



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001208

First-tier Tribunal No: HU/17030/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 11 May 2023

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

AAS
(ANONYMITY ORDER IN FORCE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Stuart King, Counsel instructed by Rahman & Co Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 13 December 2022

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court. We make this order for the protection of the appellant's children whose personal circumstances feature in this decision and we see no legitimate public interest in their identity.

DECISION AND REASONS

1. The case has a protracted and unfortunate history. At different stages each party has been described, appropriately, as the "appellant" or "respondent". For the avoidance of doubt we confirm that the appellant in the proceedings before us is

the person identified above as AAS. The appellant is a citizen of Nigeria who was born in April 1980. He appeals against a decision of the respondent on 7 October 2020 refusing him leave to remain on human rights grounds. He is the subject of a deportation order. On 28 March 2019 at the Crown Court sitting at Woolwich he was convicted of an offence of conspiring to make false representations for gain and was sentenced to two years six months' imprisonment. For the purposes of this jurisdiction the length of sentence is usually of much more importance than the circumstances of the offence because the length of the sentence is the statutory criterion that guides our approach. In extreme summary outline, the appellant was, according to the sentencing judge, "at the centre" of a "very sophisticated operation" whereby suppliers were induced to deliver goods to the appellant's home in the belief, which was wholly unfounded, that the price would be met by well-known national organisations. The goods were believed to have been exported to Lagos. Something approaching £24,000 worth of goods would have passed through the appellant's hands if the scheme had gone according to his dishonest plan.

2. The appellant entered the United Kingdom as a visitor in June 2009 and remained there. He had leave between March 2014 and September 2016.
3. It is a feature of the case the appellant has established two families and has two children with each. He has one partner who we identify as KD. He and KD have a son ES born in March 2015 and a daughter ED born in June 2017. He has another partner, RO. They have two children, a son B, born in February 2013 and another son, T born in February 2016. All of the children are British citizens.
4. It is the appellant's case that he spends a significant part of each week with each family and has been doing so since mid-2016.
5. At the end of the case before us Mr Tufan, for the Secretary of State, expressly, and realistically, conceded that the appellant enjoys a parental relationship with each of his four children and that it would be unduly harsh to expect the children to remove to Nigeria.
6. It is the appellant's case that it would be unduly harsh for them if he were deported from the United Kingdom. The respondent does not agree. Merging Ms King's skeleton argument with Mr Tufan's concessions the issue for us to decide is, first, if Exception 2 in Section 117C(5) of the Nationality, Immigration and Asylum Act 2002 applies, and second, if Section 117C(6) of the 2002 Act applies. All necessary findings of fact have to be proved by the appellant on the usual balance of probability standard. At the risk of oversimplification, it is for the appellant to show us that the effects of his removal would be "unduly harsh" on all or any of his children and, or in the alternative, that there are very compelling circumstances that justify his remaining in the United Kingdom notwithstanding the public interest in removing him as a foreign criminal.
7. The proceedings before us were (even these days) slightly unusual in that Ms King did not attend in person but conducted the case by video link from her private address. This had the slightly disconcerting consequence of Ms King's image appearing behind the witness that she was examining who could not actually see her. This was explained to the witnesses who understood that the arrangements were necessitated by a well-publicised strike by railway workers making it impractical for Ms King to attend the hearing and it was not reasonably practicable to place people where they could see without creating

other problems in a small hearing room. We are entirely satisfied that the appellant and witnesses were not in any way disadvantaged by these arrangements. The technology worked well.

8. The appellant gave evidence. He adopted first a statement he had signed on 3 February 2020. There he explained that he was born in April 1980 in Nigeria and that he entered the United Kingdom on a visit visa in June 2009. Shortly before the expiry of his visit visa he applied for a residence card as a non-EEA family member relying on his relationship with his spouse, ELBL. The application was refused in May 2012. He did not exercise his right of appeal and his identified wife does not feature again in these proceedings.
9. In March 2013 he applied for a residence card as the primary carer of a British child. The application was refused and he did not appeal. In February 2014 he applied for leave to remain on the basis of private and family life with a British child and he was given limited leave to remain. There were further attempts to regularise his position.
10. However, he was convicted as indicated in March 2019. In April 2019 he was served with the decision to make a deportation order against him and that led to the application that led to the decision complained of.
11. He asserted that he had established family life in the United Kingdom by having four children with two partners.
12. His partner KD is a Liberian national. She entered the United Kingdom in December 2008 and was recognised as a refugee in November 2010. She was given settlement in the United Kingdom.
13. He said he first met her in October 2010. Their son was born in March 2015 and their daughter in June 2017.
14. He said he was playing a significant role in their upbringing. He said "I used to visit, drop and collect them from school whenever I was available".
15. He then explained why he could not contemplate the children living in Nigeria and also why his partner KD could not be expected to leave the United Kingdom.
16. He then said how his second partner, RO, is a Nigerian national. She is settled in the United Kingdom. They started living together in December 2012. From that relationship there is a son, BS, born in February 2013 and a second son, TS, who was born in February 2016.
17. The appellant claimed that he was "playing a significant role in upbringing of both children from my second partner" and illustrated that by claiming to give support looking after the children and also collecting them from or delivering them to school. He outlined that his deportation would affect family life particularly disrupting the emotional attachment with his children. He then explained how BS was at school and also TS at the same school but TS suffered from speech difficulties and this needs speech therapy.
18. The second partner had established her family and private life in the United Kingdom and had close relatives there. She was also employed by a care home on a part-time basis.

19. The appellant's second statement is dated 23 February 2022. He explained there that his relationship with both KD and RO continued. He claimed too that when he started his relationship with RO he did not tell KD who found out in May 2012. After the birth of his son B to RO in February 2013 he split his time between the two households and his two partners began to talk to each other and establish an acceptable relationship.
20. KD gave birth to T in 2015 and RO became pregnant with TW and gave birth in 2016.
21. The appellant explained then how he was arrested and went to prison in mid-2016 but was then released on bail.
22. Ms D gave birth to their daughter E in June 2017.
23. The appellant was sent to prison on 28 March 2019 for two and a half years and then told he would be deported.
24. When he came to be released on bail he offered both KD and RO's home as places of residence but RO's address was not approved. It is right to say that RO, as far as we can see, was not charged with, and certainly it is not suggested she was convicted of, any criminal behaviour.
25. He said how he split his time between RO and KD. He spent time at weekends with RO. Sometimes the children were taken to each other's houses so that they knew about each other and had some knowledge of their half-siblings.
26. The appellant claimed to enjoy a close relationship with all his children. They talked to him and sometimes confided in him in preference to their mothers. He then talked about particular difficulties faced by his daughter E. She suffered from chronic constipation. It is treated by a general medical practitioner but for whatever reason he found it easier than did KD to manage E, keep her calm and help her use the toilet to best effect.
27. He explained how his son T was discharged from speech and language therapy during the Covid lockdown but was still "behind" for his age. His language was underdeveloped for a 6 year old. He still worked with techniques that had been taught by the speech and language therapy unit. T could not express himself as he wanted and that led to frustration and the appellant played a significant role in keeping him calm. He worried how things would manage if he were not there.
28. He also explained how KD suffered from episodes of chronic pain in her back and knee which were significantly disabling for her. When she experienced episodes like that he would play a more active role in getting the children ready for school and getting them to school. There was no-one to take over that role and he did not know how KD would manage if he were not there.
29. Additionally KD had set up a business establishing an agency to supply care workers and sometimes had to work as a care worker herself in order to preserve the reputation of the business. She could not do that if he were not there to look after the children. He wanted to play a more active role in the business but could not do that under his present immigration restrictions.

30. Cross-examined by Mr Tufan, the appellant accepted that he began his relationship with both KD and RO when he was not lawfully entitled to reside in the United Kingdom. He said, as though it were justification, that he had applied for permission to be there with his European Union wife but that had been refused.
31. He was asked about KD's business. He said that she employed up to 50 people at any one time but 30 was a more typical number.
32. He said that the children's mothers usually took the children to school but RO particularly appreciated him being around at weekends because that enabled her to work at weekends which suited them all.
33. He did not accept that the child T had recovered. He was no longer being treated but was still behind.
34. He said that his partners obtained some help from family members or others while he was in prison but did not know the details but could not see how that support could be reproduced on a long-term basis.
35. He also confirmed he had taken his son to Nigeria in 2015. His mother lived in Nigeria. He did not suggest that he could not go to Nigeria.
36. Re-examined, he was asked to give more details about how his partners were helped when he was in prison. He said RO did have family in the United Kingdom, her father and her brother. KD did not have anyone in the United Kingdom.
37. KD gave evidence.
38. At the start of her evidence the witness answered a supplementary question concerning how she coped when the appellant was in prison. She said she really struggled. Sometimes her health problems meant she could not wash the children properly and that concerned her because it was not the right way to look after them. That was not a problem when the appellant was available. She emphasised that although there were arrangements with RO about seeing the appellant they were flexible and could be and were changed when her health required them to change.
39. She made a statement on 31 January 2020. She confirmed there that she came from Liberia and was recognised as a refugee. The appellant is her partner. They first met in October 2020 and they have two children. She said that the appellant played a significant role in the upbringing of both children and "provide all kind of supports". She had made a second statement dated 23 November 2022. She said that she was not happy about the appellant seeing RO but understood that he should not be expected to leave RO when she became pregnant. She said that she and RO were "in open communication with each other".
40. She explained that when the appellant was arrested although the children were less than 4 years and about 18 months respectively, they realised that he was no longer in their lives and this realisation was associated with T, the older child, becoming "more clingy". She visited prison and took the children to prison as often as possible and their relationship with RO developed and improved during that time. It was difficult for the children to see their father

in prison and visits were awkward. She confirmed the appellant now split his time between hers and RO's home and that sometimes the children from each family spent time with the others. She remembered that when the appellant was released from prison "T was so happy" and described his excitement at seeing daddy again. Having the appellant out of prison had a positive effect on her and on the children. She had not been able to work while he was in prison because there was no one else to help with the children and life had to be put on hold.

41. Paragraph 14 is particularly important. The witness said there:

"[The appellant] means so much to me. I was trafficked to this country when I was 15, nearly 16 years of age I was told that I was being brought to this country to look after my trafficker's child but I could be sent to school as well. But when I got here it was nothing like what had been described. I was kept in isolation and abused I was forced into a situation of sexual exploitation. I was made to 'work' in a massage parlour and was sexually abused by the men who went there. I was granted my refugee status on the basis of this treatment".

42. She went on to explain that, unremarkably, the experiences had made it difficult for her to make strong connections and she had lost contact with her family. The Red Cross had tried to help but had had no success. She had also been let down by people in whom she had confided and people who knew about her past ostracised her because she had been a sex worker.

43. She said that without the appellant she would have no one that she could trust. She was worried for her children and how they would be affected. She was aware of how the appellant helped her keep calm in the face of the pressures of family life and she wondered how she would be able to cope. She said they had no family apart from her father and her. She also explained how her episodes of chronic pain in her knee and back caused real difficulties. She said that when her knee pain is bad she cannot drive and worrying about the problems seemed to make it worse.

44. Using her own words she explained how appellant played a big role in managing E's constipation.

45. She said she had been hoping to be a midwife and was attending a preparatory course but she could not deal with that because of the stress of deportation proceedings. She had set up her healthcare agency with the appellant's guidance but managing it needed some flexibility in her arrangements for the business to prosper. She hoped that the appeal would be allowed.

46. She was cross-examined.

47. She had not thought about asking social services for help. She was asked questions about the business and gave answers that broadly complemented those given by the appellant.

48. Ms O gave evidence.

49. Her first statement was dated 28 January 2020. There she confirmed that she was born in 1990 in Lagos in Nigeria. She entered the United Kingdom in 2007 with her younger brother, to be with their father.

50. She met the appellant in December 2011 and started to cohabit about a year later. She confirmed that they had sons, B born in 2013 and TS born in 2016 and that they are British citizens.
51. She described the appellant as a “dedicated father”.
52. Her supplementary statement was dated 22 November 2022.
53. She said she was upset when she found the appellant had a relationship with another woman and that he was not faithful to her. She had not had support from her parents and found the appellant someone on whom she could rely. She came to accept that there were two relationships and two families. She and KD had separate lives but they did spend time together.
54. She explained how when the children realised that the appellant was not coming home for a while they would cry and ask questions to know why he was not able to take them to school. They cried when they left him in prison. B’s behaviour deteriorated.
55. She came to notice T had talking problems and said how they had been advised how to help him. On taking that advice and he had improved significantly. She said how T still had a lot of difficulty with communicating and this could lead to temper problems. She knew that B had been badly affected when the appellant went to prison, that impacted on his confidence and he became reluctant to go to school. She explained how she relied on the appellant for support to look after the children particularly at weekends as it enabled her to work as a care worker. She could not do the job she did without his support and there was no one else to give it. Her brother and father live in London but they had insufficient space to look after her children.
56. She had problems with her blood pressure which is a treatable condition but it exists. The appellant’s deportation would have a big impact on their lives, she was most worried about the children.
57. RO was asked supplementary questions about how she coped when the appellant was in prison and she just said it was going to be difficult without him. Her health had improved since he had come out of prison, he was able to help with the children.
58. She was cross-examined.
59. She confirmed she worked as a carer usually two or three days a week, usually Saturdays and Sundays, sometimes Fridays as well.
60. She was not re-examined.
61. There are other papers which we have considered but they do not go to matters of contention. There are notes from the school, passports proving nationality and medical evidence adding some weight to the claims that have been made in evidence.
62. Mr Tufan’s submissions were short and realistic and all the more powerful for that. He accepted that there is a parental relationship with both families. He made no substantial challenge to the drift of the evidence that had been given. He pointed out that the evidence about the child’s speech difficulties

was not supported by extensive medical reports. Similarly, the daughter's constipation was not shown by independent evidence to be a serious condition. It was not suggested that these things were made up or untrue but that they were not pressing problems. Rather they were part of childhood experiences and part of growing up.

63. He submitted that there was nothing capable of supporting a finding that there were very compelling circumstances other than Exception 2. He pointed out it was the appellant's case that he had taken one of the children to Nigeria not very long ago and his mother still lived there. The appellant clearly could go there/
64. He said that the appeal was about whether the effects of separation would be unduly harsh. He had little to say on that point. It was for us to consider the evidence and to make a finding. He made it plain it was the Secretary of State's case that this is not unduly harsh.
65. Ms King relied mainly on her skeleton argument that had been produced for the hearing before us. She stressed that it was her case that it was the cumulative effect of removal that would make the effects on the children unduly harsh.
66. We have considered what she had to say and particularly her reliance on **HA (Iraq) v SSHD [2022] UKSC 22**.
67. We find that we have substantially been told the truth. Nothing in the evidence was particularly controversial or improbable. The evidence about the health problems of RO and of the child E and the boy T were not exaggerated. They were illustrations of things that happen.
68. We have to consider the best interests of the children. We have no doubt that it is in the best interests of the children for the appellant to stay in the United Kingdom. It is quite clear that there are two families here who are dependent on the appellant and that he plays a significant part in the lives of both families. He provides practical support to his partners and to the children in each family directly by helping them and indirectly by helping their mothers. He clearly cannot be present all of the time but he is present with each family for much of the time although the relationships can hardly be described as classic nuclear family life it appears to be working.
69. We have to contemplate the effects of removal. First, there would be significant emotional disruption to the children. They are big enough to understand the identity of their father and to appreciate him in their lives. They have experience of his being away and that was distressing for them. That is perfectly clear. If he were removed they would be distressed again and would have no meaningful alternative. No doubt they could keep in touch and no doubt modern electronic communication would play a part in that but that is very, very different from being there to help them when they are poorly, help them with their developmental issues, play with him, support them, look after them when their mother needs to be doing other things and generally just do what fathers do.
70. There is a sense in which the role of a loving father can never be simply replaced but in both cases there is little alternative here. We accept RO's evidence that she is isolated and really only has the appellant to whom she can turn. We

accept too that RD does have relatives in the United Kingdom but they are not available or interested in being a substitute father. These children would hurt if the appellant was removed.

71. We accept too that there would be increased tensions in both families. The appellant's absence would make it much harder for the mothers of the children to work and provide for them in the way that they do. We do not suggest that RO would lose control of herself and injure the children but we understand her point that the appellant is a calming influence when the children become draining and that influence would be removed. So too would the supportive speech therapy and the assistance in addressing constipation. None of these things would be calamitous but they would be bad for the child and not easy to replace.
72. RO was being frank about her experience of the sex industry. We do wonder what would happen to this family and the children if the income stream was taken away and the appellant's supportive influence was removed.
73. Similarly, KD has established what looks a promising business. It is very early days but seems like a sound idea and it is clear that the appellant could play a role in developing that business if that were permitted. If the appellant is deported then an income stream will be removed that cannot be replaced easily.
74. What is going to happen here is that two families will be changed from coping financially to financial uncertainty and two families that have become happy to be reunited with their father are going to become distressed again. We see no obvious substitute to take on the role discharged by the appellant either in terms of emotional or practical care.
75. We remind ourselves too that "unduly harsh" should not be construed from the perspective of a comparator but looked at on its own terms. We bear in mind that there is a clear public interest in deporting the appellant. Not only has the appellant committed sentences attracting two years six months' imprisonment but they are serious offences involving dishonesty for high value and were committed by somebody who had basically no right to be in the United Kingdom. The public interest in deporting the appellant to enforce immigration control might be thought to be particularly elevated.
76. We remind ourselves too that unduly harsh is not necessarily a test that can only rarely be satisfied.
77. Putting everything together we find that Ms King's submissions prevail. Cumulatively the effects of deportation would be too much, or unduly harsh, for four children and for no other reason than their interests was allow the appeal.
78. The appellant needs to reflect on this. He needs to understand fully that there is nothing about him that entitles him to remain in the United Kingdom other than the support he is giving to his children. The support he gives to his partners merges with that and it is the effect on the children of his removal rather than on them that is our concern. The appellant does need to understand that his circumstances may change and the Secretary of State may look at this again. He must not assume that this is the end of the matter. However, on the material presently available we find removal would, as explained in **HA**, be

unduly harsh and we allow the appeal.

Notice of Decision

79. This appeal is allowed.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 April 2023