



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2024-000301

First-tier Tribunal No:
HU/60597/2022
LH/04262/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 3 January 2025**

Before

UPPER TRIBUNAL JUDGE PINDER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

G H

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms A Radford, Counsel instructed by Turpin Miller LLP.

For the Respondent: Ms Nwachukwu, Senior Presenting Officer.

Heard at Field House on 19 November 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant (as he was before the FtT) 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.

DECISION AND REASONS

1. The Secretary of State appeals with the permission of Upper Tribunal Judge Rimmington granted on 13th February 2024 against the decision of First-tier Tribunal Judge C L Taylor. By their decision of 2nd November 2023, Judge Taylor ('the Judge') dismissed the Appellant's appeal against the Respondent's decision dated 14th December 2022 to refuse his human rights claim following the making of a deportation order.
2. I refer to the Secretary of State as the Respondent and to GH as the Appellant, as they respectively appeared before the First-tier Tribunal ('FtT'). For the avoidance of doubt, this also applies to the Anonymity Order made above, maintaining the anonymity order previously made in favour of the Appellant G H (as he was before the FtT).

Background

3. The Appellant is a Jamaican national, who entered the United Kingdom in October 1991, aged 15 years old. On 29th April 1993, he was granted Indefinite Leave to Remain. On 31st March 2021, the Appellant was convicted of Being Concerned in Supplying Controlled Drugs (Class A) – crack cocaine and heroin. The Appellant was sentenced to 40 months' imprisonment. The Appellant has a number of other criminal convictions, which he received between 2007 and 2015. Some of these convictions attracted non-custodial sentences and several others resulted in either a sentence of 12 months' imprisonment suspended for two years, six month's imprisonment or 8 weeks suspended for 12 months. The Appellant's criminal history is well known to the parties and so I do not rehearse this here.
4. The Appellant appealed against the Respondent's decision of 14th December 2022 and the Appellant's appeal was heard by Judge Taylor on 17th October 2023. Before the Judge, the Appellant pursued his appeal on the grounds that he met the exceptions to deportation under Article 8 ECHR so as to outweigh the substantial public interest in the Appellant's deportation. This included Exception 1 contained in s.117C(4) Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') based on his lawful residence in the UK for most of his life, his social and cultural integration here and there being very significant obstacles to his integration in Jamaica on return, as well as Exception 2 (s.117C(4) of the 2002 Act) based on his genuine relationships with his partner and children. The Appellant's claimed family life with his partner was raised post-decision but the Respondent provided consent for this issue to be considered as part of the Appellant's appeal before the FtT (see [19]).
5. The Appellant was represented by Ms Radford, Counsel, as he was before me, and the Respondent by a Presenting Officer. The Judge heard oral evidence from the Appellant, his mother, his eldest daughter, her mother and the mother of the Appellant's two younger children and the

Appellant's current partner. After hearing the parties' respective oral submissions, the Judge reserved his decision.

The Decision of the First-tier Tribunal Judge

6. At [21]-[29], the Judge set out and summarised the applicable legal framework consisting of s.32-33 of the UK Borders Act 2007 ('the 2007 Act') and s.117B-D of the 2002 Act as well as the leading authorities, including *NE-A (Nigeria) v Secretary of State for the Home Department* [2017] EWCA Civ 239, *HA (Iraq), RA (Iraq) and AA (Nigeria)* [2022] UKSC 22, *NA (Pakistan) v Secretary of State for the Home Department & Ors* [2016] EWCA Civ 662 and the Supreme Court's judgment of *KO (Nigeria)* [2018] UKSC 53 in the same litigation.
7. With regards to the issues that the Judge needed to determine, the Judge recorded at [36]-[37] that the Respondent accepted that the Appellant met the first two limbs of Exception 1, namely that he had been lawfully resident in the UK for most of his life and social and culturally integrated too. With regards to the question of very significant obstacles to integration, the Judge considered the Appellant's evidence at [38]-[42] and concluded at [42] that the Appellant's return would result in hardship and difficulty in integrating into Jamaica, however his circumstances and the difficulties described above did not, individually, nor cumulatively meet the elevated threshold of very significant difficulties.
8. In respect of Exception 2, the Judge considered the Appellant's appeal first in respect of his claimed relationship with his partner and found at [45] that he had not maintained a genuine and subsisting relationship with a qualifying partner.
9. Turning to the Appellant's relationship with his children, this was considered by the Judge at [46]-[55] finding in favour of the Appellant on the basis that it would be unduly harsh for the children to accompany the Appellant to Jamaica and to be separated from the Appellant. The Respondent had accepted that the Appellant's younger children were British citizens and that he had a genuine and subsisting parental relationship with them, albeit the Respondent had submitted that this was "limited" (see [11]).
10. The Judge correctly directed and reminded themselves of Underhill LJ's comments at paragraph 51 of *HA (Iraq)*, that in interpreting the words 'unduly harsh', "(t)he underlying question for tribunals is whether the harshness which the deportation will cause for the partner and/or child is of a sufficiently elevated degree to outweigh that public interest." The Judge's reasons for their findings included the following:
 - (a) The Judge accepted the evidence of the mother's children about the Appellant's relationships with his children - [51];
 - (b) The Appellant's relationship with them was not limited and she rejected the Respondent's case on this. There were also no concerns

with the Appellant having contact with his children since contact arrangements had been put into place through the family courts, which the Judge considered must have decided that contact was in the best interests of the children and was able to take place safely - [48], [51];

- (c) The Appellant spends time with his children 3-4 times a week, and is closely involved in their lives - [47], [51];
- (d) One of the Appellant's children became withdrawn when the Appellant went to prison and she continued to struggle even after his release. The same child was experiencing issues with her gender identity, which she had only been able to discuss with her father - [51];
- (e) The Independent Social Worker ('ISW') evidence before the Judge was that a separation between the children and the Appellant would cause the children emotional harm and potentially negatively impact upon all areas of the children's development, including key areas of identity, family and social relationships - [49]. The ISW also reported that the same child as mentioned above at (d) was withdrawn when the ISW attempted to meet with her - [50];
- (f) The children are mixed race and whilst their mother would be able to meet their physical needs on her own if the Appellant was deported from the UK, the children would have unmet emotional needs linked not just to the loss of a parent but to the loss of the parent who represents half of their cultural identity. The Judge found this to be an element of the parental relationship, which the children's mother could not replicate because she is white British.

11. Drawing the above together, the Judge concluded at [55] that deportation would be unduly harsh upon the Appellant's children. The Judge also stated that "(g)iven their cultural identity the harshness which the deportation would cause for them is elevated beyond just harshness to undue harshness and is of a sufficiently elevated degree to outweigh the public interest".

12. Based on the above, the Judge allowed the Appellant's appeal on human rights grounds.

The Appeal to the Upper Tribunal

13. Permission to appeal was granted to the Respondent on all grounds pleaded. Upper Tribunal Judge Rimmington noted in particular that it was arguable that the Judge misdirected themselves in relation to and/or failed actually to apply the test of 'unduly harsh' in relation to the Appellant's children and or/give adequate reasons thereon, referring specifically to [49]-[55] of the decision.

14. The Appellant had not sought to file and serve a response to the grounds of appeal under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the Procedure Rules').

15. Ms Nwachukwu made oral submissions maintaining all of the Respondent's grounds of appeal and Ms Radford, on behalf of the

Appellant, made oral submissions in response defending the Judge's decision. I have addressed those respective submissions in the section immediately below when setting out my analysis and conclusions.

16. I reserved my decision at the conclusion of the parties' submissions.

Analysis and Conclusions

The Respondent's first ground of appeal

17. In her first ground of appeal, the Respondent argued that the Judge had failed to give adequate reasons for finding that the Appellant had a genuine parental relationship with his two minor children. It was submitted that the Appellant did not live with his children and he was no longer in a relationship with their mother. It was further submitted that the Appellant's relationship with them was limited. It was also submitted that in light of the children having witnessed domestic abuse of their mother (from the Appellant), the Judge had failed to address the question as to how the Appellant could be considered to be a positive influence in his children's lives given his extensive criminal record for this and other offences.
18. The Respondent's first submission under this ground is surprising considering the Respondent had accepted that the Appellant had a genuine parental relationship with his children. This was expressly recorded by the Judge at [11]. It is correct that the Judge recorded the Respondent's submission that in her view, their relationship was "limited" but there was nonetheless an acceptance that their relationship was genuine and continuing and was parental by nature. I consider that the Respondent's first ground is no more than a mere disagreement with the Judge's findings and an attempt to re-argue her case in this Tribunal.
19. It is also well established that a parent who has contact, or spends time with their children, as opposed to living with them, comes within the definition of genuine parental relationship.
20. In *R (RK) v SSHD (s.117B(6); "parental relationship")* IJR [2016] UKUT 31 (IAC) the Upper Tribunal approached the question of whether a person has a parental relationship (which of course must be considered in the context of the entire phrase "genuine and subsisting parental relationship") with a child at [42]:

"Whether a person is in a "parental relationship" with a child must, necessarily, depend on the individual circumstances. Those circumstances will include what role they actually play in caring for and making decisions in relation to the child. That is likely to be a most significant factor. However, it will also include whether that relationship arises because of their legal obligations as a parent or in lieu of a parent under a court order or other legal obligation. I accept that it is not necessary for an individual to have "parental responsibility" in law for there to exist a "parental relationship,"

although whether or not that is the case will be a relevant factor. What is important is that the individual can establish that they have taken on the role that a "parent" usually plays in the life of their child."

21. The Upper Tribunal in *SR (Subsisting Parental Relationship - s117B(6)) Pakistan [2018] UKUT 00334 (IAC)*, also found and as follows at [39]:

There are likely to be many cases in which both parents play an important role in their child's life and therefore both have subsisting parental relationships with the child, even though the child resides with one parent and not the other. There are also cases where the nature and extent of contact and any break in contact is such that although there is contact, a subsisting parental relationship cannot be said to have been formed. Each case turns on its own facts.

22. In *SSHD v VC* at [42] Macfarlane LJ accepted the submission (recorded at [27]) that the requirement to establish whether "the person has a genuine and subsisting parental relationship with a child" albeit for another part of the Immigration Rules, namely 399(a), contains four elements: "(a) a relationship between the child and the foreign criminal; (b) which is 'parental', rather than of some other kind; (c) the relationship must be 'genuine'; and (d) the relationship must be 'subsisting' (in the sense that it exists or has a real existence)" and that simply to establish biological parentage is insufficient - there must be a genuine existing parental relationship. As Macfarlane LJ observed at [42] "each of those words denotes a separate and essential element in the quality of relationship..." and at [43] "the 'parent' must have a 'subsisting' role in personally providing at least some element of direct parental care to the child".

23. All the cases above were cited with approval by the Court of Appeal in *Secretary of State for the Home Department v AB (Jamaica) & Anor* [2019] EWCA Civ 661.

24. Lastly, it cannot be said that the Judge had not considered the issue of whether it was safe and in the children's best interests to have contact with their father, in light of the history between him and their mother, as well as his past criminality. This is clear from [48] where the Judge noted the prior involvement of the family courts. I raised with this with Ms Nwachukwu since it is not for this Tribunal nor for the Judge at first instance to go behind that assessment since the family courts are the specialist forum to make such assessments.

25. Ms Nwachukwu submitted in response that the Judge had not made a finding at [48] and repeated that the Judge ought to have made a finding as to what relationship the Appellant enjoyed with his children. I consider, for the reasons above, that the Judge has reached very clear findings, no less because of the Respondent's agreement before them that the issue of genuine parental relationship was not disputed.

26. Lastly, Ms Nwachukwu submitted that the Judge had not addressed the submissions made on the Respondent's behalf in the FtT on whether the Appellant met Exception 2 in respect of his children. However, the Judge could not have been clearer in rejecting the Respondent's case that the relationship between the Appellant and his children was limited and that it would not be unduly harsh for the Appellant's children. The Judge expressly found in the Appellant's favour on the needs that could not be met by their mother, rejecting the Respondent's case on this issue. For all of the reasons above, I am satisfied that the Judge did not err in law for the reasons pursued in the Respondent's first ground of appeal.

The Respondent's second ground of appeal - misdirection in law on public interest

27. In her second ground of appeal, the Respondent pursued submissions that the Judge had materially misdirected themselves in law. The written submissions rehearse the well-established intentions of Parliament behind the introduction of s.117 to the 2002 Act and that it remains of prime importance that Tribunals and Courts honour that expression of Parliament's will. Reference was made to the Supreme Court's guidance in *KO (Nigeria)* on the unduly harsh test being a "high one" and turning to the Appellant's case, that the evidence did not support the Judge's conclusions that such a threshold was established by the Appellant. The Respondent extensively cited from *MK (Sierra Leone) v Secretary of State for the Home Department* [2015] UKUT 223 (IAC) and *HA (Iraq)* [2020] EWCA Civ 1176.
28. The Respondent also focused on there being no evidence that the children's mother could not care for the children without the Appellant being present in the UK, as she had done when he was in prison. Further, that the Judge had failed to take into consideration that support from other family members would be available to the children and their mother, should they require this. With regards to the children's cultural or racial identity, it was submitted that the Judge failed to take into consideration that the Appellant could provide for this via other means of contact and that this could be provided for by the paternal side of the children's family instead of the Appellant.
29. I do not consider that the Respondent's submissions under this ground, whether made orally or in writing before me, are made out either. The Judge took into consideration the evidence of the ISW, who reported that one of the Appellant's children had been significantly impacted upon when the Appellant was in prison ([50]) and the Judge accepted the mother's evidence to that effect as well ([51]). The Judge specifically considered whether the impact on the children from the Appellant leaving the UK could be managed or lessened with the Appellant maintaining contact via video calls etc. but specifically found that it could not at [53]. With regards to the cultural and racial identity, that finding was also open to the Judge on the evidence before them particularly when one of the Appellant's children was already

experiencing questions concerning her gender identity and could not speak about this with anyone else other than her father.

30. For the reasons above therefore, I am satisfied that the Judge has not erred in law and the Respondent's submissions under this ground amount to no more than a mere disagreement with the Judge's findings, which were reasonably open to them on the evidence and fully reasoned in their decision.
31. I also remind myself of the guidance from Green LJ in the Court of Appeal in *Ullah* at [26], which provided as follows and which has application to each of the grounds pursued by the Respondent:

Sections 11 and 12 TCEA 2007 Act restricts the UT's jurisdiction to errors of law. It is settled that:

(i) the FTT is a specialist fact-finding tribunal. The UT should not rush to find an error of law simply because it might have reached a different conclusion on the facts or expressed themselves differently: see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49 [2008] 1 AC 678 at paragraph [30];

(ii) where a relevant point was not expressly mentioned by the FTT, the UT should be slow to infer that it had not been taken into account: e.g. *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49 at paragraph [45];

(iii) when it comes to the reasons given by the FTT, the UT should exercise judicial restraint and not assume that the FTT misdirected itself just because not every step in its reasoning was fully set out: see *R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority* [2013] UKSC 19 at paragraph [25];

(iv) the issues for decision and the basis upon which the FTT reaches its decision on those issues may be set out directly or by inference: see *UT (Sri Lanka) v The Secretary of State for the Home Department* [2019] EWCA Civ 1095 at paragraph [27];

(v) judges sitting in the FTT are to be taken to be aware of the relevant authorities and to be seeking to apply them. There is no need for them to be referred to specifically, unless it was clear from their language that they had failed to do so: see *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296 at paragraph [34];

(vi) it is of the nature of assessment that different tribunals, without illegality or irrationality, may reach different conclusions on the same case. The mere fact that one tribunal has reached what might appear to be an unusually generous view of the facts does not mean that it has made an error of law: see *MM (Lebanon) v Secretary of State for the Home Department* [2017] UKSC 10 at paragraph [107].

32. It is also well established that the reasons given by a judge for conclusions made on an appeal need not be extensive - *Shizad (sufficiency of reasons: set aside)*.
33. In addition to the authorities I have referred to above, I also reminded myself that the Judge's decision should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirection simply because they might have reached a different conclusion on the facts or expressed

themselves differently: **AH (Sudan) v Secretary of State for the Home Department** [\[2007\] UKHL 49](#); [2008] 1 AC 678, at [30].

34. It follows therefore that I am satisfied that the Judge has set out sufficient reasons for finding that the 'unduly harsh' threshold was met in respect of the Appellant's children and contained in the second exception to deportation. Those findings were grounded in and justified by the evidence before them. The Judge's decision does not disclose any errors of law.
35. In the circumstances, I dismiss the Respondent Secretary of State's appeal and order that the decision of the Judge shall stand.

Notice of Decision

36. The Respondent Secretary of State's appeal is dismissed. The Judge's decision to allow the Appellant's human rights appeal stands.

Sarah Pinder

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20.12.2024