



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07585/2016

THE IMMIGRATION ACTS

Heard at Field House
On 27 September 2018

Decision & Reasons Promulgated
On 16 May 2019

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M K

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer

For the Respondent: Ms J Hughes, Counsel instructed by E & E Solicitors

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. Breach of this order can be punished as a contempt of court. I make this order because the case concerns the welfare of children who are entitled to privacy and whose interests may 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 to refuse him leave to remain on human rights grounds.

3. The claimant initially challenged a decision by the Secretary of State to refuse his protection claim but the point was not argued before the First-tier Tribunal Judge who dismissed the appeal on “protection” grounds and that part of the decision has not been challenged.
4. By way of introduction, in outline the First-tier Tribunal allowed the appeal because, although the claimant was subject to deportation, the judge was satisfied that the effect of deportation on the claimant’s child was unduly harsh. It is the Secretary of State’s contention that that finding was not open to the judge on the evidence.
5. I begin by considering carefully the decision made by the First-tier Tribunal.
6. He noted that the claimant was born in 1951 and is a citizen of Sierra Leone. He first arrived in the United Kingdom in May 1987 as a visitor. In October 1988 he was still in the United Kingdom and he was arrested and charged with obtaining mortgages by deception. The offence was more serious because he claimed, untruthfully, to be a solicitor. He was sentenced to three years’ imprisonment in 1989 with a recommendation for deportation. He appealed against the sentence and it was varied to the limited extent that the recommendation for deportation was removed. The deportation order had been made but was then revoked. In 1992 he went to Sierra Leone but returned shortly afterwards in January 1993 in a false identity. In March 1994 he was convicted of handling stolen goods and sentenced to four months’ imprisonment.
7. Notwithstanding this history in February 1996 he was given indefinite leave to remain in the United Kingdom largely as a consequence of his relationship with a British citizen whom he married in February 2000. The claimant and his wife have a number of children. One of whom, S was born in July 2002 and so was not quite 16 years old when the First-tier Tribunal’s decision was promulgated in June 2018. The judge noted that the claimant had asked on several occasions to be naturalised as a British citizen but the application was refused because of his character and conduct. The claimant’s wife and children are British citizens.
8. In June 2015 the claimant was in trouble again, this time for providing immigration advisory services unlawfully and he was sentenced to fifteen months’ imprisonment. He was served with a notification of his liability to deportation and a protection claim was refused. That is the decision that gave rise to these proceedings.
9. The claimant appealed but did not give evidence before the First-tier Tribunal. The judge regarded this as no more than sensible because the merits of his case, if any, lay in the claimant’s relationship with his children and the effect on the children of removal. The important evidence was not anything the claimant could say but the evidence of a social worker supplemented with evidence of family members. Be that as it may if the claimant had given evidence it may be that some of the “loose ends” in his account could have been tied.
10. The judge reminded himself of leading cases on deportation and referred several times to the strong public interest in removing foreign criminals. The judge particularly had regard to Section 117B and 117C of the Nationality, Immigration and Asylum Act 2002.

11. There was also evidence that the claimant is unwell. He is suffering from prostate cancer, hypertension, kidney problems and coronary heart disease. The claimant has no money. He is paying off a substantial compensation order in the sum of £500 a month. His wife works full-time as a nurse and pays the family bills.
12. The judge found there was no question of the claimant's son S or the claimant's wife removing to Sierra Leone. The son needed his mother and had no experience of life outside the United Kingdom. Neither did the judge have any difficulty concluding that S's best interests lay in his father remaining in the United Kingdom and supporting him.
13. It is a feature of the case that however discreditable the claimant's conduct may have he has reason to be proud of his children. None of them have been convicted of any criminal offence and those who are old enough have obtained good employment and contribute to society.
14. Paragraph 27 of the Decision and Reasons is particularly pertinent. There the judge said:

"I have little difficulty in finding that S's best interests lie in allowing the [claimant] to remain with him and his mother in the United Kingdom. It was quite rightly not suggested during submissions that it would not be unduly harsh to expect S and his mother to give up their lives in the United Kingdom and move to Sierra Leone. As already indicated both representatives focussed on whether it was unduly harsh to expect S and his mother to remain in the United Kingdom without the [claimant]. I find for the reasons outlined above that it would be unduly harsh to expect S to remain in the United Kingdom without his father. The consequences of the [claimant's] deportation are more than merely uncomfortable, inconvenient, undesirable, unwelcome or merely difficult and challenging. They are in my judgment excessively severe and bleak. I accept the social worker's concerns that the deportation would have a serious and possibly irrevocable impact on the mental health of both S and his mother. S, has lived since his birth, with his father and throughout that period S has been a British citizen and his father, the [claimant], has been here lawfully and settled with indefinite leave to remain. The jurisprudence makes clear that children should not be punished for the sins of their parents and on the particular facts of this appeal I find the unduly harsh impact on the [claimant's] wife and youngest son, S justify finding that the deportation of the [claimant] would be disproportionate despite the seriousness of the index offence and the historic offences which the [claimant] has committed.
15. In the subsequent paragraph the judge made it clear that he was balancing the public interest in removal against the effect of removal on the claimant's wife and S and the judge concluded that it would "be unduly harsh" for them to remain in the United Kingdom without the claimant and "unduly harsh" for them to remove with the claimant to Sierra Leone. The judge allowed the appeal.
16. The grounds contend, in effect, that the decision is perverse. The judge is not criticised for identifying incorrect legal tests. Rather it is said that he has not explained how the finding that deportation would be "unduly harsh" is right and there is nothing in the evidence that was before him that would support such a conclusion.

17. I agree with the judge that it would be wrong to give “excessive weight” to the historic offences. Although the claimant’s past behaviour has been seriously wrong and led to prison sentences the fact that he was subsequently given indefinite leave to remain makes it hard to say that they are weighty matters in determining the present public interest in his removal.
18. However the most recent conviction leading to a sentence of fifteen months’ imprisonment was after a trial which indicates that the claimant took no responsibility or showed no remorse for his behaviour. This most recent sentence is quite sufficient to justify his removal. He is a foreign criminal and it is the public interest that foreign criminals are removed.
19. There are matters here which I find should not have impressed the judge in his balancing exercise.
20. The fact that the claimant is unlikely to get into further trouble is of minimal if any relevance. He is subject to deportation by reason of the crime and the sentence that was imposed. The fact that he seems unlikely to reoffend means there is not a further aggravating factor arising from the risk of further misbehaviour but it is not a point in his favour. The expectation of future good behaviour has not particularly impressed the judge but it should not have impressed him at all.
21. There can be no criticism in the finding that it would be unduly harsh to expect the appellant’s wife or son to leave the United Kingdom. The United Kingdom is their country of nationality and is where they have made their home. Nothing turns on that. Neither should much weight be given to the difficulties the claimant might have in the event of his return. He is clearly a resourceful man. He can be expected to find a way of maintaining himself in Sierra Leone. The judge did not suggest otherwise.
22. However the judge was clearly impressed by the social worker’s report. The judge said at paragraph 25:

“The social worker is particularly concerned about the inevitable impact the [claimant’s] removal would have upon S. S is aware of his father’s immigration status, which keeps him awake at night. He is depressed about the possibility of his father being deported and is burdened by the concerns of potentially losing his father. He has feelings of worry and hopelessness that his father will not be allowed to support him in his education and his budding football career as he develops into an adult. S’s mother, the [claimant’s] wife (the wife) states she is currently at breaking point. As the male role model, the [claimant] keeps an eye on S, who as a 15 year old is at a difficult and suggestible age, ensuring that he does not get involved with a bad crowd and does not have any kind of involvement in youth crime or antisocial behaviour.”
23. Given the claimant’s own criminality this would seem a rather rum remark but credit has to be given to the undisputed facts that the claimant’s other children seem to have grown up to be responsible people.
24. At paragraph 27 the judge clearly had his mind on whether or not it was unduly harsh for the claimant to be deported. The judge said that “for the reasons outlined above” he would find it unduly harsh to expect S to remain in the United Kingdom without his father.

25. Although I have read the decision I cannot see what those reasons are. What we have is a 15 year old young man living in a nuclear family with the father who has committed criminal offences. It does not need very much experience of life or human decency to appreciate that removing the father is likely to be a bad thing for his son. Of course there are families where removing a parent is a way of easing pressure and creating peace but they are probably quite rare and this is not such a case. Deportation is nasty. Very often a person who is deported will have to adapt to a much poorer lifestyle with less state protection and less opportunity that would be available in the United Kingdom. Deportation is also often harsh for those who love the person removed. Families used to be seen as essential social building blocks and breaking up the nuclear family is not something to be done lightly. Rather it should send a shiver of reluctance down the spine of any enforcement agency. It should be expected to harm children and frustrate partners. It is a harsh thing to do. However it is sometimes a necessary thing to do. Sending a person to prison is probably a paradigm example of such behaviour being necessary. I do not have to ask myself why it is in the public interest for the claimant to be deported. Parliament says that it is. That is established. Where the claimant is a father living in a nuclear family it is going to be a bad experience for those close to him and that is likely to mean a bad experience for children. I note S's age but there is no good age to lose a father. Another way of looking at it is that this is a young man not very far away from adult life who will soon make his own decisions. Further, although appropriately dependent on his father, there are other men in his life.
26. I will consider the social worker's report in some detail. The report relied on is the work of one Azra Jabbar who the First-tier Tribunal recognised as an appropriately qualified social worker able to give expert evidence. Ms Jabbar qualified as a social worker in 2003 and obtained a degree in social work in 2015. She has over ten years' experience working with families and children. She made plain that she understood her duty as an expert to assist the Tribunal rather than the party instructing her. She noted that the claimant lived with his wife and three children, a son born in 2006 aged 11, the child S and a son aged 20. There is another son "F," who is not the son of the claimant and his wife and does not live at the same address as the others. Although he has some contact with the father the claimant the social worker had not seen him because he was not available when the assessment was made.
27. I have difficulty reconciling the social worker's observation at paragraph 11 that the claimant "resides with his wife Mrs F, three children, F, T and S and Mrs F's mother" with the observations at paragraph 12 that "F was not available at the assessment as he resides with his mother at a separate address".
28. According to the claimant's witness statement which does not appear to be dated, the youngest child F lives in Manchester with his mother. The social worker's report is dated 20 December 2017 and not only does this refer to F living with the claimant and the claimant's wife and two other children and the claimant's wife's mother but it refers to the claimant taking S and F to school every day in Camberwell, London. Maybe circumstances have changed but I find this all rather puzzling.
29. The social worker concentrated on the claimant's relationship with S. Certainly she picked up on S's sense of worry and anxiety. The report says much about the

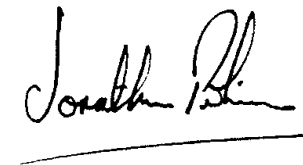
importance of keeping together nuclear families wherever possible. She expresses the view that it would “be inappropriate to disrupt the bonds, links and attachments that S and F have with their father”. What I cannot see in that report is anything that lifts this case into an unusual category.

30. Judges must be very careful when reading the reports of social workers not to be swept along by the use of professional language to describe family relationships and the likely effect of removal. I mean the report no disrespect or discredit when I say that all the social worker tells us is that removing the father from day-to-day contact of the nuclear family with a 15 year old boy is a bad thing to do from the point of the child. We know that. Parliament knows that. No doubt this is why the relevant test is one of being “*unduly* harsh”. The point is that deportation is likely to have harsh consequences on people other than the person to be removed. That is anticipated. I cannot find anything in that report which justifies the conclusion that removal would be unduly harsh.
31. I have more than a little sympathy for the judge if I may so respectfully. The miserable consequences of deportation on the boy and to the lesser extent to the wife were explained fully at the hearing and it is understandable that he was reluctant to endorse the decision. However although he set out to apply the correct test he identified nothing that satisfied it. This is not a case where the extra elements that make it something unduly harsh can be identified. That is because they are not there. This appeal should not have been allowed.
32. Further this is not a case where a Rule 24 notice is given other reasons for the appeal being allowed in accordance with the decision in **EG and NG (UT Rule 17: Withdrawal; Rule 24: Scope) Ethiopia [2013] UKUT 143 (IAC)**. Neither was anything said in argument before me to suggest that the appeal ought to have been allowed for other reasons.
33. It follows that I not only set aside the decision of the First-tier Tribunal but I substitute a decision dismissing the appeal. That must be the consequence of my decision which is that the First-tier Tribunal’s decision was perverse.

Notice of Decision

34. The First-tier Tribunal erred in law. I set aside its decision and I substitute a decision dismissing the claimant’s appeal against the decision of the Secretary of State.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 16 May 2019