



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

Appeal Number: HU/02816/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 February 2019**

**Decision & Reasons  
Promulgated  
On 28 February 2019**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

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

Appellant

**and**

**[C H]**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer

For the Respondent: Mr A Joseph of Counsel, instructed by Turpin & Miller LLP

**DECISION AND REASONS**

1. The Secretary of State for the Home Department appeals with permission the decision of First-tier Tribunal Judge Mathews promulgated on 24 July 2018 allowing the appellant's appeal against the refusal of his human rights claim. This was on the grounds that the appellant met one of the exceptions to deportation, namely that contained in paragraph 399(a) of the Immigration Rules that it would be unduly harsh for his children to

relocate with him to Jamaica and also that it would be unduly harsh for them to remain in the United Kingdom without him. For ease I refer below to the parties as they were before the First-tier Tribunal, with CH as the appellant and the Secretary of State for the Home Department as the respondent.

2. The First-tier Tribunal's decision considers in detail the evidence of the appellant's current family circumstances and in particular in relation to the breakdown of his relationship with his partner and also the ongoing relationship he has with his children, together with the wealth of evidence from external agencies as to the family situation both in the years since 2016 but also more recently. The First-tier Tribunal essentially found that it is in the best interests of the appellant's three children to they remain in the United Kingdom where they can take advantage of the benefits of their British citizenship and also where they have spent all of their lives. The children had no clear ties or experience of life in Jamaica. It would also be in their best interests to remain with their father, the appellant, who is found to be their primary carer and has played a very significant role in their upbringing in recent years in particular due to the ill-health of their mother. There is clear reference to the evidence from the local council and local authorities as to the position of the family and the appellant's role within it.
3. The First-tier Tribunal decision includes express consideration of the appellant's children's current education and their positive pursuit of that at a stage where the older two in particular are moving into secondary education. The findings in relation to best interests are contained in paragraph 39 of the decision, which also considers a possible future scenario as to where the children may live. It was noted at the time of the hearing that the local authority were in the preliminary stages of some form of care proceedings in relation to the children following the breakdown of the parent's relationship with each other, including a planned parenting assessment of both parents. The First-tier Tribunal, having considered all of the evidence, came to the conclusion that there would be a positive influence from the appellant on his children from a safeguarding perspective in light of concerns as to the mother's parenting and the First-tier Tribunal considered that the appellant is the parent most likely to be preferred as a full-time carer given the positive assessment of his parenting to date and concerns as to the care otherwise provided.
4. There is a clear finding that the appellant has a genuine and subsisting relationship with his three youngest children. The conclusions on the law against this factual backdrop are contained in paragraphs 43 and onwards of the decision which set out the requirements of the Immigration Rules for deportation and the exceptions thereto. The findings made are primarily focused on the situation of the children and do not consider within the assessment of unduly harsh the public interest in deportation or the appellant's criminal or immigration history. These appeals were allowed on the basis that deportation would be unduly harsh on either

eventuality of the children staying or going therefore the exception in paragraph 399(a) of the Immigration Rules was met.

5. The respondent sought permission to appeal against that decision on 29 July 2018 on the grounds that the First-tier Tribunal had failed to apply the Court of Appeal's guidance in MM (Uganda) v Secretary of State for the Home Department [2016] EWCA Civ 617, by failing to take into account the public interest factors in deportation, primarily the appellant's immigration and criminal history, when assessing whether the appellant's deportation would be unduly harsh on qualifying children. That application for permission to appeal was properly made and correct on the basis of the existing authority at the date of the First-tier Tribunal's decision and date of application for permission. The second ground of challenge was that the existence of care proceedings in the background was not determinative and that the First-tier Tribunal should have considered possible external support available for the children. The permission application however ends as follows:

“Undoubtedly if consideration was based solely on the best interests of the children it would dictate that the appellant be allowed to remain in the United Kingdom. However, Parliament has decided that that is not the determinative factor, it is something that has to be balanced against the public interest in maintaining the Immigration Rules and in particular in this instance, the maintenance of authority of deportation orders.”

6. After those grounds are submitted to the First-tier and refused and resubmitted to the Upper Tribunal, the Supreme Court gave their decision in KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53, which found precisely that the exceptions to deportation both in the Immigration Rules and replicated in Section 117C of the Nationality, Immigration and Asylum Act as to whether the effect of deportation would be unduly harsh is entirely focused on the child and is not to be balanced against any wider public interest. That is precisely, although not on the authorities that existed at the date, what the First-tier Tribunal did in this case. Whilst the application for permission to appeal was perfectly proper on the basis of the previous authority, it no longer remains arguable at least on the first ground of challenge that the First-tier Tribunal erred in law in any way.
7. The Upper Tribunal gave permission to appeal in this case after the decision in KO (Nigeria) and expressly referred to it in the grant of permission but did not deal with it in relation to the first ground of challenge at all nor reject it as no longer arguable on the basis of the change of authority. In the alternative, permission was granted on two grounds, one of which was not relied upon by the respondent at all and is not a Robinson obvious point. That ground is that it is arguable that the First-tier Tribunal had not properly considered matters at the date of hearing. In my view, permission should not have been granted on any such ground which was not Robinson obvious and not relied upon by the

respondent. In any event, it is not set out in what way the First-tier Tribunal had arguably not dealt with matters at the date of hearing and on a clear reading of the decision as a whole, it is apparent that it deals with very up-to-date evidence up to the date of hearing. There is no arguable error of law let alone an error of law on that basis that I can find in the decision.

8. The second ground on which permission to appeal appears to have been granted is on the basis that the First-tier Tribunal had failed to engage with the external support which may be available to the children in the event of any difficulties they may experience or would be created by the appellant's removal. However, for the very clear reasons set out by the First-tier Tribunal in their decision, whether or not external support is available to the children or family remaining in the United Kingdom, this is a case which on the facts is clearly one in which there would be no material change to the outcome of the appeal even with local authority and external support. The First-tier Tribunal did not rely on the care proceedings as determinative. It is clear on the wealth of evidence that was before the First-tier Tribunal that it would be unduly harsh for the children to remain in the United Kingdom without their father. Those findings would in any event stand regardless of any additional support that may be available. The respondent has further accepted that it would be unduly harsh for the children to return with the appellant to Jamaica.
9. For these reasons I find no error of law in the First-tier Tribunal's decision which therefore stands.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to allow the appeal is therefore confirmed.

### **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  
2019

Date                      22<sup>nd</sup>                      February

Upper Tribunal Judge Jackson

