



**IN THE UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM  
CHAMBER) (HU/03558/2018)**

Appeal Number: UI-2022-  
002710

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28 September 2022**

**Decision & Reasons Promulgated  
On 14 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE BLUNDELL**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**FAYCAL ARIOUAT  
(ANONYMITY NOT ORDERED)**

Respondent

**Representation:**

For the Appellant: Stephen Whitwell, Senior Presenting Officer  
For the Respondent: Sajid Mustafa of counsel

**DECISION AND REASONS**

1. The Secretary of State for the Home Department appeals, with permission granted by the First-tier Tribunal, against Judge Brewer's decision to allow Mr Ariouat's appeal against the refusal of his human rights claim.
2. To avoid confusion, I will refer to the parties as they were before the FtT: Mr Ariouat as the appellant and the Secretary of State as the respondent.

**Background**

3. The appellant is an Algerian national who was born in 1968. He has seemingly been in the United Kingdom since 1993. He was granted

Indefinite Leave to Remain under the Legacy programme in 2011. He had minor convictions before that decision.

4. On 22 June 2017, the appellant was convicted of nine counts of deception and fraud, for criminal conduct over a sixteen year period. The appellant had fraudulently and dishonestly received benefits totalling more than £150,000 during that time. He was sentenced by HHJ Cole to a total of 30 months' imprisonment for these offences. The Secretary of State initiated deportation proceedings and a deportation order was signed on 18 January 2018. The appellant made a human rights claim which was refused. He asserted before the First-tier Tribunal that his deportation would be contrary to Article 8 ECHR.
5. The appellant has been in a relationship with a British woman called Ms Roberts for many years. The appellant does not live with Ms Roberts. They spend time together at the weekends and speak regularly on the telephone.
6. Ms Roberts has a daughter who I shall call X. X is a vulnerable adult, who suffers from a rare autoimmune disorder of the nervous system called Opsoclonus Myoclonus Ataxia. Amongst other difficulties, X is seriously immunosuppressed. She has to receive radiotherapy every six weeks. She also receives regular chemotherapy. Ms Roberts is her primary carer and has received medical training to undertake the chest flushes which X requires every week in order to ensure that the central line out of her chest remains clear and clean. X has poor motor skills and requires Ms Roberts' help to dress and bathe. Ms Roberts is also entirely responsible for the cooking and cleaning in the home that she shares with X. Ms Roberts is in full-time employment as a Business Manager at a school. X attended that school and is therefore known to the Headteacher. He is sympathetic to the family's situation and permits Ms Roberts to absent herself from school in the event that it is required, whether for one of X's hospital appointments or otherwise. X's father does very little to assist and X has not spent time at his home for some years.
7. The appellant has a child from a previous relationship. There have been proceedings in the Family Court in respect of that child. As matters stood before the FtT, however, it was clear that the appellant did not have a genuine and subsisting parental relationship with that child.
8. The appellant was unrepresented before First-tier Tribunal Judge Brewer ("the judge"). The respondent was represented by a Presenting Officer, Mr Yeboah. The judge heard oral evidence from the appellant and Ms Roberts. She noted that Ms Roberts in particular had been ably cross-examined by the Presenting Officer. She heard submissions from Mr Yeboah and from the appellant before reserving her decision.

### **The Decision of the First-tier Tribunal Judge**

9. The judge's reserved decision is carefully and logically structured. Having set out the appellant's immigration history and his antecedents, she set out a summary of the refusal letter and the issues as they had been summarised by Mr Yeboah. At [18]-[54], the judge

summarised the evidence before her, which bore on subjects including the relationships I have mentioned above, the sentencing remarks of HHJ Cole and the appellant's attempts to rehabilitate himself.

10. At [56]-[62], the judge summarised the legal framework. No complaint is made about this section of the judge's decision. Nor could it be. There is reference to Part 5A of the Nationality, Immigration and Asylum Act 2002 and to a range of authorities of the Supreme Court, Court of Appeal and Upper Tribunal.
11. The judge's analysis of the evidence followed this detailed introduction and took place at [63] *et seq.* I need not set out the reasons why she concluded that the appellant could not meet the first (private life) exception to deportation or the basis upon which she found that he had no extant parental relationship with his own child. There is no attempt to challenge those findings by way of a response to the grounds under rule 24 (SSHD v Devani [2020] EWCA Civ 612; [2020] 1 WLR 2613 refers).
12. The basis upon which the judge allowed the appeal was described at [65]-[76]. That section of her decision began with further citation of relevant authority, comprising KO (Nigeria) v SSHD [2018] UKSC 53; [2018] 1 WLR 5273; HA (Iraq) & Anor v SSHD [2020] EWCA Civ 1176; [2021] 1 WLR 1327 and MK (Sierra Leone) [2015] UKUT 223; [2015] INLR 563. The effect of those authorities was summarised with precision and concision by the judge.
13. The judge found that the appellant's deportation would give rise to unduly harsh consequences for Ms Roberts. The judge noted that Ms Roberts had been ably cross examined by Mr Yeboah and that he had not challenged the credibility of her evidence: [69]. She found Ms Roberts to be a straightforward witness whose evidence was supported by the other evidence before the Tribunal. She noted that Ms Roberts had been willing to give evidence which supported a central plank of the respondent's case, regarding her own willingness and ability to support the appellant in Algeria, and that he had family there: [70]. At [71], the judge expressly accepted as credible the matters I have summarised at [6] above. She found that Ms Roberts would not leave the UK without X. At the end of that paragraph, she made this finding:

(x) Ms Roberts is emotionally dependant on the appellant, to help her manage the emotional stress of being a long term carer of a child who is highly vulnerable and suffering with a serious and life-long condition. That she would feel 'destroyed' if separated from the appellant.
14. The judge noted at [72] that the appellant would not be able to return to the UK for ten years if he was deported. At [73], she found that Ms Roberts would not leave the UK because of her daughter. I should reproduce the final three paragraphs of the judge's analysis in full:

[74] In assessing the emotional harm that Ms Roberts will suffer if separated from the appellant I take into account that currently, the couple do not live together, this is not by choice but circumstance. But it does mean they are not with

each other daily. The appellant wants to remain living close to his child. He had chosen his present accommodation because it is close to Lou's school, in London. Ms Roberts remains outside of London, in a home she owns. She lives there with her daughter, and has a full-time job close to her home. The couple try to see each other as much as possible, and will spend Friday to Sunday together. The couple talk every evening on the telephone.

[75] I accept as credible that the appellant is Ms Roberts main emotional support. I find to a civil standard, that Ms Roberts does experience significant emotional distress because she has a child, now an adult, who suffers from a serious, debilitating and lifelong condition which can leave her acutely vulnerable because she is immunosuppressed. I find that, that alone would cause significant emotional distress to a parent and does so for Ms Roberts. I accept to the civil standard that Ms Roberts bears the primary responsibility of providing care for Amy, that again I find will carry significant emotional distress for Ms Roberts. Particularly, when Amy is struggling mentally with managing her illness alongside her physical needs. The way in which Ms Roberts receives emotional support from the appellant is through their visits, time in each other's company on a frequent basis as well as by telephone. The stark reality of Ms Roberts life, as described to me, is when she is not at work, her entire time is taken up with caring for her daughter and her respite from this is the time she is able to carve out with the appellant. I find to a civil standard, that Ms Roberts would suffer emotional harm if she were separated from the appellant, in her own words she describes that she would feel 'destroyed' by such a separation. I find this would particularly be the case, because I have found it more probable than not that this couple would not be physically reunited for at least 10 years (see 72 above).

[76] Taking all these factors into account and bearing in mind the high threshold relevant to my assessment. I am satisfied that although there is a significant public interest in this appellant's deportation, it would be unduly harsh for Ms Roberts, the appellant's partner, if she were to remain in the UK and he were to be deported. The respondent conceded that it would be unduly harsh for Ms Roberts to move to Algeria when the appellant is deported.

15. So it was that the judge found that the appeal should be allowed on the basis of the family life exception to deportation in s117C(5) of the 2002 Act.

### **The Appeal to the Upper Tribunal**

16. The respondent sought permission to appeal. There is said to be a single ground, titled "Making a material misdirection of law/failing to give adequate reasons for findings on a material matter." On analysis,

however, the grounds of appeal raise the following challenges to the decision of the FtT:

- (i) The judge failed to give adequate reasons for finding that it would be unduly harsh for Ms Roberts to remain in the UK without the appellant;
  - (ii) The judge failed to consider that Ms Roberts and the appellant did not cohabit, which rendered it less likely that it would be unduly harsh for them to be separated;
  - (iii) The judge failed to have regard to the high threshold for finding that deportation would be unduly harsh.
17. In granting permission to appeal, Judge Aziz considered it arguable that the judge had 'failed to properly consider whether the very high threshold needed to meet the unduly harsh test has been met'.
18. I heard briefly from Mr Whitwell in amplification of the grounds. As a preliminary point (not taken in the grounds), he noted that it was difficult to reconcile the third sentence of the judge's [74] with the evidence that the couple did not live together and did not spend time with each other apart from at the weekends. He submitted that the judge had given inadequate reasons for finding that the appellant's deportation would give rise to unduly harsh consequences for Ms Roberts. When pressed, he accepted that there was no appeal against the finding that Ms Roberts would be 'destroyed' by the appellant's deportation and he accepted that this finding, if sustainable, was sufficient to cross the statutory threshold of undue harshness.
19. Mr Mustafa responded concisely. He noted that the judge had seen and heard the appellant and Ms Roberts and had been entitled to reach the conclusion that deportation would give rise to undue harshness. She had provided more than sufficient reasons for that finding. Mr Whitwell's preliminary point about [74] concerned nothing more than an infelicity in the judge's otherwise exemplary decision. She was clearly aware that the couple did not live together and that their physical contact was confined to weekends. She could only have meant that they were in daily contact.
20. Mr Whitwell responded, submitting that it was impermissible to read words into the decision of the judge. Paragraph [74] showed a clear error in the judge's understanding of the evidence and was sufficient in itself to demonstrate legal error in her decision.
21. I reserved my decision at the end of the submissions.

### **Analysis**

22. There is no legal error in the decision of the judge. Her self directions as to the law are impeccable and, I should note, untainted by anything said subsequently, including in SSH D v HA (Iraq) [2022] UKSC 22; [2022] 1 WLR 3784. She was plainly aware of the threshold for finding that a decision gives rise to unduly harsh consequences.

23. As Mr Mustafa submitted, the judge had the benefit of hearing evidence from Ms Roberts and she based her conclusion squarely on that evidence. It is often said that the trial judge has a considerable benefit over an appellate judge, in that the trial allows the judge to immerse herself in the sea of the evidence and to reach a decision on the totality of that evidence. The reality is that the extent of that advantage varies from case to case.
24. In this case, the advantage was considerable. The real focus was necessarily on Ms Roberts' situation and, in particular, on what would happen to her in the event of the appellant's deportation. The advantage enjoyed by the first instance judge in this respect is obvious and significant. She heard from Ms Roberts and she was best placed to understand her struggle to maintain her job and her caring responsibilities for her daughter. The judge heard from Ms Roberts that she would be 'destroyed' in the event of the appellant's deportation and she was entitled, in my judgment, to attach significance to what was said in that regard. The judge accepted that evidence and weighed it against what was said in the authorities she had set out. She was clearly entitled to reach the conclusion that the emotional impact of the appellant's deportation on Ms Roberts was such as to meet the threshold set out in MK (Sierra Leone), given the particular and unusual circumstances. Adequate reasons – founded in those particular circumstances – were plainly given by the judge.
25. The respondent suggested in the grounds of appeal that the judge had overlooked the fact that the appellant and Ms Roberts do not cohabit. Mr Whitwell also noted in his submissions that the judge had wrongly observed at [74] that the appellant and Ms Roberts were 'with each other daily'. He submitted that this demonstrated a clear misunderstanding of the evidence.
26. I am unable to accept that submission. It is clear from [44] that the judge was aware that the appellant and Ms Roberts do not cohabit. The reference in [74] to the couple being 'with each other' was obviously not a suggestion that they see each other physically. Instead, it was a recognition on the part of the judge that they speak daily, as she recorded later in the same paragraph. When read as a whole, there is no ambiguity in the judge's decision. She clearly understood the evidence.
27. By reference to what was said in Buci (Part 5A: "partner") [2020] UKUT 87 (IAC), there was a submission in the grounds of appeal that the judge had erred in finding that the effect of the appellant's deportation could give rise to undue harshness. The submission was based on the absence of cohabitation and the third paragraph of the judicial headnote to that decision:

*(3) The fact that, in the absence of a statutory definition, judges may reach different conclusions as to whether an individual has been shown to be another person's partner is unlikely to pose significant difficulties, since the fundamental question in section 117C(5) is the effect of deportation on the partner. A relationship which is categorised as that of partners, where the parties have only recently met and are*

*not cohabiting is, in general, far less likely to generate unduly harsh consequences for the remaining partner, if the foreign criminal is deported, compared with where a relationship is longstanding and there has been significant co-habitation.*

28. This is not, however, a relationship of the type considered by the Presidential panel in Buci. The appellant is in his fifties and has been in a relationship with Ms Roberts, who is a professional woman with a vulnerable daughter, for nearly a decade. As the judge recorded at [44], they became friends in 2011 and a relationship developed in 2013. There has not been a significant period of cohabitation but the relationship is plainly a committed one and the judge was entitled to reach that finding. What the President went on to say in the final paragraph of the headnote was that it was the ‘substance of the relationship that needs to be examined’ and that is precisely what the judge did in this case. She was acutely conscious of the quality of this relationship, just as she was acutely conscious of Ms Roberts’ particular family circumstances. The nub of this decision was the role played by the appellant in supporting Ms Roberts as she continues to manage her professional and caring responsibilities. The judge was entitled to find that Ms Roberts would be ‘destroyed’ without his support.
29. The First-tier Tribunal is a specialist tribunal, tasked with administering a complex area of law in challenging circumstances. Its decisions should be respected unless it is quite clear that it has misdirected itself in law. That injunction has been repeated most recently by the Supreme Court at [72] of SSH D v HA (Iraq). To find an error of law in this case would be to ignore what was said in that line of authority. I decline to do so. The decision of the FtT will stand.

### **Notice of Decision**

The Secretary of State’s appeal is dismissed. The decision of the FtT stands.

No anonymity order is made.

M.J.Blundell

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**4 October 2022**