



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05725/2017

THE IMMIGRATION ACTS

Heard at Field House
On 21st August 2018

Decision & Reasons Promulgated
On 06th September 2018

Before

UPPER TRIBUNAL JUDGE KING TD

Between

RANDY [J]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss E Sanders of Counsel, instructed by Duncan Lewis & Co
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant seeks to appeal against a deportation order made against him on 10th June 2016 on the grounds that it is disproportionate to make such an order having regard to his private and family life.
2. The appellant entered the United Kingdom as a visitor in 2001. Eventually he was granted indefinite leave to remain in 2011. On 10th February 2016 he was sentenced to sixteen months' imprisonment upon being convicted for assault occasioning actual

bodily harm. It was that offence which gave rise to the deportation order. In judicial review proceedings he was granted an in-country right of appeal against that order.

3. The appellant sought to appeal to the First-tier Tribunal, which appeal came before First-tier Tribunal Judge Frankish on 5th April 2018. That appeal was dismissed in a determination dated 5th April 2018.
4. The grounds of challenge mounted against that decision raise a number of concerns. Permission to appeal to the Upper Tribunal was given on the basis of a failure to consider the best interest of the children and an inadequate assessment of the evidence relating to [T]'s behavioural problems.
5. In summary the appellant has a child from a previous relationship. He has two children, [T] aged 6 at the time of hearing and [R], aged 3 at the time of hearing. These are from his current relationship with [AH].
6. Ms [H] also suffers from epilepsy and requires treatment for that condition.
7. Although the Judge considers in some detail the evidence that is presented it is difficult to find that the statutory and legal approach had been applied in a structured way or at all. Indeed it is far from clear from paragraph 33 of the determination as to what principles were being considered in the overall conclusions that were made.
8. The Court of Appeal in **NA (Pakistan) [2016] EWCA Civ 662** set out the framework in paragraphs 26 to 37 in particular.
9. The first stage is to consider whether the appellant falls within Exception 1 or Exception 2 and set out in paragraphs 399 and 399A of the Immigration Rules. If so the Article 8 claim succeeds. If not the next stage is to consider whether there are "sufficiently compelling circumstances" over and above those as described in Exceptions 1 and 2. An approach to such circumstances is also set out in guidance in the decision of **NA**.
10. It is necessary for a decision maker to consider first to the current partner of the appellant and determine to whether it would be unduly harsh for her to go to Jamaica and it whether it would be unduly harsh for her to remain in the United Kingdom without the appellant.
11. Similar considerations also apply to the two children and whether it would be unduly harsh for them to return to Jamaica and whether it would be unduly harsh for them to remain in the United Kingdom without the appellant.
12. Much of the determination features upon the situation of [AH] and the extent to which the appellant does or does not provide support for her. Indeed it is the conclusion in paragraph 31 that the appellant is conspicuous by his absence. Although it is clear by inference from the Judge's finding that it would not be unduly harsh for Ms [H] to

remain in the United Kingdom, it is not a matter that is clearly articulated as is required.

13. In any event it is clear that the approach taken to the two children lacks any structured consideration on the basis of whether it would be unreasonably harsh for them to remain in the absence of the father. [T] in particular suffers from behavioural problems. There are expert reports in relation to the children which are given but brief acknowledgment in the determination. No clear findings on the issue of unduly harsh are made.
14. It is incumbent, as I have indicated, for the Judge to come to clear findings as to whether Exception 1 or Exception 2 has application and if not whether there are any other circumstances taken in combination which would render removal disproportionate.
15. Given the absence of such structured consideration it seems to me that the determination must be set aside to be remade applying the correct consideration to the evidence as is found.
16. Given the volume of material that is presented, I have regard to the Senior President's Practice Direction. In the circumstances the matter shall be remitted to the First-tier Tribunal for a fresh rehearing of the issues and evidence.

Notice of Decision

The decision of the First-tier Tribunal is set aside to be remade upon a further hearing conducted in the First-tier Tribunal.

No anonymity direction is made.



Signed

Date 30 August 2018

Upper Tribunal Judge King TD