Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2021-001341**
HU/06174/2020

THE IMMIGRATION ACTS

Heard at Field House
On the 5th December 2022

Decision & Reasons Promulgated
On the 17th January 2023

Before

UPPER TRIBUNAL JUDGE KEITH
DEPUTY UPPER TRIBUNAL JUDGE STOUT

Between

MICHAEL JORDON AIKEN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Sharma, Counsel, instructed by Phoenix Chambers
For the Respondent: Mr Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. These are the written reasons which reflect the oral decision, which we gave with full oral reasons, on the day of the hearing. The appellant appeals against the decision of a Judge of the First-tier Tribunal, Judge Veloso, who, in a decision and reasons promulgated on 7th August 2022, dismissed the appellant's human rights appeal. His appeal was in the

context of an automatic deportation order having been made against him, because he is a 'foreign criminal', as defined by section 32(5) of the UK Borders Act 2007. Specifically, he has been convicted on four counts of possession with intent to supply Class A and B drugs, for which he was sentenced to 2 years and 4 months imprisonment.

The FtT's decision

2. In reaching her decision, the FtT was conscious of preserved findings of a previous First-tier Tribunal decision, which had been set aside, in part, by an earlier Upper Tribunal decision. At §7, the FtT recorded that the earlier decision:

> "is set aside but for the following findings:
>
> (i) The appellant has a relationship with his partner and their child;
> (ii) He is socially and culturally integrated in the United Kingdom;
> (iii) [He] has been lawfully resident in the United Kingdom for more than half his life."

3. At §9, she recorded that the issues were therefore as follows:

> "(i) Exception 1, whether there would be 'very significant obstacles' to the appellant's integration into Jamaica;
>
> (ii) Exception 2, whether it would be unduly harsh for his child to remain in the UK without him or to follow him to Jamaica; and the same issues with regards to his partner.

4. The FtT went on to remind herself of the law at §§22 to 28, including the relevant provisions of Section 117C of Nationality, Immigration and Asylum Act 2022, which we do not repeat here. She went on to make relevant findings at §29 onwards. She noted and was conscious of the fact that the appellant had spent, at the date of the hearing, 22 years of his life in the UK, arriving in the UK aged 2 years old and had spent most of his life and formative years in the UK. She recorded the appellant's mother's oral evidence that her half brother and his three children lived in Jamaica.

5. In relation to Exception 1, the FtT found at §36 that she did not accept the appellant's oral evidence that he did not have any family in Jamaica, nor did she accept that having travelled to Jamaica with his mother, in around 2007, they would not have visited relatives, bearing in mind the distance to make such a visit and the mother's regular travels to Jamaica. At §38, the FtT cited the appellant's apparent good health and his work experience. She considered the risk to the appellant, given the violence within Jamaica, citing a Country Policy and Information Note at §40. She concluded at §45 that given his links to Jamaica , the likely assistance which would be provided to him, and his qualifications and work experience, that there would not be very significant obstacles to his integration.

6. The FtT then considered Exception 2 and the unduly harsh effect of the appellant's deportation on both his partner and his son. Importantly, at §46, she referred to the evidence of the appellant and his partner taking or collecting his child to or from school, albeit she took some issue with the consistency of the evidence. At §52, she referred to not being informed that the child had started nursery, in the context of him now being 4 years' old. She considered the child's health and the impact of separation when the appellant was in prison. She concluded that the effect of deportation would not be unduly harsh either in the so-called 'go scenario' or in the 'stay scenario'. She analysed and reached the same conclusion in respect of the effect on the appellant's partner (§§56 to 62) and concluded that there were not very compelling circumstances over and above Exceptions 1 and 2 (§§63 to 67).

The appellant's appeal

7. The appellant appealed against the FtT's decision in respect of the right to respect for both his private and family life. In respect of private life, he argued that the FtT had erred in her conclusion that there would not be very significant obstacles to his integration in Jamaica, in particular as her focus had been impermissibly on the appellant's mother's connections to Jamaica, rather than the appellant's connections and there had not been a fair and meaningful analysis of his ability to integrate, bearing in mind his limited experience of living in Jamaica.

8. In relation to family life, the appellant argued that the FtT's reasons were contradictory, referring on the one hand to the FtT's concerns about who took and collected the appellant's son from school, whilst being unclear on whether the appellant claimed that his son attended nursery. The appellant also argued that the FtT had failed to scrutinise the evidence and consider the son's best interests, for the purposes of Section 55 of the Borders, Citizenship and Immigration Act 2009.

The grant of permission

9. First-tier Tribunal Judge Barker granted permission on 8th August 2022. Whilst she regarded some of the grounds as less persuasive, she concluded that the FtT arguably erred in making contradictory findings about the son's school attendance, as set out in §46 and 52 of the FtT's decision. Those contradictions arguably demonstrated a lack of care in consideration of the evidence.

The hearing before me and the respondent's concession

10. Mr Lindsay, on behalf of the respondent, began the hearing by formally conceding that the FtT had erred in respect of her analysis of respect for the appellant's private and family life. Mr Lindsay made clear that he no longer sought to rely upon the respondent's Rule 24 response. He said that he made the concession based on his concerns about the FtT's analysis of the obstacles to appellant's integration and the unduly harsh

effect of deportation. In respect of the first issue, he conceded that the FtT had erred at §36 in failing to explain why she had rejected the appellant's claim that he did not have any family in Jamaica. Whilst it had been accepted that the appellant's mother had a half brother in Jamaica, it was not explained what, if any relationship, the appellant had with that uncle. Mr Lindsay said that the FtT's reasoning was deficient and that this was a material error, such that her decision was unsafe and could not stand.

11. In respect of the second issue, family life, he made a further concession. In a human rights appeal involving family life with a potential deportee's child, the child's bests interests needed to be analysed. Mr Lindsay conceded that the FtT had erred as it was unclear what she regarded as being in the child's best interests. There were no findings about where those interests lay and how strong those interests were, on the facts of this case. The issue was not adequately dealt with at all. The FtT had instead focussed on the authority of Azimi-Moayed and others (decisions affecting children; onward appeals) Nigeria [2013] UKUT 197 (IAC) as authority for the proposition that as he was under 7, the son had not yet set down roots, and the FtT had applied this as a hard and fast test. The lack of adequate analysis had been reflected in the confusion about the FtT's apparent lack of knowledge of the son attending nursery, when there had been evidence on the point. Once again, Mr Lindsay accepted that the error was material, such that the FtT's decision was not safe and could not stand.

12. However, in making both concessions, he was careful to accept that the preserved findings, referred to earlier in these reasons, should continue to be relevant in any remaking.

13. For her part, Ms Sharma pointed out that there have been developments that would be pertinent to any remaking. These are that the appellant is now cohabiting once again with his partner and she is pregnant with their second child. Mr Lindsay, for his part, confirmed that he did not regard these developments as a 'new matter' for the purposes of Section 85 of the Nationality, Immigration and Asylum Act 2002 but that if they did constitute a new matter, on behalf of the respondent, he consented to these developments being considered by any Tribunal remaking the appeal.

14. In light of the above concessions, we conclude that the FtT erred in law, such that her decision is not safe and cannot stand. This does not affect the preservation of previous findings.

Disposal of the remaking of the appeal

15. We turn to the question of whether it is appropriate to retain the remaking of the appellant's appeal in this Tribunal as opposed to remitting the matter to the First-tier Tribunal. We are conscious of the Court of Appeal's recent decision in AEB v SSHD [2022] EWCA Civ 1512 and §7.2 of the

Senior President's Practice Statements. Sub-paragraph (a) deals with where the effect of the error has been to deprive a party before the FtT of a fair hearing or other opportunity for that party's case to be put to and considered by the FtT, whereas sub-paragraph (b) directs us to consider whether we are satisfied that the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the FtT.

16. On the one hand, there are extensive preserved findings. On the other hand, we expect that in light of the new potential evidence, it will be necessary to make substantial additional findings of fact. Mr Lindsay has invited us, in these circumstances, to remit the matter back to the First-tier Tribunal and Ms Sharma indicated that she had no objection to remittal. We therefore remit remaking to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and we set it aside. We remit this appeal to the First-tier Tribunal for a complete rehearing, subject to the preserved findings that the appellant has a relationship with his partner and their child; he is socially and culturally integrated in the United Kingdom; and he has been lawfully resident in the United Kingdom for more than half his life.

Directions to the First-tier Tribunal

This appeal is remitted to the First-tier Tribunal for a complete rehearing.

The remitted appeal shall not be heard by First-tier Tribunal Judge Veloso.

No anonymity direction is made.

Signed J Keith Date: 12 January 2023

Upper Tribunal Judge Keith