



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17823/2018

THE IMMIGRATION ACTS

Heard at Field House
On 8 October 2020

Decision & Reasons Promulgated
On 24 November 2020

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

JAMA ADAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert, counsel, instructed by Turpin & Miller Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of the First-tier Tribunal dismissing the appellant's appeal against a decision of the Secretary of State refusing him leave to remain on human rights grounds.
2. The appellant starts off with the very substantial disadvantage of being subject to deportation because he has been sent to prison for a total of six and a half years for drugs-related offences. Mr Lindsay has reminded me, correctly, that in fact the appellant served two concurrent terms and the Secretary of State is entitled to say that the seriousness of the offending is even more than the four year qualifying sentence created by section 117C(6) of the Nationality, Immigration and Asylum Act 2002. This provision makes it very difficult for people to resist deportation and this has to be firmly factored into my decision. I have to bear that very much in mind. I am quite sure that representatives of the experience of those involved in this case will have given the appellant very clear advice about the predicament in which his own misconduct has placed himself.

3. However, when First-tier Tribunal Judge Landes gave permission she said at paragraph 5 of her decision:

“I have considered carefully whether any error is material. After all, the appellant has committed very serious drug offences with a lengthy sentence and had serious previous convictions. Nevertheless as the appellant came to the UK at the age of 4 and subsequently obtained ILR, I do not think that it can be said at permission stage that any error about the extent of his relationship with his son (when the ISW considered the appellant’s deportation was likely to be extremely traumatic and damaging to his young son) could not possibly have made a difference to the ultimate outcome.”
4. With respect to Judge Landes, her reasons for granting permission went right to the heart of the matter. I have to decide if the argument was made out and that there was a material error. I am quite satisfied that the First-tier Tribunal erred in law. It erred in law because it did not have proper regard to the evidence of an independent social worker and made findings about the relationship between the appellant and his child which are not explained adequately in the judge’s review of the evidence. The appellant’s case was not assisted by the mother of the child not attending to give evidence. Clearly, supportive evidence from her would not have harmed the appellant’s case. The absence of it probably did and probably had to, to some extent but there are reasons to think she may have had genuine difficulty in giving evidence relating to her mental health. I am not satisfied they have been explored satisfactorily in the decision of the First-tier Tribunal.
5. Further, the conclusions of the independent social worker are written off for reasons I find completely unsatisfactory. The judge refers to there being no corroborating evidence, whatever that is supposed to mean. The judge did have some supporting evidence from the oral evidence of the appellant’s sister and from documents supplied by the Secretary of State in the respondent’s bundle that there was an ongoing relationship between the child and the appellant. No proper reason has been given for discounting these and whilst it is clearly the case that there is no photographic evidence which might have some value and no supporting good confirmatory evidence from the schools which, if available, might have some value, the judge has just not considered the independent social worker’s evidence and made proper findings about its reliability and about its impact.
6. I have reflected very much on Mr Lindsay’s entirely proper observations about the seriousness of the offending and the public interest in deporting such offenders. This point was reflected completely in Judge Landes’ grant of permission and is very much in my mind but Mr Gilbert is right when he argues that unless it is going to be said that the case is completely hopeless and people in these circumstances cannot possibly succeed I have to say this determination is unsatisfactory.
7. I am not in setting this decision aside intending to encourage anybody and especially not the appellant to think that he has a strong case. There are very formidable obstacles in front of him but I am satisfied that the decision of this judge will not do because strands of evidence have been discounted or apparently discounted and no proper explanation given.
8. I have asked myself if the case at its highest could possibly succeed. I have doubts about that but I agree with Judge Landes that, when a proper investigation is made,

there might be something on which to latch to allow it for the sake of the child. I therefore set aside the decision of the First-tier Tribunal and I direct that the appeal be heard again. Mr Gilbert says unequivocally that he asks for the matter to go to the First-tier Tribunal. He said that it is a matter of preserving appeal rights, the appellant's case has just not been decided properly in accordance with the case that he presented, and he is right.

9. I therefore set aside the decision of the First-tier Tribunal and I direct that the case be heard again in the First-tier. No findings are preserved.

Notice of Decision

The appeal is allowed and the case is remitted to the First-tier Tribunal

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 20 November 2020