



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: HU/00145/2020**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 11 November 2021**

**Decision & Reasons  
Promulgated  
On the 25 November 2021**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR  
DEPUTY UPPER TRIBUNAL JUDGE FROMM**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**SJ**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify SJ or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.**

**Representation:**

For the appellant: Ms S Cunha, Senior Home Office Presenting Officer  
For the respondent: Miss A Sehra, Counsel, instructed by Divine Legal Practice

## **DECISION AND REASONS**

### **Introduction**

- 1.** The Secretary of State (“SSHD”) brings this appeal against the decision of First-tier Tribunal Judge G A Black (“the judge”), promulgated on 26 May 2021, by which she allowed SJ’s appeal against the refusal of his human rights claim made in the context of deportation proceedings.
- 2.** SJ is a citizen of Jamaica, born in 1977. He came to the United Kingdom illegally in 1997. In June 1999 he was convicted of the possession and supply of Class A drugs and sentenced to 2 years’ detention at a Young Offenders’ Institution. A deportation order was signed on 8 February 2000. A short time thereafter SJ was deported to Jamaica. He then re-entered this country illegally (and in breach of the deportation order) in October 2000. When his presence in this country was detected, he made an asylum claim. That claim was refused and the subsequent appeal dismissed in 2003. Meanwhile, he had married a British citizen, Ms M. An application for leave to remain as a spouse was made and refused in 2005. A subsequent application of the same nature was made and refused in October 2006. In December of that year SJ was once again deported to Jamaica. He has remained in that country ever since.
- 3.** By representations dated 23 August 2019, the application was made to revoke the deportation order. This was based on SJ’s relationship with a British citizen, Ms H, whom he had married in Jamaica in June 2017 and with whom he had three British children, born in 2005, 2006, and 2019 (we understand that SJ divorced Ms M prior to his marriage to Ms H: the SSHD has not suggested otherwise).
- 4.** The SSHD treated these representations as a human rights claim and refused it, giving rise to a right of appeal which was then exercised.

### **The decision of the First-tier Tribunal**

- 5.** Having set out relevant provisions of the Immigration Rules, section 117C of the Nationality, Immigration and Asylum Act 2002, as amended, and quoted from Binaku (s.11 TCEA; s.117C NIAA; para. 399D) [2021] UKUT 34 (IAC), the judge summarised the parties’ respective submissions and went on to state her findings of fact and conclusions. The core factual findings were as follows:
  - (a) the evidence of Ms H and her mother was “entirely reliable and truthful”;
  - (b) SJ’s second daughter was in receipt of counselling, having been referred to CAMHS for depression and self-harming behaviour;

- (c) Ms H was suffering from depression and anxiety;
- (d) SJ's own parents, who are living in the United Kingdom, were elderly and his mother was suffering from stage 4 cancer;
- (e) Ms H's mother has suffered a stroke some three years ago, but was able to assist with some childcare. However, this involved Ms H having to drop the youngest child with her mother at 3am on certain days;
- (f) Ms H was working as a part-time bus driver;
- (g) the two older children were having to look after the youngest at weekends whilst Ms H was working.
- (h) the family had been able to visit SJ in Jamaica in the past, but the last visit by Ms H was in 2018 and by the two older children in 2017. The younger child had never met SJ;
- (i) Ms H's part-time work meant that future visits to Jamaica would be "restricted".

**6.** The judge noted the undisputed facts that 21 years had elapsed since the deportation order was made and that it had been approximately 15 years since SJ was deported. It was common ground that SJ had not committed any further offences whilst in Jamaica. A full consideration of SJ's offending was carried out, including "aggravating features which show total disregard for the law". She found that there was a "strong family life" between SJ and his family in this country. At the end of [18] the judge stated her view that:

"... The family have shown resilience in particular [Ms H], but that has been born out of necessity and sheer determination to put the interests of the family first and there has been considerable hardship. I find little justification for the continued hardship to the family."

**7.** At [19] the judge considered children's best interests, which she stated to be a primary consideration. She took account of the second daughter's state of mental health and again referred to the "considerable hardship" faced by the family unit. The shift work undertaken by Ms H was noted, together with what was clearly a very difficult childcare arrangement with her mother. The fact that the two other children had to look after for their younger sister at weekends was also considered. The judge concluded that it was in the children's best interests for the family unit to be reunited in the United Kingdom. Further, the judge concluded that there were "now circumstances where the separation can no longer be justified without it being unduly harsh."

**8.** At [20] the judge concluded that it would be unduly harsh for the family to relocate to Jamaica.

9. At [21] the judge concluded that Exception 2 within section 117C(5) of the 2002 Act applied and the appeal was accordingly allowed.

### **The grounds of appeal and grant of permission**

10. Although the specific challenges set out in the grounds of appeal are set out under the heading of “Making a misdirection of law on a material matter and/or failing to provide adequate reasons on a material matter”, the two complaints which are in fact stated can be summarised as follows. Firstly, it is said that the judge failed to provide adequate reasons for her conclusion that continuing separation would be unduly harsh. Secondly, it is said that the facts of the case, or at least those seemingly relied on by the judge, could not rationally have supported a conclusion that continuing separation was unduly harsh having regard to MK (Sierra Leone) [2015] UKUT 223) and KO (Nigeria) [2018] UKSC 53; [2019] Imm AR 400.
11. The grounds confirm that the judge’s conclusion on relocation was not being challenged.
12. Permission to appeal was granted by Upper Tribunal Judge Grubb on 24 September 2021.
13. Following the grant of permission, SJ’s legal representatives provided a rule 24 response which cautioned against interfering with the judge’s decision. It was said that the findings and conclusions were all open to the judge and there had been no perversity on her part.

### **The hearing**

14. Ms Cunha confirmed that the SSHD’s challenge was twofold: reasons and perversity. She submitted that the judge had failed to give any consideration to the possibility of changing her work shifts or obtaining help from the state. There was, she submitted, “nothing to show the situation was unduly harsh”. The high threshold imposed by the unduly harsh test was not met by a conclusion that the family was suffering from “considerable hardship”. Ms Cunha submitted that the judge had in reality conducted a reasonableness assessment. She re-affirmed the absence of any challenge to the judge’s conclusion on relocation and undue harshness.
15. Miss Seehra relied on the rule 24 response and submitted that the SSHD’s complaints were nothing more than disagreements. The judge had considered all of the evidence, found it to be credible, and provided adequate reasons in respect of her findings and conclusions. The issue of the work shifts had been specifically addressed in documentary evidence

and that from Ms H herself. Any reliance on state assistance had not been raised before the judge and in any event she had considered matters as a whole. The factors relied on by the judge were not simply practical ones; wider matters had been taken into account. The judge had not conflated best interests with unduly harsh; one was an important aspect of the other, but there was no indication they had been treated as one and the same.

- 16.** At the end of the hearing we announced to the parties and Ms H our conclusion that the judge had not erred in law and that her decision should stand. Our reasons for this would be set out in writing.

### **Conclusions on error of law**

- 17.** It is important to reiterate the need to exercise restraint before interfering with a decision of the First-tier Tribunal. In this regard, we have borne in mind what has been repeatedly stated by the Court of Appeal in recent times: see, for example, KB (Jamaica) [2020] EWCA Civ 1385, at paragraph 16; UT (Sri Lanka) [2019] EWCA Civ 1095, at paragraph 19; Herrera [2018] EWCA Civ 412, at paragraph 18, and now MI (Pakistan) [2021] EWCA Civ 1711, at paragraphs 47 and 51. When analysing a decision of the First-tier Tribunal, is important to read it sensibly and holistically, and to guard against the danger of simply substituting one view for the legitimate view of another. Perfection is not being sought, there is no obligation to provide the best possible reasons (or indeed reasons for reasons), and an irrationality challenge imposes an elevated threshold.
- 18.** With the above in mind, we turn to the judge's decision in this case.
- 19.** It is clear that the judge was impressed by the evidence and found it all to be truthful and reliable. There has been no challenge to this aspect of her decision. When considering the SSHD's challenge it is important to bear this favourable assessment of the evidence in mind, as are the specific findings of fact set out at paragraph 5, above.
- 20.** The first ground is expressly based on the reasons provided by the judge. Paragraph 7 of the grounds asserts that the "sum of the reasoning amounts to that it is in the best interests of the children for [SJ] to be in the United Kingdom to play an active and present part of the family unit" and paragraph 9 contends that the judge limited her consideration to "practical effects" arising from Ms H being a single parent. Paragraph 10 provides two examples of this: the shift work and childcare arrangements. It is said that the judge failed to provide any reasons as to why changes could not have been made to the work pattern, or whether alternative methods of childcare could be arranged.
- 21.** In our judgment, these contentions do not stand up to scrutiny.

- 22.** Firstly, it is sufficiently clear that the judge’s reasoning does not begin and end with a best interests assessment. It is right that this phrase is repeated within [19], but it is also the case that the judge employed the appropriate “unduly harsh” terminology. It appears again in the final paragraph of her decision where she states her overall conclusion. Further, it is quite clear that SJ’s case was argued with reference to the exception set out in section 117C(5) of the 2002 Act. We observe that a failure to specifically refer to relevant case-law (in this case, for example, KO (Nigeria)) does not of itself constitute an error of law. Reading the decision as a whole, we do not accept that the judge conflated the concepts of best interests and unduly harsh. We are satisfied that the judge fed her best interests assessment into the unduly harsh test, but did not equate one with the other. Further, we do not accept Ms Cunha’s submission that the judge simply equated what she regarded as “considerable hardship” with the unduly harsh threshold. The former phrase was, in our judgment, employed as part of the overall evaluative assessment, whereas the outcome of that assessment was clearly stated in the appropriate terms: continuing separation would be unduly harsh. Although the judge could have set out her analysis in a more structured manner, there is no error of law here.
- 23.** Secondly, the grounds are simply wrong to suggest that the judge limited her consideration of relevant factors only to “practical effects” arising from Ms H being a single parent. A reading of [14], [15], [18], and [19] shows that she took account of other non-practical factors. These included: the second daughter’s mental health problems; Ms H’s mental health problems; the fact that the youngest daughter had never met her father; the overarching contextual matter of the significant passage of time since SJ had been deported (albeit for the second time); and emotional considerations.
- 24.** Thirdly, in any event we are satisfied that the judge did have in mind the problems associated with Ms H attempting to change her work patterns, as demonstrated by the evidence before her. Miss Seehra referred us to a letter from Ms H employer, dated 9 September 2020, in which part-time arrangements were confirmed, but with the caveat that the rota could not guarantee the timing of shifts (i.e. whether they would be “early, late, middle, etc.”). The judge had accepted the evidence before her as reliable and we see no reason to suppose that she failed to have this documentary evidence (which was supported by Ms H’s witness statement) in mind when undertaking the unduly harsh assessment.
- 25.** In respect of any possible assistance from the state or professional childminders, we accept Miss Seehra’s assertion that this point had not been relied on before the judge. In any event, we agree with the submission that the judge undertook a holistic assessment of a variety of factors going beyond simply “practical effects”.
- 26.** Overall, the reasons provided by the judge for her findings and conclusions were legally adequate.

- 27.** Turning to the second ground, we conclude that, on the evidence before her and the findings of fact made thereon, the judge's conclusion that it would be unduly harsh for the lengthy separation to continue was rationally open to her. Another judge might have taken the opposite view on the same set of facts, but that does not constitute perversity. This aspect of the SSHD's challenge is in truth simply a disagreement with an unfavourable decision.
- 28.** There is no suggestion in the grounds that the judge misdirected herself in law. For the sake of completeness, we see no errors in that respect. Whilst not specifically mentioning HA (Iraq) [2020] EWCA Civ 1176; [2021 WLR 1327, it is clear enough to us that she conducted a child-focused assessment, taking account of other relevant surrounding circumstances. The careful consideration of SJ's offending and immigration history undertaken by the judge at [17], whilst not relevant to the unduly harsh assessment, was nonetheless an appropriate recognition of the strong public interest in deportation cases.
- 29.** In summary, the SSHD has failed to identify any errors of law in the judge's decision. The appeal to the Upper Tribunal is therefore dismissed and the decision of the First-tier Tribunal shall stand.

### **Anonymity**

- 30.** The First-tier Tribunal made an anonymity direction, presumably because of the involvement of minor children in this case. We have considered whether it is appropriate to maintain that direction in light of the strong public interest in open justice. The mere involvement of children in a case will not automatically lead to an anonymity direction. However, on the facts of this case, one of those children is suffering from mental health problems and, taking all the circumstances into account, we conclude that the direction should remain in place.

### **Notice of Decision**

- 31. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.**
- 32. The appeal to the Upper Tribunal is dismissed and the decision of the First-tier Tribunal shall stand.**

Signed: H Norton-Taylor

Date: 22 November 2021

Upper Tribunal Judge Norton-Taylor