



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-002201
UI-2024-003700
First-tier Tribunal Nos: EA/08820/2022
HU/51022/2021
IA/05099/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 24th of January 2025**

Before

**UPPER TRIBUNAL JUDGE LOUGHRAN
DEPUTY UPPER TRIBUNAL JUDGE LAY**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**RICARDO SAMUEL RICKETTS
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Ms J Isherwood, Senior Home Office Presenting Officer
For the Respondent: Ms A Radford, Counsel instructed by Turpin & Miller LLP

Heard at Field House on 8 January 2025

DECISION AND REASONS

1. The Secretary of State for the Home Department appeals with the permission of First-tier Tribunal Judge Moon and First-tier Tribunal Judge Adio against a determination of First-tier Tribunal Judge Coll (“the judge”) promulgated initially on 8 April 2024 and re-promulgated on 1 July 2024.
2. For ease and clarity, we will refer below to Mr Ricketts as “the appellant” and the Secretary of State as “the respondent” as they were before the First tier Tribunal.

Background

3. The appellant came to the United Kingdom in 2002 when he was 13 years old. He was granted indefinite leave to remain as a child of settled parents on 6 June 2003.
4. In 2015, the appellant began a relationship with Sara Guillen-Amo, a Spanish national. The couple moved in together in February 2016 and their son Elijah Ricketts was born on 10 July 2016.
5. On 15 January 2019 the appellant was found in possession of cocaine and heroin with intent to supply. He was sentenced on 2 December 2019 to 51 months' imprisonment. On 17 March 2021 the respondent made a decision to deport the appellant and refuse his human rights claim. The appellant lodged an appeal against the refusal of his human rights claim.
6. Ms Guillen-Amo was granted indefinite leave to remain under the EU Settlement Scheme ("EUSS") on 25 November 2020.
7. On 30 November 2021 the appellant applied under the EUSS as the joining family member of an EEA national. This application was refused in a decision dated 24 June 2022 and the appellant lodged an appeal against that decision.
8. On 9 November 2023 the respondent acting as the Single Competent Authority made a conclusive grounds decision that the appellant was a victim of modern slavery and he had been forced into criminality.

The appeals to the First tier Tribunal

9. We will refer to first appeal the appellant lodged as the "HU appeal" and the second appeal he lodged as the "EA appeal."
10. The appeals came before the judge on 28 February 2024. The appellant, his partner and his two sisters gave oral evidence.
11. The judge identified the issues in dispute at paragraph 13 of the determination:
 - 13.1. Whether the appellant is a joining family member of an EEA national?
 - 13.2. Whether he presents a sufficiently serious threat to public policy/public security under the applicable threshold?
 - 13.3. If so, whether his deportation would be proportionate under the EEA Regulations?
 - 13.4. If so, whether his deportation would be lawful and proportionate under domestic law?
 - 13.5. If A is not a joining family member of an EEA national, whether his removal would be lawful and proportionate under Article 8 ECHR, due to very compelling circumstances. Within this the Tribunal will also need to determine the following:
 - 13.5.1. Whether the appellant is socially and culturally integrated in the UK?
 - 13.5.2. Whether he will face very significant obstacles to integration in Jamaica?

13.5.3. Whether it would be unduly harsh for the appellant's partner and/or son to move to Jamaica?

13.5.4. Whether it would be unduly harsh for them to be separated from the appellant?"

12. In the original determination dated 8 April 2024 the judge considered issues 13.1-13.3. At paragraph 39 of the determination, the judge summarised her conclusions:

"The appellant is a joining family member of an EEA national sponsor and as such, may only be excluded from the United Kingdom because of criminal conduct which pre-dated 11pm on 31 December 2020 if the grounds for exclusion in Regulation 27 EEA Regulations 2016 are made out. The grounds for exclusion in Regulation 27 are not made out because the appellant's personal conduct does not represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. In any event, even if his personal conduct was considered to pose such a threat (which I do not find), his deportation under Regulation 27 would not be proportionate."

13. Accordingly, the judge allowed the appellant's EA appeal.
14. By some administrative error the HU appeal was not formally linked to the EA appeal and the HU appeal remained outstanding until the same determination was re-promulgated on 1 July 2024 with reference to the HU appeal.
15. In the re-promulgated determination the judge explained the following paragraph 40:

"Although there was a different appeal number (HU/51022/2021) which featured on MyHMCTS database I was not asked to consider any separate matters from the appeal under EA/08820/2022. For reasons of completeness I have also issued this decision under HU/51022/2021 on 1 July 2024 although the EA/08820/2022 was written on 31 March 2024 and promulgated in early April 2024".

The appeals to the Upper Tribunal

16. The respondent appealed against both the original determination and the re-promulgated determination.
17. The respondent relied on the following grounds in her application for permission to appeal against the judge's initial determination dated 8 April 2024 allowing the appellant's EA appeal:

Ground 1 - the judge materially misdirected herself in law by failing to determine the appellant's appeal against the refusal of his human rights claim in the circumstances where the judge's application of the EEA Regulations was not correct.

Ground 2 - the judge made a material mistake of fact which could be established by objective and uncontentious evidence, where the appellant and/or his advisers were not responsible for the mistake, and where

unfairness resulted from the fact that a mistake was made / making a material misdirection of law on any material matter by:

- a. finding the appellant was entitled to be considered under the Withdrawal Agreement as a 'joining family member' in the circumstances where he never 'joined' his sponsor in the UK with a valid EUSS Family Permit and never held a document under the EEA Regulations that would allow him to be considered a family member of an EEA citizen;
- b. finding that the appellant was entitled to rely on the provisions of the Withdrawal Agreement and the EEA Regulations as he failed to submit an in-time application;
- c. failing to fully apply the sub-sections in the annex relating to the definition of a durable partner even if the appellant did come within the Withdrawal Agreement.

Ground 3 - failing to take into account or resolve conflicts or material matters and a failure to give reasons. In particular, the judge had failed to engage with Section 117C.

18. Permission to appeal was granted by First-tier Tribunal Judge Moon on 2 May 2024. First-tier Tribunal Judge Moon granted permission on ground 2 only in the following terms:

"The second ground of appeal is that the judge made a number of material mis directions of law in finding that the appellant is joining a family member and that the judge mixed provisions contained within Appendix EU and Appendix EU (Family Permit). It is asserted that this led to the judge incorrectly finding that the decision to deport should have been made in accordance with the 2016 EEA Regulations.

Ground two is arguable; the judge applied Appendix EU when provisions for joining a Family member are contained within Appendix EU (Family Permit). It is also arguable that the judge erred in failing to consider suitability grounds in circumstances when the appellant is subject to a deportation order. These finding have an effect on the deportation regime to be applied."

19. The appellant's representatives provided the following response to the respondent's grounds under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008:

"a. A applied for leave to remain, and his application was therefore considered and refused by SSHD under Appendix EU, para EU14A and EU11A. FTTJ therefore also considered A's eligibility under Appendix EU, and SSHD did not dispute that these were the applicable rules. Appendix EU (Family Permit), by contrast, applies to applications for entry clearance.

- b. FTTJ did not in fact rely on the UK-EU Withdrawal Agreement.

- c. A 'joining family member' is a defined term in Annex 1 of Appendix EU. That definition does not require an applicant to have applied for or been granted an EUSS Family Permit.
 - d. FTTJ did not impermissibly "mix" the Rules under paras EU11A and EU14A. Para EU14A refers the reader to EU11A. FTTJ followed the scheme set out in the Rules.
 - e. RR does not need to have a document under the EEA Regulations to qualify as a 'joining family member' in his particular circumstances, as explained by FTTJ at §23.
 - f. RR did not fail to submit an in-time application. He had a good reason for applying after June 2021 (he had ongoing deportation proceedings and indefinite leave to remain). However, even if he had no good reason, June 2021 was not his deadline, applying Appendix EU, Annex 1, definition of "the required date".
 - g. No supervening event had taken place because a 'deportation order' is a defined term in Annex 1 of Appendix EU, and does not include a domestic deportation order based on conduct before 31 December 2020. Only a deportation decision under Reg 27 of the 2016 Immigration (EEA) Regulations would be a 'supervening event.' However, FTTJ found that RR's deportation was not justified under Regulation 27.
 - h. Section 117C NIAA 2002 applies to grounds raised under the Human Rights Act 1998, not EUSS appeals. SSHD disagrees with FTTJ's conclusions on proportionality, but no arguable error of law is raised here."
20. On 1 July the judge re-promulgated the determination to include the HU number and the additional paragraph cited at paragraph 10 above. There are no other additions in the re-promulgated determination.
21. On 8 July 2024 the respondent applied for permission to appeal against the re-promulgated determination. The respondent submitted that the judge had committed or permitted a procedural or other irregularity capable of making a material difference to the outcome or fairness of proceedings. The respondent complained that the judge's decision to re-promulgate the determination after permission to appeal had already been granted against their original determination amounted to a procedural irregularity that goes against the fairness of proceedings and could not stand. The respondent asserted that permission should be granted on the same basis as First-tier Tribunal Judge Moon's decision although now that the HU appeal had been addressed grounds 1 and 3 of the original permission to appeal application were renewed. It was submitted that the judge had failed to provide findings on the decision to deport that was taken under the UK's domestic laws which it was submitted applied to the appellant's appeals.
22. Permission to appeal was granted by First-tier Tribunal Judge Adio on 9 August in the following terms:

“It is an arguable error of law that the judge has reissued a decision against which permission to appeal has already been granted. That amounts to a procedural irregularity. Secondly, as far as the current decision is concerned the judge has not provided findings on the decision to deport in line with the domestic regime.”

23. The appellant’s representatives provided an amended Rule 24 response on 21 August 2024. The amended response included the further additional point:
- “i. Having lawfully concluded that RR’s ‘EA’ appeal should be allowed, it followed that the automatic deportation regime did not apply to RR, given his offending took place before 11pm on 31 December 2020 and FTTJ concluded that the EEA public policy grounds for exclusion were not made out (see paras 25-26, 39 of the determination). Deportation was therefore unlawful, and RR’s ‘HU’ appeal had to be allowed for the same reasons as the ‘EA’ appeal. SSHD has not identified any practical prejudice she has suffered due to the delayed promulgation of the same determination for the linked ‘HU’ appeal.”

The Hearing

24. At the hearing on 8 January 2025 we heard submissions from Ms Isherwood and Ms Radford.
25. Ms Isherwood informed the Tribunal that it was now the respondent’s position that the judge did not materially misdirect herself in law in the application of Appendix EU to the appellant’s case. Accordingly Ms Isherwood was no longer relying on the grounds granted permission on by First-tier Tribunal Judge Moon.
26. Ms Isherwood confirmed that the respondent’s position was that the only error the judge had made was in respect of her assessment of proportionality. Ms Isherwood submitted that the judge did not consider all the evidence in her assessment of proportionality and had therefore materially erred by failing to consider the evidence before her. Ms Isherwood also confirmed that if we found that the judge had not erred in her assessment of proportionality then the EA appeal was unaffected by a material error of law as domestic deportation provisions were not relevant to the appellant’s case as they did not apply to him.
27. In response Ms Radford highlighted that the respondent had not challenged the proportionality assessment in her grounds and any complaint about the proportionality assessment was in the context that the judge had failed to engage with Section 117C.
28. Ms Radford took us to paragraph 28 of the determination and submitted that the judge had had regard to all of the evidence and noted that the respondent had not identified any evidence or relevant matters that the judge had failed to consider.
29. We reserved our decision which we now give.

Discussion

30. As outlined above, Ms Isherwood, conceded that the judge did not err in law in respect of her application of Appendix EU to the appellant's case.
31. We have therefore limited our consideration to the respondent's submission that the judge materially erred in her assessment of proportionality. We are satisfied that the judge did not.
32. We have considered the judge's determination in detail. At paragraph 17 the judge notes that she has carefully and anxiously considered the oral testimony of the appellant and his witnesses, the written evidence and other documents in the Tribunal file together with the skeleton argument and submissions made by the representatives. She notes at paragraph 18 that she found the evidence of the witnesses to be entirely credible and that they answered all the questions directly and clearly. From paragraph 19 onwards she notes that the background facts are not in dispute and outlines what those background facts are before finding that the appellant is the joining family member of an EEA national. Ms Isherwood has made clear that the respondent no longer takes an issue with that finding. The judge then goes on to consider whether the appellant is a genuine and present and sufficiently serious threat to public policy, public security at paragraph 27, and again Ms Isherwood confirmed that no issue is taken with the judge's consideration in respect of judge's finding that he is not.
33. The only issue taken now by the respondent is the proportionality assessment that the judge undertakes from paragraph 28 onwards of the determination. It is clear to us that the judge had regard to all of the evidence. She notes that the appellant's partner had been living as a worker since September 2014. She considered the nature of the appellant's offences at paragraph 30. At paragraph 31 she considers the appellant's risk of reoffending and his positive conduct since his conviction at paragraph 32. At paragraph 33 she considers the strength of his ties in the UK in terms of his family and private life. In particular she considered the appellant's family which included his partner and his son. She considered the best interests of the appellant's son at paragraph 35, his lack of ties in Jamaica at paragraph 36, his age, and she also went on to consider that there is a good chance of his complete and lasting rehabilitation at paragraph 37. The judge concluded at paragraph 38 that deportation would compromise his rehabilitation.
34. Ms Isherwood was unable to take us to any evidence or relevant matter that the judge had failed to consider in her proportionality assessment. We are satisfied that the judge conducted a detailed proportionality assessment which was open to her on the accepted facts of the case and in respect of the findings she made in relation to the witnesses' evidence. Accordingly, the judge therefore did not materially err in law.
35. As agreed by Ms Isherwood there is no need for us to go on to consider whether the judge erred by failing to consider the domestic deportation provisions as having rightfully found that the EEA Regulations apply to the appellant, the domestic deportation provisions do not apply to him.
36. Accordingly the judge's determination stands as there is no making of an error of law.

Notice of Decision

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37. The Secretary of State for the Home Department's appeal is dismissed. The making of the determination of the First-tier Tribunal did not involve the making of an error on a point of law.
38. The determination allowing the appellant's appeal stands.

G.Loughran
Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 January 2025