



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: HU/08680/2017

THE IMMIGRATION ACTS

At **Field House**
on **31.05.2018**
Decision signed: **01.06.2018**

Decision & Reasons Promulgated
On 4 June 2018

Before:

The Hon. **Lord UIST** and
Upper Tribunal Judge **John FREEMAN**

Between:

[J E]

appellant

and

Secretary of State for the Home Department

respondent

Representation:

The appellant in person
Mr Paul Duffy for the respondent

DETERMINATION AND REASONS

This is an appeal, by the respondent to the original appeal, against the decision of the First-tier Tribunal (Judge Lisa Gibbs), sitting at Harmondsworth on 19 September 2017, to dismiss a deportation appeal by a citizen of Grenada, born 1990.

2. History

1994	given indefinite leave to remain here with mother
2002 on	convicted of various offences, including burglary of dwelling-houses in 2004 and 2005
03.04.2007	sentenced to 3 years' detention for robbery
29.06.2007	not deported, owing to age – warning letter sent

NOTE: (1) *no anonymity direction made at first instance will continue, unless extended by me.*
(2) *persons under 18 are referred to by initials, and must not be further identified.*

28.05.2008	sentenced to total of 18 months' imprisonment for handling two high-value cars stolen in burglaries
18.12.2009	first deportation order
2010	appeal allowed: warned as to consequences of future offending
31.12.2014	commits present offence (burglary with intent)
28.08.2015	daughter N born to appellant's British girl-friend
20.11.2015	sentenced to 3 years' imprisonment
19.12.2016	custodial period ends, followed by immigration detention
08.02.2017	present deportation order
31.07.2017	human rights decision re-issued, with in-country right of appeal, following <i>Kiarie and Byndloss</i> [2017] UKSC 42
31.08.2017	released from detention
19.09.2017	appeal heard

3. Issues

4. Since this appellant had been sentenced to less than 4 years' imprisonment, he was entitled to rely on paragraph 399 of the Rules, and the judge allowed his appeal under sub- paragraph (a):

This paragraph applies where paragraph 398 (b) or (c) applies if –

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i) the child is a British Citizen; or

(ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case

(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and

(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported.

5. The appellant was also entitled to the benefit of paragraph 399A, which follows:

This paragraph applies where paragraph 398(b) or (c) applies if –

(a) the person has been lawfully resident in the UK for most of his life; and

(b) he is socially and culturally integrated in the UK; and

(c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.

The judge mentioned this paragraph, but did not deal with it; no doubt it would have been argued, if the appellant had been represented before her.

6. Permission was granted on two grounds: the judge did not

- (a) pay enough attention to the public interest, given the appellant's criminal history, disregarded warnings, and the short time he had been at large, following his release from detention; or
 - (b) give any satisfactory explanation as to why the different standard of living in Grenada would make the appellant's removal there unduly harsh.
7. It is now well settled (see *MM (Uganda) & another* [2016] EWCA Civ 450) that 'unduly harsh' in paragraph 399 (a) of the Rules means unduly harsh, taking account of the public interest as well as that of the child concerned. The judge referred to this authority, and set out to deal with it at paragraphs 29 – 35. She was of course fully entitled to note that the sentencing judge on the appellant's last appearance before a criminal court had taken account of the progress he had made since he had been caught, and the birth of N; though for some reason she did not note at the same time what the judge had said about the appellant's having just started with a rehabilitation programme when he committed the offence, nor about N having been already *en ventre sa mère* when he did so.
8. Likewise the judge was fully entitled to note that the judge had given the appellant the minimum sentence of 3 years' imprisonment for a repeated dwelling-house burglar; but she failed to note at the same time the warnings about his future conduct which he had disregarded, not only from the Home Office in 2007, but by the panel who had allowed his appeal in 2010.
9. On ground (b) Mr Duffy referred us to *AJ (Zimbabwe)* [2016] EWCA Civ 1012, which represented a line of authority not taken account of by the judge; but, in view of the result we have reached, there is no need to go into that here. It is quite clear, for the reasons set out at 6 – 7, that the judge's conclusions about what the public interest required were, despite the obvious trouble she had taken over them, somewhat unbalanced. The result was that she was wrong in law on ground (a).
10. Since Mr Duffy accepted that the appellant was entitled to a first-tier hearing on paragraph 399A, which the judge had not dealt with, he made it clear that he was not inviting us to re-make her decision under 399 (a), but to direct a fresh hearing of the appeal on both grounds. On that basis, the appellant, who clearly understood what was involved, did not seek to support the judge's decision on the law.

**Home Office appeal allowed: first-tier decision set aside
Fresh hearing at Hatton Cross, not before Judge Gibbs**



(a judge of the Upper Tribunal)