



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000792
HU/53422/2021
IA/09592/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 12th September 2024

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EDWIN MUHINDI MWANGI
(no anonymity order made)

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Mr Haddow, Counsel instructed by Gray and Co Solicitors

Heard in Edinburgh on the 4th September 2024

DECISION AND REASONS

1. The Respondent is a national of Kenya. On the 12th January 2024 the First-tier Tribunal (Judge McTaggart) allowed his appeal, on human rights grounds, against a decision to deport him from the United Kingdom. The Secretary of State now has permission to appeal against that decision.
2. The Respondent has lived in the UK since 2003. He is married to a British woman and together they have 2 children. The Respondent also has another child from a previous relationship with whom he enjoys a genuine and subsisting parental relationship. On the 1st April 2015 he was convicted of perverting the course of justice and sentenced to 12 months imprisonment. He is therefore a

'foreign criminal' by operation of s32(1) UK Borders Act 2007 and can only defeat the action to deport him by showing that one or more of the exceptions set out in s33 UK Borders Act apply to his case.

3. The exception relied upon by the Respondent before the First-tier Tribunal was that it would be contrary to s6(1) Human Rights Act 1998 to deport him. He submitted that it would be a disproportionate interference with his Article 8 right to family life. The statutory test for determining that matter is whether his deportation would have an "unduly harsh" impact on either his partner or his children.
4. The First-tier Tribunal allowed the appeal on the basis that the Respondent had demonstrated that test to be met. It had regard to the fact that one of the Respondent's children has been diagnosed with ADHD, has suspected autism and high care needs. The evidence before the Tribunal was that this child requires routine and stability to feel safe. She is close to her father, and her mother would face a bleak situation should she be required to care for this child, in addition to the other, alone. Having had regard to the guidance given in HA Iraq [2022] UKSC 22 the Tribunal determined that the impact on the family would be unduly harsh.
5. The Secretary of State now appeals on the grounds that the decision is inadequately reasoned, and that the First-tier Tribunal has failed to take a material fact into account, specifically that the Respondent's wife's family live close by and could be called upon to offer her support in the absence of her husband. The Secretary of State further suggests that in the absence of corroborative evidence from an objective source, such as a social worker, the Tribunal's findings on the difficulties that this family might face were unsustainable.

Discussion and Findings

6. I deal first with the contention that there was material evidence which the Tribunal fails to take into account, since this is the most tangible of the alleged errors. The Secretary of State points out that there were family (grandparents) and friends whom the Respondent's wife could turn to if she needed assistance and submits that the decision of the First-tier Tribunal is flawed for a failure to take that into account.
7. I am not at all satisfied that the Tribunal did fail to take that matter into account. The First-tier Tribunal refers to that evidence at its paragraph 12 when it records that the children's maternal grandparents had to move from Orkney to Glasgow to assist their daughter when the Respondent was in prison. Paragraph 12 also records that there are family friends and an uncle living in Glasgow. Mr Haddow, who represented the family before the First-tier Tribunal, asserts in his Rule 24 response that third party support was explored in live evidence at the hearing before the Tribunal and this is what the decision references at its paragraph 20 when it states:

"The interlinking set of family circumstances is accepted by me as it is put forward by the Appellant and his wife in their evidence. This evidence was not actively disputed by the Respondent..."

I am satisfied that the Tribunal understood the Secretary of State's case on this point, and that it was taken into account when it reached its decision.

8. The next, connected, ground, is that the decision is inadequately reasoned. Decisions by public bodies may be subject to a 'reasons challenge' where one or more of the parties to the proceedings are unable to discern the rationale for a decision. Here the rationale is plain, and I do not accept that the Secretary of State is unable to comprehend why the First-tier Tribunal reached the decision that it did. The point is that there is a child in this family who has very high care needs and that these needs are met by providing her with stability. The Tribunal accepted the parents' evidence that "any change of routine is described as being hugely stressful for their daughter leading to significant emotional distress". The need for stability is referred to repeatedly in the evidence, and the decision. For instance at paragraph 10 the Tribunal records the child's "inability to cope with change"; at 28 the evidence that "expected changes remain unsettling for her and unexpected changes can it appears be emotionally debilitating for her"; at 29 that she finds the "thought of anything new very daunting". This point is, in the context of a child with ADHD and suspected autism, entirely unremarkable. This was a child for whom predictability and order is hugely important. Her father is part of that predictability and order, and that is why she would be so adversely impacted by her *father's* departure from her life. That is why, to return to the point made above, the help that might be offered by grandparents, social services, nannies, childminders, friends, uncles, aunts or anyone else was not of the significance that it might assume in another case.
9. The final ground is more difficult to understand. The Secretary of State acknowledges that there is no statutory requirement for parties to deportation proceedings to produce independent expert evidence to support their assertions, but then goes on to suggest that it was an error for the Tribunal to accept the evidence about the Respondent's child without some. This is fallacious for a number of reasons. First, as the Secretary of State acknowledges, there is no requirement for corroboration. Evidence speaks for itself, and absent perversity, weight is a matter for the judge. Second, it is not an error of law for a judge to believe what he is being told by a witness. Third, the evidence before the First-tier Tribunal about this child, and the extent of her needs, was not contested by the Secretary of State at the hearing. The evidence of the parents about their day to day lives, and how they believe that she would be impacted if her father were to be removed from the family home, was not placed in issue. A report by, for instance, an independent social worker, would therefore add little if anything to what had already been said. It was an unusual feature of this case that the mother of the child is herself a GP who has a special interest in understanding the conditions that her daughter lives with, and she was evidently able to speak to these matters with a greater degree of clarity and detail than the layperson might. As the First-tier Tribunal notes, she was not an expert in her own case, and did not contend to be such, but no doubt her professional standing and articulacy had a role to play when the Judge was determining what weight to attach to her evidence. Fourth, and perhaps most importantly, there was in fact corroborative evidence before the Tribunal. It notes at its paragraph 26 that "there is a host of other material which together can help inform the court of the daily struggles faced by the appellant and his wife in dealing with their daughter and the impact that the removal of her father would have on her". That evidence included letters in support from the child's Headmistress, the Leader and Family Worker from the family's church, and the National Autistic Society of Scotland.

10. For the foregoing reasons I am not satisfied that any of the grounds are made out and the appeal is dismissed.

Decisions

11. The decision of the First-tier Tribunal is upheld. The Secretary of State's appeal is dismissed.
12. There is no order for anonymity.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
4th September 2024