



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006672

First-tier Tribunal No: HU/53579/2021
IA/09157/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 29th May 2024**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**ERROL MCKANNEL FAIRWEATHER
(NO ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Balroop of Counsel, instructed by VH Lawyers Limited
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 16 April 2024

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Manuell dated 14 June 2022, in which the Appellant's appeal against the decision to refuse his human rights claim (in the context of deportation) dated 17 May 2021 was dismissed.
2. The Appellant is a national of Jamaica, born on 20 July 1987 who claims to have arrived in the United Kingdom as a minor on an unknown date. He was first encountered on 19 October 2006 when he was arrested for immigration offences and notified that he was liable to removal. The Appellant's first application for leave to remain was made on 5 December 2012, which was refused on 25 June 2013. A further application was made on private and family life grounds on 16 March 2016 which was granted with leave to remain to 16 January 2017 and again to 4 April 2020 on the basis of being a parent of two British citizen children, born in 2012 and 2018.

3. On 2 August 2019, the Appellant was convicted of possession with intent to supply a Class A drug (heroin and cocaine) for which he was sentenced to three years and four months' imprisonment. Following which the Appellant was notified of his liability to deportation.
4. The Respondent refused the application on the basis that although it was accepted that the Appellant had a genuine and subsisting relationship with his partner (although this commenced when he was in the United Kingdom unlawfully) and two children (with there being no evidence of a biological relationship with a third child), it would not be unduly harsh for the family members to relocate to Jamaica with him or to remain in the United Kingdom if he were deported. There were wider family members in the United Kingdom and the children could adapt and be educated in Jamaica. In terms of private life, it was not accepted that the Appellant had been in the United Kingdom lawfully for more than half of his life such that this exception could not be met either. Finally, the Respondent did not accept that there were any very compelling circumstances to outweigh the public interest in deportation.
5. Judge Manuell dismissed the appeal in a decision dated 14 June 2022 on all grounds. The decision notes that there was little dispute as to the facts in this appeal, in that the Appellant could not meet the private life exception to deportation, nor the family life exception on the basis of his relationship with his partner; the focus was on whether it would be unduly harsh on the Appellant's children. It was accepted that it would be unduly harsh for the children to relocate to Jamaica, but not if they remained in the United Kingdom given that the Appellant could maintain contact and the family could continue as it did while the Appellant was in prison, with the children in education, the mother being able to work and with family and other local support. It was noted that there was no evidence of any rehabilitation and that the Appellant continued to pose a risk to the public. It was found the Appellant had family in Jamaica and would be able to reintegrate there. Overall, for the proportionality balancing exercise, it was found that the public interest in deportation was not outweighed by any very compelling circumstances.

The appeal

6. The Appellant appeals on two grounds. First, that the First-tier Tribunal erred in law in failing to properly assess whether the Appellant's deportation would be unduly harsh on the three children, then aged three, nine, and thirteen years old if they remained in the United Kingdom; including that they had always lived together as a family and that there was a special bond between the Appellant and his step-daughter whose separation anxiety may manifest itself into a mental disorder if not properly managed. Secondly, that the First-tier Tribunal erred in law in considering the Appellant's offence in the unduly harsh assessment, contrary to KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53.
7. At the oral hearing, Mr Balroop highlighted paragraphs 41 and 42 of the First-tier Tribunal decision which referred to the children having experience of separation from the Appellant but without consideration that this was at the time temporary and would now be permanent; and the view that the eldest child could help around home.
8. The final part of paragraph 42 referred to the social worker's report being too pessimistic in viewing the Appellant's deportation as unduly harsh, without

further explanation or reasons and without engagement with paragraph 7.2 of the social work report in which the special bond between the Appellant and his step-daughter was referred to along with the risk of mental disorder.

9. Mr Balroop also highlighted paragraphs 43 and 44 of the First-tier Tribunal decision which relied on the nature of the Appellant's offences rather than just focusing on the length of sentence which is the relevant question for consideration of the factors in section 117C of the Nationality, Immigration and Asylum Act 2002. It was unclear as to whether the nature of the offences were considered as part of the unduly harsh test or not, with a conflict between paragraphs 42 and 47 of the decision.
10. On behalf of the Respondent, Mr Wain opposed the appeal. He submitted that the First-tier Tribunal had followed the correct approach in its assessment of unduly harsh in accordance with HA (Iraq) v Secretary of State for the Home Department [2020] EWCA Civ 1176. Mr Wain also drew attention to paragraphs 41 and 42 of the First-tier Tribunal in which there was express consideration of the detail of the social work report and the special bond with the Appellant's step-daughter, as well as the arrangements while the Appellant was in prison. In these circumstances, it can not be said that there was no proper consideration of that evidence and in paragraph 42 reasons are given as to why no weight was given to parts of the report (some pages of which are missing from the bundle). Mr Wain highlighted that the social work report referred to the eldest child's emotional wellbeing and anxiety, but that this was not a current mental health problem and may only be in the future if anxiety was not properly managed. There was an obvious difficulty with that part of the report in that the author had no known mental health qualifications. In the same paragraphs, the First-tier Tribunal also considered what support was available to the family in the United Kingdom. Overall, it was open to the First-tier Tribunal to find that the social worker's view was too pessimistic, particularly given that there was no consideration of any continuing contact after deportation.
11. As to the second ground of appeal, Mr Wain submitted that although headings for the First-tier Tribunal's consideration of unduly harsh and whether there were very compelling circumstances to outweigh the public interest in deportation could have made it clearer; there was no material error when the decision was read as a whole. The relevant tests were set out in paragraphs 6 and 9; with consideration of whether deportation would be unduly harsh in paragraphs 40 to 42 of the decision, summarised in paragraph 47 and consideration of very compelling circumstances in paragraphs 43 to 45, summarised in paragraph 48. In between, paragraph 46 deals with the private life exception. Read properly, there was no conflation of the nature of the criminal offence when considering whether deportation was unduly harsh.

Findings and reasons

12. When considering the grounds of appeal, it will be helpful to set out more fully the reasons of the First-tier Tribunal which were relied upon by both parties. The relevant paragraphs are as follows:
 41. Can the same be said about the children having to lose the current presence of their father in their lives, i.e., would that have unduly harsh consequences? The children already have some significant experience of that, while the Appellant was in prison. They were able to visit him and to speak to him

on the telephone. It was difficult, but the family managed. In the tribunal's view they will manage again without undue harshness for the children.

42. All of the children are of school age which will facilitate Ms Whitely's continued ability to work. There is no reason why the older children cannot help around the house. There are local relatives and there was no suggestion that they would be unwilling to assist. There must be family friends, although none came forward to give evidence. The children will be able to maintain contact with their father in Jamaica by one or more of the free video phone applications, with which so many people became familiar during the Covid-19 lockdown. Ms Whitely has to her credit undertaken courses to help understand the effect of the Appellant's absence on the children. In the tribunals' view Mrs Kelchure-Cole's opinion that the Appellant's absence would have an unduly harsh effect is too pessimistic. He will not be completely cut off. The effect will be harsh but not unduly harsh.

43. Unfortunately when the Appellant decided to embark on criminal activity, he chose to do so on a large scale, engaging in the sale of Class A drugs. It must be said that the ease with which the Appellant was able to establish contact with serious criminals gives cause for concern, if not alarm. The tribunal sees no reason to disbelieve Ms Whitely who said she knew nothing about it. That indicates that the Appellant acted deceitfully towards his own family.

44. It is a fact (as was pointed out in the sentencing remarks) that drugs are a serious danger to the community. The Appellant planned his involvement in drug dealing and was motivated by personal gain, heedless of the harm his dealing would cause to other families. The Appellant claimed no knowledge of chemistry and can have no idea whether the drugs he acquired to sell on were contaminated, increasing the level of danger. Theft to feed drug habits is a common cause of crime. Ignoring the violence and murders committed by drug dealers and drug gangs, mainly among themselves, thousands of people die every year in the United Kingdom from drug-related deaths, as the official statistics show. The recent death of the late Jamal Edwards at the age of 33 is a recent and well known example.

45. The Appellant has only been released from prison relatively recently. There was little evidence of his reformation, other than his expressions of regret and remorse which are easily made. As already noted, the fact that engaging in serious crime carried with it a risk of deportation (apart from causing harm to others) had no deterrent effect. Such conduct indicates no desire to integrate into the United Kingdom. The Appellant had no reason to engage in crime apart from his own greed. In the tribunal's view he continues to pose a serious risk to the public.

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47. The Appellant's deportation will have harsh results. The issue is whether it will be unduly harsh or disproportionate: see [HA \(Iraq\)](#) (above). For the reasons given above, the tribunal finds that the Appellant's absence will not produce unduly harsh or disproportionate results on any relevant person.

48. Drawing these threads together, the tribunal finds that the proportionality balancing exercise remains strongly with the public interest. The Appellant's deportation is conducive to the public good. Very compelling circumstances have not been shown. The tribunal so finds. The appeal must be dismissed.

13. The first ground of appeal is whether the First-tier Tribunal properly assessed whether it would be unduly harsh for the children to remain in the United Kingdom if the Appellant were to be deported and whether all relevant matters were taken into account. In oral submissions, the ground also included whether adequate reasons were given, in particular as to the assessment of the social worker's view.

14. In paragraphs 41 to 43 above, reasons are given by the First-tier Tribunal for why the Appellant's deportation would not be unduly harsh on the children. These paragraphs follow a more detailed summary of the evidence before the First-tier Tribunal, which includes express reference to the family's previous living arrangements (including that the Appellant established a relationship with his step-daughter from shortly after her birth) and the close bond between them; as well as express reference to the social work report.
15. The matters that were said in the grounds of appeal not to have been taken into account included the age of the children; that they have always lived as a family (save for during the Appellant's imprisonment); the special bond between the Appellant and his step-daughter; the lack of any evidence that local relatives would assist and the individual characteristics of the child and risk of mental disorder in the eldest contained in the social work report. However, we consider that the First-tier Tribunal considered all of these matters in the assessment of whether deportation would be unduly harsh and there was express reference to these factors and evidence within the decision.
16. At the oral hearing, the focus shifted slightly to a reasons challenge as to the conclusions on whether deportation would be unduly harsh and by reference to the rejection of the social worker's view as being too pessimistic. However, we find that although relatively brief, the reasons given by the First-tier Tribunal as set out above are more than adequate to explain the finding in a way that the parties are able to understand. In relation to the social work report, it was lawfully open to the First-tier Tribunal to attach the weight it did to it and consider it was too pessimistic about the impact on the children.
17. When considering that report, it is important to note that the section in paragraph 7.2 highlighted by Mr Balroop was of the eldest child being at risk of her anxiety about her father's departure manifesting as a mental disorder if it was not managed. There was no suggestion of the departure itself causing any anxiety to manifest as a mental disorder in the future, only a risk relating to current management of the situation. Further, the assessment of the impact on the relationship between the Appellant and the children if he relocates to Jamaica and they remain in the United Kingdom is very limited, extending only to 3 short paragraphs focusing on the cost of visiting being prohibitive and there being a difference between physical contact and other contact via social media. There is no conclusion as the likely impact on the relationship being maintained by the latter means at that point, only in the conclusion section is there a reference to a positive relationship being unrealistic in this way and a suggestion that deportation would be a permanent separation. Without any wider consideration by the social worker; it was open to the First-tier Tribunal to find the overall conclusion that deportation would be unduly harsh, given that the Appellant would not be completely cut off, was too pessimistic.
18. For these reasons, we find no error of law on the first ground of appeal. The First-tier Tribunal properly considered whether the Appellant's deportation would be unduly harsh on his children if they remained in the United Kingdom and gave sufficiently clear reasons for the finding that it would not.
19. The second ground of appeal is whether the First-tier Tribunal improperly considered the nature of the Appellant's criminal offence when assessing whether the effect of deportation would be unduly harsh on the children, contrary to KO (Nigeria). We do not find that it did. The First-tier Tribunal's decision expressly considers whether the impact would be unduly harsh in paragraphs 41

and 42 of the decision, with a conclusion at the end that it would not be. Thereafter follows separate consideration in paragraphs 43 to 45 as to whether there are very compelling circumstances to outweigh the public interest in deportation, in particular by reference to rehabilitation and ongoing risk and finally there is consideration of the private life exception in paragraph 46. Although headings may have assisted for clarity, in substance, the distinct consideration of each of the aspects is clearly set out in the respective paragraphs identified.

20. We do not find any inconsistency, contradiction or lack of clarity when the final two paragraphs, particularly paragraph 47 are read. These are clearly paragraphs summarising the conclusions already reached in the preceding paragraphs and deal with both the unduly harsh consideration and whether there are very compelling circumstances. For these reasons, we find no error of law on the second ground of appeal.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20th May 2024