Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01661/2014

THE IMMIGRATION ACTS

Heard at : Royal Courts of Justice	**Decision and Reasons Promulgated**
On : 11 May 2015	**On: 13 May 2015**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

C R D
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondent: Ms S Iqbal, instructed by Wilson Barca LLP

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing CRD's appeal against the decision to deport him from the United Kingdom.

2. For the purposes of this decision, I shall refer to the Secretary of State as the respondent and CRD as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

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3. The appellant is a citizen of Jamaica, born on 20 December 1979. He arrived in the United Kingdom on 31 January 2004 and was granted leave to enter as a visitor for six months. On 6 May 2004 he submitted an application for leave to remain as a student which was refused on 24 May 2004. On 17 June 2004 he submitted an application for leave to remain as an unmarried partner of a British citizen. Following his marriage to his partner in April 2007 he varied his application. His application having been made when he had no leave, he was granted discretionary leave to remain on 5 February 2009 until 4 February 2012. On 29 February 2012 he submitted an application for indefinite leave to remain as the spouse of a British citizen. His application was refused on 6 December 2012 as he had previously had only discretionary leave, but he was given a further period of discretionary leave to remain until 5 December 2015.

4. On 13 February 2014 the appellant was convicted of six counts of supplying Class A controlled drug (heroin) and six counts of supplying Class A controlled drug (cocaine) and was sentenced to three years' imprisonment. On 28 February 2014 he was notified of his liability to automatic deportation under section 32(5) of the UK Borders Act 2007 and on 4 August 2014 a deportation order was made against him. On the same day a decision was made that section 32(5) applied.

5. The respondent, in making that decision, accepted that the appellant had a genuine and subsisting relationship with his wife and four children who were British citizens, but considered that it would not be unduly harsh for his wife and children to live in Jamaica or to remain in the United Kingdom without him. Accordingly the requirements of paragraph 399(a) and (b) of the immigration rules were not met. The respondent considered further that the appellant could not meet the requirements of paragraph 399A and did not accept that there were very compelling circumstances which outweighed the public interest in his deportation. The respondent accordingly concluded that the appellant's deportation would not breach Article 8.

Appeal before the First-tier Tribunal

6. The appellant's appeal against that decision was heard in the First-tier Tribunal on 3 December 2014 by First-tier Tribunal Judge Monson. The judge heard from the appellant and his wife and considered a report from a qualified social worker. He found that it would be contrary to the best interests of the children for the appellant to be removed to Jamaica or for them to have to accompany him to Jamaica and considered that it would be unduly harsh for them to have to do so and for his wife to do so. He found that the appellant presented as having a very low risk of reoffending and concluded that the criteria in paragraph 399(a) had been met. He accordingly allowed the appellant's appeal under the immigration rules.

7. The respondent sought permission to appeal to the Upper Tribunal on the grounds that the judge's decision was inadequately reasoned and contained a misdirection in law: that he had failed to explain why the

children could not adjust to life in Jamaica; and that the question of the harshness of deportation had been inadequately analysed and did not take into account the seriousness of the offending, given in particular that the appellant had been sentenced to 12 concurrent periods of three years' imprisonment.

8. Permission to appeal was granted on 20 January 2015 with particular reference to the second ground, that there was an arguable misdirection in law as to whether "undue harshness" was to be gauged simply by reference to the effects on the children or whether it had also to take account of the nature and seriousness of the offending.

Appeal before the Upper Tribunal

9. The appeal initially came before me on 9 March 2015 but I adjourned the case since the appellant was unaware of the decision of the First-tier Tribunal or that the decision had been challenged by the respondent and had received none of the relevant notices and decisions, the paperwork having been sent in error to his previous place of imprisonment. He had only become aware of the hearing that morning. Since he was, at that point, no longer legally represented, it seemed to me to be in the interests of justice for him to be given an opportunity to consider the First-tier Tribunal's decision and the respondent's grounds and grant of permission and to seek legal representation.

10. The appeal then came before me again on 11 May 2015, by which time the appellant was legally represented.

11. I heard submissions on the error of law.

12. Mr Bramble submitted, with respect to the second ground of appeal, that the judge had erred in law when making his findings in paragraph 68 by discounting the seriousness of the appellant's offences from the "unduly harsh" consideration and had failed to have regard to s117C(2) which stated that the more serious the offence, the greater was the public interest in deportation. He had placed too much weight on the risk assessment and had based his conclusions on outdated case law. With respect to the first ground of appeal, he had not explained why it was unduly harsh for the children to adjust to life in Jamaica.

13. Ms Iqbal, in response, submitted that the judge had followed the correct approach in considering whether it would be unduly harsh for the children if the appellant were deported, as consistent with the judgment in Secretary of State for the Home Department v AQ & Ors [2015] EWCA Civ 250.

14. I advised the parties that, in my view, the judge's decision did not contain any errors of law and should be upheld. My reasons for so concluding are as follows.

Consideration and findings.

15. The ground upon which permission was specifically granted was the judge's assessment of and approach to the "unduly harsh" question in paragraph 399(a) of the rules which, it was submitted by Mr Bramble, did not take proper account of the seriousness of the appellant's offending and the weight of the public interest and placed too much weight upon the low risk assessment. However it seems to me that the judge took into account all relevant matters when considering the "unduly harsh" question and that he made it very clear in his decision that it was a concept that was not simply confined to the interests and needs of the children but necessarily encompassed a rounded assessment of all the relevant circumstances including the nature and seriousness of the appellant's offending and the risk of re-offending.

16. At paragraphs 51 to 54 the judge gave careful consideration to the best interests of the appellant's children. I do not agree with Mr Bramble that anything material arises out of his reference to case law not specifically related to deportation proceedings, since that was simply his starting point. He went on, at paragraphs 55 and 56, specifically to refer to public interest considerations in deportation cases, with reference to the provisions in s117C of the Nationality, Immigration and Asylum Act 2002, and at paragraph 58 he emphasised that the children's best interests was not the sole defining factor in the "unduly harsh" question. In the following paragraphs he considered other significant factors which, when taken together with the matter of the children's best interests, fully addressed the "unduly harsh" question. At paragraphs 59 to 62 he considered the impact of the appellant's deportation on his wife and, in turn, the effect of that upon his children and at paragraphs 63 to 69 he considered the appellant's offending itself, including the risk of re-offending and the seriousness of the offence. It seems to me that, contrary to the assertion made in the grounds and to Mr Bramble's submission, paragraph 68 of the decision plainly shows that the seriousness of the crime and the public interest were not discounted by the judge but were significant considerations in the assessment of the "unduly harsh" question and were given due weight. The judge was plainly aware that the public interest in deportation increased with the seriousness of the crime and specifically referred to that at paragraph 55 of his decision.

17. In the circumstances I accept Ms Iqbal's submission that the judge's approach to the "unduly harsh" question was the correct one and that he took into account all relevant factors when considering whether or not the appellant's deportation would have unduly harsh consequences for the children. As regards the first ground of appeal, it is the case that he did not provide, in his decision, a detailed analysis of the socio-economic conditions the children would experience in Jamaica, but what is clear is that he gave consideration to the difficulties the children would face in Jamaica and provided reasons, at paragraphs 57 and 60 to 62, for concluding that it would be unreasonable and unduly harsh for them to be forced to relocate there. His conclusions in that respect and in respect to

the separation of the children from their father were based upon the supporting evidence before him, including the report of the social worker, as well as the oral evidence and when considered together with his findings on the appellant's criminal offending, were entirely open to him on the evidence before him.

18. Accordingly I find that the judge did not make any errors of law in his decision. He was entitled to reach the decision that he did and the grounds of appeal amount to little more than a disagreement with that decision.

DECISION

19. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The Secretary of State's appeal is dismissed and the decision of the First-tier Tribunal to allow the CRD's appeal stands.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed
Upper Tribunal Judge Kebede