



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: DA/01375/2013
DA/01377/2013
DA/01378/2013

THE IMMIGRATION ACTS

Given orally at Field House
On 6th March 2014

Determination Promulgated
On 13th March 2014

Before

UPPER TRIBUNAL JUDGE PETER LANE

Between

TAMIKA LATESHA TALABI
SAPHIRE JADE WILSON
TALISA WILLSON

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: *Mr R Layne*, instructed by MetroLaw Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge Andonian and Mrs Endersby promulgated on 20th January 2014 in which they allowed the appeals brought by the appellants against the decisions of the Secretary of State that they should be deported. The issue with which we are concerned is whether the First-tier Tribunal in doing so failed to have regard to the state's interests articulated in the UK Borders Act 2007 and related case law that favours the deportation of those categorised as foreign criminals. The first of the appellants is the mother of the second and third appellants. All three are citizens of Jamaica. The first appellant has a significant criminal history. She is married to a dual Nigerian/British national resident in the United Kingdom by whom she has two further children who are British citizens.
2. The determination of the First-tier Tribunal is, I am fully satisfied, materially wrong in law. Before me Mr Layne has done the very best he could to preserve the determination. In particular he has urged me to find that the experienced First-tier Judge who wrote the determination must have had in mind the relevant case law stretching back as far as N (Kenya) and more recently SS (Nigeria) [2013] EWCA Civ 550, when writing the determination. I have to say that one looks in vain, however, in the determination for any reference to those or other relevant cases. One also more particularly looks in vain for any articulation of what those cases have to say about the 2007 Act.
3. As was made plain by Lord Justice Laws in SS (Nigeria) the deportation of foreign criminals is a matter which Parliament itself has decreed to be in the public interest and that important matter finds no expression in the determination. Nor do we find any expression in the determination of the public interest so far as it concerns deporting foreign criminals as an expression of societal revulsion of crimes committed by them. Instead the Tribunal concentrates effectively to the exclusion of all else upon the fact that the first appellant has remained crime free for a number of years. That is undoubtedly a factor to be weighed in the balance in determining proportionality under Article 8; but it is not the only issue.
4. I fully accept as Mr Lyne has submitted this morning that the case is complicated. As I have already indicated, there are other children concerned by the potential deportation of the first appellant. Those children are described in paragraph 15 of the determination. It may be the case that a proper analysis by a Tribunal would conclude under paragraph 399 of the Immigration Rules that it would not be reasonable to expect those children to leave the United Kingdom and/or that there is no other family member who is able to care for them.
5. At paragraph 15 the Tribunal summarily dismissed the suggestion that the father of the British children could look after them if the first appellant were deported but that paragraph, however, on inspection lacks any adequate reasoning. It seems to accept

that a preference on the part of a parent not to have to care for a child is sufficient to engage paragraph 399(2)(b) of the Immigration Rules. It is by no means certain that that is so. By the same token paragraph 16, which concerns the asserted inability of the father to live in Jamaica, ignores the detailed decision letter of the Secretary of State in which amongst things it was pointed out that the gentleman concerned had been to Jamaica in the past. It also ignores the fact that he originally came from Nigeria and has experience of relocating to different continents.

6. In all the circumstances therefore, despite Mr Layne's submissions, I have come to the conclusion that one cannot in any sense be satisfied that the decision in this appeal would be bound to be the same, even if the factors missing from the determination had been considered by the First-tier Tribunal.
7. For those reasons I have no hesitation in setting aside this determination. The issue therefore arises as to how the decision in the appeal should be remade. I agree with Mr Layne that in all the circumstances the appropriate course is remittal to the First-tier Tribunal. I say that because the complete failure of the First-tier Tribunal to have regard to relevant matters in the case before it means that a fact finding exercise needs to be conducted. But I also consider that in these circumstances it is appropriate that the appellants start again at the First-tier Tribunal so that if they are ultimately unsuccessful, and I express no view on that, they will have a right of appeal, subject to permission being granted to the Upper Tribunal.
8. This appeal is therefore allowed to the extent that the determination of the First-tier Tribunal is set aside for error of law and the appeals are remitted to be re-heard in their entirety in the First-tier Tribunal by a panel that shall not include First-tier Judge Andonian or non-legal member Mrs Endersby.

Signed

Date

Upper Tribunal Judge Peter Lane