



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/14291/2017

**THE IMMIGRATION ACTS**

Heard at City Centre Tower  
On 13 December 2018

Decision & Reasons Promulgated  
On 6 February 2019

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LDE

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mr M Karnik, Counsel instructed by Paragon Law Solicitors

For the Respondent: Mr David Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the respondent or his children. Breach of this order can be punished as a contempt of court. I make this order because the decision impacts on the welfare of children who could be harmed by publicity.
2. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant”, against

the decision of the Secretary of State refusing him leave to remain on human rights grounds. An error of law in an earlier decision was identified by Upper Tribunal Judge Hanson who set aside the decision and directed that the case be decided again in the Upper Tribunal and the case was transferred to me to achieve that end.

3. The claimant is a citizen of St Vincent and the Grenadines who was born in July 1977. He chose to serve in Her Majesty's Forces and has been a Royal Marine Commando. He finished his military service in October 2016.
4. He has also committed a serious criminal offence and in October 2016 was sentenced to two years' imprisonment for an offence of dishonesty. The precise circumstances for the offence are not entirely clear but he tricked a person to allow him access to her bank account and emptied it of sums in the region of £20,000 to £30,000 for his own use. It seems that he was funding a gambling habit.
5. Evidence was called before me.
6. I begin by considering the evidence of the claimant. In his statement he outlined his personal circumstances and commented on his strict upbringing and the challenges of life as a Royal Marine. There is a testimonial from the Royal Marines outlining his service. He was a Royal Marine for some fifteen years or thereabouts and was successful in his career being commended on various occasions for particularly useful service which included spells of duty in dangerous circumstances in Afghanistan.
7. His statement also refers to his personal life and particularly his sons. He has two boys from different relationships. The oldest, who I identify as "R", was born in November 2005 and so is now 13 years old. The second, who I identify as "D", was born in March 2011 and is now 7 years and 8 months old. The claimant does not say much about these children in the statement although he makes it plain that he wants to keep contact with them. In answer to supplementary questions before me he was quite clear that he has little or no contact with the older boy. He has not seen R since April 2016. He would like to see the child more. I regard that as a genuine intention but not one to which he can give effect. Presently theirs is a non-existent relationship and there is little prospect of it being rekindled.
8. The younger boy, D, he sees from time to time. When he was released from custody in February 2018 he resumed cohabitation with D's mother and that lasted for a few months. Clearly there was daily contact in that time. Since then contact has become occasional but D's mother supports the idea of contact and my impression is that if the claimant were allowed to remain in the United Kingdom they would try and ensure that the claimant was a significant part in D's life. Certainly I did not get the impression from D's mother that she would set out to frustrate contact. She clearly regards the claimant as a good influence in her son's life.
9. As already indicated, D's mother gave evidence. She spoke well of the claimant's work ethic and told me that D does not wish to see his father but wishes to be kept in touch. She said that the time will come where he will want to see his father. I did not

see this as the evidence of a mother allowing a small boy to have too big a say in these things but rather as a mother who listened to the child but who continues to present his natural father in a positive way. She would encourage him to resume contact and certainly has facilitated occasional contact. She told how on one occasion she made an unplanned visit so that the claimant could see D but that D slept throughout the visit.

10. The claimant's present partner, CDW, gave evidence. She confirmed that the claimant was trying to find funds to help him maintain contact with his older son and she had concerns about his returning to his country of nationality.
11. Some of the evidence in written form was addressing the Secretary of State's idea that the claimant could go to St Vincent with his family but Mr Mills made it plain that he did not pursue that as a serious suggestion.
12. There was also evidence from Mr C Ch who has employed the claimant. He clearly thought highly of him describing him as a "very competent and proficient man". He said at paragraph 9:
 

"I do not understand why the Home Office want to deport him, or what they think that will achieve. I have said that I will support him and will not see him struggle. I see him regularly in person, and whilst I may not have known him for very long, I have seen him be professional and law abiding and accepting of the situation, which cannot have been easy, given his background. Eddie is a proud man but he readily accepts help from others. Currently, I make sure that he has somewhere to live, and he is surviving. I will support him through to the end, if needs be."
13. He then commented on the claimant's military record and described deportation as "very Draconian" and then offered the view that deportation "in this case is a disgrace".
14. The evidence before me was truthful in the sense that the people who gave their evidence gave it honestly without candour and were subject to little cross-examination. The difficulty that I face in acquiescing to their wishes is that Parliament has decided that the public interest lies in deporting people who are foreign criminals and the claimant is a foreign criminal. He is not in the most serious category and he is not at the higher end of the less serious category but he is a foreign criminal and deportation is required by the public interest because Parliament says that it is and my opinions and Mr CC's opinions are of no concern to that point.
15. I begin my analysis by considering Part 5A of the Nationality, Immigration and Asylum Act 2002. Under the Act the only relevant consideration is whether it would be unduly harsh on the boys for the claimant to be deported. As far as the elder boy is concerned the answer is very straightforward. He has no contact with his father and has not had any contact for some time. The claimant's deportation brings to an end any prospect of anything being re-established except possible occasional written or similar "long distance" contact but that will be more than exists at the moment. There is no basis for saying that the effect on the older boy would be unduly harsh.

16. The younger boy is in a different position. He has suffered the uncertainties of being a military child and of having his father coming back into his life and then going away again after a short time. It is unsurprising he is rather raw presently. On the limited material before me I find that it would be very much in that child's best interests to continue to have a relationship with his father and that theirs is a relationship that would settle down into fruitful occasional contact if that were permissible. Removing him will mean there is little prospect for a meaningful close relationship although I suspect that the claimant, supported by the child's mother, will do what they can.
17. However there is no basis for saying the removing the claimant will have unduly harsh consequences for the child. Disruption of close relationships is the natural consequence of deportation. There is nothing here that aggravates the harm or makes it particularly difficult.
18. Mr Karnik had much to say about the Military Covenant and I have considered his submissions carefully. As he reminds me, rightly, that the Military Covenant extends to the families of those who serve. Although there is no direct evidence on the point I incline to the view (I cannot go any further on the evidence) that the gambling habit that appears to be behind the criminal behaviour was connected in some way with the unpleasant experiences that the claimant has had in the Armed Forces. However Parliament has not made any statutory exception for members or former members of the Armed Forces involved in deportation proceedings. There is nothing in the Act that says that their families are entitled to special consideration. Clearly the respect that everyone wants to have for members of Her Majesty's Forces is diminished if that person commits a serious criminal offence and this man has.
19. I have reflected on the submissions and I have read the papers. I am aware, for example, of the favourable probation report and the favourable military material as well as supporting letters which show clearly that the criminal behaviour that got the claimant into trouble is by no means the extent of this man's personality and character.
20. I cannot agree that the military connections amount to compelling compassionate circumstances. I am confident that the judge in the Crown Court would have thought very carefully about the claimant's military service, and possible reasons for offending, before sentencing him. Clearly he was told about it and commented on it. The "Military Covenant" was no less relevant then than it is now. By reason of the sentence he is subject to "automatic deportation" and his military service is not a weighty factor.
21. This is a case of a man with no meaningful contact with his older child and in an estranged relationship with his younger child who is not a member of a nuclear family being unable to show that the effect of his deportation is unduly harsh on his close relatives.

22. The other factors in the case, despite Mr Karnik's determined efforts, do not save the day. Although I am entitled to and should look at all the matters in the round, and it is difficult to say that anything is *irrelevant* for the purposes of an Article 8 balancing exercise guided by statute or not, the statutory criteria dominate my analysis.
23. Putting everything together I must and do dismiss the claimant's appeal.

Notice of Decision

24. An error of law has already been established and the decision of the First-tier Tribunal set aside. I dismiss the claimant's appeal against the Secretary of State's decision.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal



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Dated 28 January 2019