



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

Case No: UI-2024-004935

First-tier Tribunal No: HU/02173/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

24<sup>th</sup> January 2025

**Before**

**UPPER TRIBUNAL JUDGE LOUGHRAN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**DONOVAN FITZGERALD REID  
(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Ms Ahmed, Senior Home Office Presenting Officer

For the Respondent: Unrepresented

**Heard at Field House on 3 January 2025**

**DECISION AND REASONS**

1. The Secretary of State for the Home Department appeals with the permission of First-tier Tribunal Judge Khurram against a decision of First-tier Tribunal Judge Loke (“the judge”) dated 17 July 2024.
2. For clarity and ease, I shall refer to the Secretary of State for the Home Department as the respondent and Donovan Fitzgerald Reid as the appellant, as they were addressed in the First-tier Tribunal.

**Background**

3. The appellant is a national of Jamaica born on 21 June 1965. The appellant entered the United Kingdom on 14 November 2001 with a visitor’s visa.
4. In 2008 the appellant started a relationship with Ms Simpson and in 2009 their child (‘L’) was born. The appellant was granted leave to remain on the basis of

Article 8 on 18 July 2013. Leave to remain was extended on subsequent occasions having last been granted on 8 December 2021 to expire on 12 June 2024.

5. On 29 July 2022 the appellant was convicted of wounding with intent to cause grievous bodily harm and possession of an offensive weapon. He was sentenced to three years' imprisonment.
6. On 28 November 2022 a stage 1 notice of decision to make a deportation order was issued to the appellant.
7. On 1 December 2022 the appellant made representations in response and on 10 November 2024 the respondent issued a decision which was served on 14 November 2024 refusing the appellant's human rights claim and issuing a deportation order in respect of the appellant.

### **The appeal to the First tier Tribunal**

8. The appellant appealed against the refusal of his human rights claim and the appeal came before the judge on 24 June 2024.
9. The appellant was represented by Mr Jaufarally, instructed by Callistes Solicitors and the respondent was represented by Mr Adjei, a Home Office Presenting Officer. The appellant and his partner, Ms Simpson, both gave oral evidence.
10. The appellant claimed that if he returned to Jamaica he would be persecuted by the Shower gang and would therefore face treatment contrary to Articles 2 and 3 ECHR. The judge concluded that there was insufficient evidence on the lower standard to indicate that the appellant would be persecuted on his return.
11. In respect of Article 8 ECHR the judge noted that there was no dispute that the appellant is a foreign criminal as defined by Section 32(1) of the UK Borders Act. Having received a sentence of 36 months the judge recorded that he is a medium level offender, so the exceptions contained in Section 117C of the Nationality, Immigration and Asylum Act 2002 apply. The judge correctly identified that the relevant exception is contained in Section 117C(5) of the Nationality, Immigration and Asylum Act 2002 which provides:

"Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh".
12. The judge recorded that the respondent accepts that the appellant's relationship with his partner and L are genuine and subsisting. Accordingly, the issue that the judge was required to determine was whether the effect of the appellant's deportation on his partner and L would be unduly harsh. The judge considered L's best interests, noting that the appellant spoke to L every day on the telephone whilst he was in prison and that she had heard evidence that L's emotional health during that time and her studies deteriorated. The judge considered the appellant's and his partner's evidence on this issue to be credible and accepted that L's well-being deteriorated during the appellant's absence and it was in her best interests to remain in the United Kingdom with both her parents. The judge recorded that having found it was in L's best interests to remain with both parents it followed that she accepted that there will be a degree

of hardship suffered by her were the appellant to be deported. The judge noted that the respondent accepted that it would be unduly harsh for L to relocate to Jamaica.

13. The judge considered the effect on L were she to remain in the UK with her mother while the appellant was deported to Jamaica and made the following findings at paragraph 22:
  - a) The Appellant is an active and caring parent to L and is a key part of the family unit.
  - b) I have accepted that L's schooling and emotional welfare deteriorated during the Appellant's incarceration.
  - c) I accept that Ms Simpson had difficulty managing L in the Appellant's absence. Her evidence was that L was rebelling, refusing to eat and refusing to attend school.
  - d) I accept that L has a close relationship with her father. Her father called her every day from prison. Currently the evidence is that with her father's physical presence her behaviour has settled down.
  - e) L is 15 and at a crucial point in her education and emotional development.
  - f) I accept the evidence that the prospect of the Appellant being deported has affected L significantly in that it has caused anxiety and stress and problems with her focussing in school.
14. The judge went on to conclude that given the closeness between L and the appellant and because L was at an important age for both her education and emotional and physical development the appellant's deportation would be unduly harsh on L if she were to remain in the UK with her mother.
15. The judge found that it followed that the appellant's deportation is disproportionate to her and his family's rights under the Article 8 ECHR and allowed the appeal.

### **The appeal to the Upper Tribunal**

16. The respondent applied for permission to appeal to the Upper Tribunal. The respondent claimed that the judge had erred by "Making a material misdirection of law - application of the unduly harsh test to the elevated standard." In particular the respondent argued the following:
  - "3. It is not disputed that the appellant has a genuine and subsisting relationship with his daughter and further that it was accepted it would be unduly harsh for her to leave the UK to join him in Jamaica. However, having cited the relevant case law of KO (Nigeria) [2018] and HA (Iraq) [2022] [18-19], Judge Loke has erred by failing to adequately reason and explain with evidence how the unduly harsh test is met to the 'elevated' threshold, having relied on very limited evidence which was given by the appellant's partner. The onus is on the appellant to satisfy the unduly harsh test and to do so with evidence.
  4. There is no independent evidence to show the appellant's daughter has been emotionally impacted either psychologically or physically, nor evidence that of additional support or counselling. In fact, the school report and comments from her tutor were positive. No concerns were raised regarding her behaviour.
  5. Furthermore, judge has failed to adequately explain how the consequences of deportation on the appellant's daughter would be 'severe' or 'bleak,' without more to substantiate the claim.
  6. There is no corroborative evidence to support the partner's claims that his incarceration has detrimentally impacted her or in fact any information of how his

partner has coped, other than finding her daughter's behaviour difficult to manage, given it is also relevant to note she is a teenager, or what the effects of future ongoing separation might be.

7. As set out in : MK (Sierra Leone) v Secretary of State for the Home Department [2015] UKUT 223 (IAC), see [§27]: "By way of self-direction, we are mindful that 'unduly harsh' does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. 'Harsh' in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb 'unduly' raises an already elevated standard still higher.

The Court also upheld the UT's application of this test to the specific facts in KO itself "44. ...Nor do I have any difficulty in accepting the submission that the children, who have enjoyed a close and loving relationship with their father, will find his absence distressing and difficult to accept. But it is hard to see how that would be any different from any disruption of a genuine and subsisting parental relationship arising from deportation. As was observed by Sedley LJ in AD Lee v Secretary of State for the Home Department [2011] EWCA Civ 248: 'The tragic consequence is that this family, short-lived as it has been, would be broken up for ever, because of the appellant's bad behaviour. That is what deportation does.'

8. It is submitted that the appellant's partner will continue to protect her daughter in the event the appellant is deported. She will also be supported by other family and her friends It is therefore submitted given the absence of evidence that the unduly harsh test has not been properly made out and decision should be set aside."

17. Permission to appeal was granted by First-tier Tribunal Judge Khurram on 15 October 2024. No Rule 24 response was submitted.
18. The appellant was unrepresented at the hearing. I heard submissions from Ms Ahmed on behalf of the respondent.
19. I indicated that I was not persuaded that the judge materially erred in law. I now give reasons for that decision.

### **Discussion**

20. The respondent complains that the judge made a material misdirection in law but does not identify how the judge did so.
21. I am satisfied the judge was aware of and applied the relevant authorities. The judge identified and applied the relevant exception contained in Section 117(5) of the Nationality, Immigration and Asylum Act 2002.
22. The respondent accepts in the grounds that the judge cited the relevant case law of **KO (Nigeria)** [2018] UKSC 53 and **HA (Iraq)** [2022] UKSC 22 at paragraphs 18 to 19 of the decision. I note that the judge did significantly more than simply cite the names of the cases. She correctly identified and cited the relevant tests therein. The judge noted the following at paragraphs 18-19:

"...'The unduly harsh test involves a comparison between the level of harshness which is justifiable in the context of the public interest, and the greater degree of harshness which is connoted by the requirement of 'unduly' harsh. The word 'undue' does not invite a balancing exercise, and my focus should simply be on the effect on the child."

“...’that ‘unduly harsh’ is an elevated threshold, and does not equate with merely uncomfortable, undesirable or merely difficult.”

23. The respondent has not identified any language of the decision that demonstrates that the judge failed to apply the relevant test. I am satisfied that the judge was aware of and applied the relevant legal tests to the facts of the appellant’s case.
24. The respondent complains that the judge erred by failing to adequately reason and explain with evidence how the unduly harsh test is met to the elevated threshold.
25. The respondent complains that there is no independent evidence to show that L has been emotionally impacted either psychologically or physically, nor evidence of additional support or counselling. The respondent notes that there is no corroborative evidence to support the partner’s claims that the appellant’s incarceration detrimentally impacted L and what the effects of the future ongoing separation might be.
26. There is no requirement for independent or corroborative evidence in a case such as this. The judge was entitled to accept the evidence of the appellant’s partner on the impact that appellant’s incarceration had on her and L and her evidence on what she thought the effects of future ongoing separation would be. Given that she is L’s mother the judge was entitled to give significant weight to that evidence.
27. The respondent asserts that the judge has failed to adequately explain how the consequences of deportation on L would be ‘severe’ and ‘bleak’. I am satisfied that the judge gave adequate reasons why the consequences of appellant’s deportation would be ‘severe’ and ‘bleak’. At paragraphs 22 to 23 the judge found:

22. I turn to the effect on L were she to remain in the United Kingdom with her mother while the Appellant were deported to Jamaica. Regarding the effect on L, I make the following findings:

- a) The Appellant is an active and caring parent to L and is a key part of the family unit.
- b) I have accepted that L’s schooling and emotional welfare deteriorated during the Appellant’s incarceration.
- c) I accept that Ms Simpson had difficulty managing L in the Appellant’s absence. Her evidence was that L was rebelling, refusing to eat and refusing to attend school.
- d) I accept that L has a close relationship with her father. Her father called her every day from prison. Currently the evidence is that with her father’s physical presence her behaviour has settled down.
- e) L is 15 and at a crucial point in her education and emotional development.
- f) I accept the evidence that the prospect of the Appellant being deported has affected L significantly in that it has caused anxiety and stress and problems with her focussing in school.

23. Given the closeness of the relationship between L and the Appellant and the fact that L is at an age which marks an important point in her education and is also a particularly significant point in her emotional and physical development, I do find that the Appellant’s deportation would be unduly harsh for her, even if she were to remain in the United Kingdom with her mother.

28. The reasons given by the judge are adequate, clear and appropriately concise and focus upon the issue on which the outcome of the case turns, i.e., whether the appellant's deportation would be unduly harsh on L. I am satisfied that a reader of the decision could understand why the judge concluded that it would be unduly harsh.
29. Before me today Ms Ahmed argued there was nothing in the judge failed to have regard to the school reports that indicated that L had not had a difficult time when he was incarcerated. I am satisfied that the judge did consider the school reports. At paragraph 17 the judge states that she found them to be "limited."
30. For all these reasons I do not find the respondent's grounds to be made out and I conclude that the judge's decision should stand. I accordingly uphold the judge's decision. I am satisfied that the conclusion was open to the judge on the evidence before her.

### **Notice of Decision**

31. The Secretary of State for the Home Department's appeal is dismissed. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
32. The decision allowing the Appellants appeal stands.

**G. Loughran**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**23 January 2025**