



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number: UI-2023-  
000667

First-tier Tribunal: HU/58300/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 08 September 2023**

**Before**

**UPPER TRIBUNAL JUDGE BLUNDELL  
DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**OM**

Respondent

**Representation:**

For the Appellant: Mr T Melvin, Senior Home Office Presenting  
Officer

For the Respondent: Ms A Nicolaou, Counsel instructed by Turpin  
Miller LLP

**Heard at Field House on 8 August 2023**

**DECISION AND REASONS**

**Introduction**

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal (Judge Shakespeare) in which the Judge allowed the appeal of the Appellant (as he then was), a citizen of Jamaica, against the Secretary of State's decision deport him to Jamaica. The appeal was on human rights grounds under section 82(1) of the Nationality Immigration and Asylum Act 2022. Although the Secretary of State is the appellant in this appeal we

shall refer to the parties in this decision as they were referred to by the First-tier Tribunal.

2. The sole ground of appeal to the Upper Tribunal asserts that the First-tier Tribunal Judge erred in law by making a material misdirection in relation to the unduly harsh test. Permission to appeal was refused by Judge Chohan in the First-tier tribunal on 4 January 2023 but on renewal to the Upper Tribunal was granted by Judge Rimington on 3 April 2023 on the basis that it was arguable that the First-tier tribunal “failed to actually apply the high test of ‘unduly harsh’ ...(and) that the decision is inadequately reasoned both in relation to the children and LRM the wife.” A rule 24 response was filed by the Appellant on 7 June 2023.

### **Submissions**

3. At the hearing before us Mr Melvin appearing on behalf of Secretary of State confirmed that he had seen the Rule 24 response filed by the Appellant. He relied on the grounds of appeal and said that paragraph 6 is not the “foremost” issue. It was arguable, he said, that despite the self-direction to KO (Nigeria) and others v SSHD [2018] UKSC 53 the Judge failed to apply the high threshold of the unduly harsh test. Three years previously the case came before Judge Clarke and was dismissed and it was found that the Appellant’s removal was not unduly harsh. There was very little reason given to divert from the previous decision to meet this high threshold. The child C4 does not live with the Appellant. C5 does but there was very little in the way of evidence other than that the Appellant picks C5 up from school and does domestic chores. The Judge makes the “extraordinary” finding that C5 is at a critical stage of education having just turned 11. Other than the school run and the completion of domestic chores there is not much different from the previous decision. It should have been borne in mind that the Appellant was on licence for the majority of the time since he rejoined the family. The relationships were accepted but the evidence was insufficient to meet high threshold
4. We did not ask Ms Nicolaou to address us and announced that the Secretary of State’s appeal would be dismissed and we reserved our written decision.

### **Discussion**

5. The Appellant is a 43-year-old citizen of Jamaica who arrived in the United Kingdom in 2000 and was granted indefinite leave to remain in 2002 on the basis of his marriage to a British Citizen. He has seven children six of whom are British citizens and five (identified as C3-C7) are under the age of 18. The Appellant lives with his wife (Ms LRM) and C2 (aged 21) and C5 (aged 12). The decision to deport was made on 8 June 2018 and the Appellant’s appeal against that decision was dismissed by Judge Clarke on

30 April 2019 but following further representations a new decision was made on 10 December 2021 again refusing the Appellant's claim. The subsequent appeal was allowed on human rights grounds by Judge Shakespeare. The Appellant's criminality resulting in the decision to make a deportation order is detailed in the decision of the First-tier Tribunal and involves 8 convictions for 18 offences with the last conviction, following a Class A drugs offence committed on 21 November 2016, attracting a prison sentence of 42 months. The appellant is therefore a 'medium offender' who has available to him the statutory exceptions to deportation in s117C(4) and (5) of the Nationality, Immigration and Asylum Act 2002.

6. In a very detailed decision the First-tier Tribunal considered reports from three Independent Social Workers and the Judge carefully examined the situations of and relationships between the Appellant and all of the children noting that it was the Respondent's position that LRM and the youngest child could go to Jamaica with the Appellant and that it was the Respondent's position in particular that it would not be unduly harsh for LRM and C5 either to live in Jamaica or to remain in the UK without the Appellant.
7. Having set out the legal framework comprehensively the First-tier Tribunal considered the previous decision and decided that the Devaseelan principles applied and so treated the factual findings of the previous decision as a starting point. In going on to consider the prime issue of family life the Judge begins by taking two children C3 and C6 out of the equation and noting the Respondent's acceptance of the existence of family life with the remainder of the family goes on to consider the 'unduly harsh test. The Judge not only refers to the approach set out in KO (Nigeria) and HA (Iraq) but also, in our judgement, very clearly follows that approach. In doing so the Judge considers the situation pertaining at the time of the previous decision, the changes that have taken place since that decision and the present situation. The Judge finds that it would be unduly harsh for C4, C5 and C7 to move to Jamaica. The finding that C5 is at a critical stage of his education having just moved to secondary school was not, in our judgment, "extraordinary" as submitted by Mr Melvin but given the reasoning behind it was clearly open to the Judge. Indeed the Judge's examination of the issues involving the children is not only comprehensive but exhaustive and the Judge's conclusion at paragraph 63 that the consequences of the Appellant's deportation would be unduly harsh in respect of C4 and C5 was a conclusion that was manifestly open to her. She permissibly attached particular significance to the 'neediness' of C5 and to the well-documented special educational needs of C4 and, having reminded herself of what was said about the threshold in MK (Sierra Leone) [2015] INLR 563, she found that threshold to be crossed in relation to those two children. It is fallacious to suggest that the judge was unaware of the threshold or that she failed to apply it to the circumstances before her.

8. The Judge goes on to consider the position of LRM and again gives very detailed, clear and rational reasons for the finding that the Appellant's deportation would also be unduly harsh for LRM. There is in our judgment no merit in the grounds of appeal. There is no misdirection in law either material or otherwise and the Judge's reasoning in all respects is both adequate and rational.

**Conclusion**

9. The decision of the First-tier Tribunal did not involve the making of a material error of law.
10. The appeal of the Secretary of State is dismissed. The decision of the First-tier Tribunal stands.

Signed:  
2023



**Date: 16 August**

**J F W Phillips**  
**Deputy Judge of the Upper Tribunal**