the appeal on human rights grounds is upheld.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed



Date 7<sup>th</sup> December 2018

Upper Tribunal Judge King TD