



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/03152/2019 (P)

THE IMMIGRATION ACTS

**Decided under rule 34
On 3 July 2020**

**Decision & Reasons Promulgated
On 20 July 2020**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

EMMANUEL [B]

(ANONYMITY ORDER NOT MADE)

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Ghana, who arrived in the United Kingdom in September 2005 with a settlement visa to join his parents. On 26 April 2018 he was convicted of possession with intent to supply a Class A drug, namely heroin, and also possession with intent to supply a Class A drug, namely cocaine, and on 22 May 2018 he was sentenced to two years imprisonment on each count to run concurrently.
2. The Respondent made a decision to deport him on account of his convictions on 7 February 2019, having made a deportation order against him on 6 February 2019. The Appellant

appealed and First-tier Tribunal Judge Swinnerton dismissed his appeal in a decision promulgated on 6 December 2019.

3. The Appellant appealed against this decision and Upper Tribunal Judge Keith granted him permission to appeal on 2 March 2020. He found that it was difficult to discern from the structure of the First-tier Tribunal's decision, particularly in paragraphs 21 to 24, the extent to which the Judge had considered and applied paragraphs 399(a) and (b) of the Immigration Rules and that, therefore, grounds 2 and 3 were arguable. He found that the other grounds were weaker and poorly drafted.
4. The error of law hearing was listed for 28 April 2020 but was adjourned, due to the Covid-19 Pandemic. Upper Tribunal Judge Norton-Taylor made further directions on 23 April 2020. He invited the parties to inform the Upper Tribunal whether they were content for the error of law hearing to be heard without a hearing. He also gave them permission to make further submissions about the substance of the appeal.
5. The Appellant's solicitors responded by email on 4 May 2020, stating that the Appellant was not seeking to submit any further submissions or additional documentary evidence. The Respondent responded to Upper Tribunal Judge Norton-Taylor's directions on 12 May 2020. She stated that she resisted all of the Appellant's grounds of appeal but made a more detailed response to grounds 2 and 3 of the Appellant's grounds of appeal.
6. Neither party objected to the appeal being without a hearing and the detail given by Upper Tribunal Judge Keith in his decision alerted the parties to the issues which were central to the error of law hearing and both parties were provided with an opportunity to respond to these issues. In addition, First-tier Tribunal Judge Norton-Taylor's directions noted that Upper Tribunal Judge Keith's grant of leave had been "clear as to the focus of the Appellant's challenge to the First-tier Tribunal's decision".
7. I have reminded myself of rule 2 of The Tribunal Procedure (Upper Tribunal) Rules 2008, as amended, and the need to take into account the fact that the need to deal with cases fairly and justly is an overriding objective for the Upper Tribunal. In the light of the fact that the issues before me have been usefully narrowed by Upper Tribunal Judge Keith and as these issues arise from the manner in which First-tier Tribunal Judge Swinnerton applied the law to the facts of this appeal, it is my view that it was not necessary to have any oral submissions in order to reach a decision on whether or not there had been any errors of law in his decision .

8. On 2 June 2020, the Appellant's solicitors wrote to the Upper Tribunal seeking to assert that his deportation would also give rise to a breach of his family life rights, as he had now registered his customary marriage to his current partner in Ghana. This was not evidence which was before First-tier Tribunal Judge Swinnerton when he reached his decision and, therefore, I cannot take it into account when considering whether there were any errors of law in his decision.
9. It will only be if an error of law is found in First-tier Tribunal Judge Swinnerton's decision, it is set aside and there is a fresh hearing that this evidence may be admissible. Furthermore, if a decision is made to retain the appeal in the Upper Tribunal the Appellant will have to make an application under rule 15(2A) of The Tribunal Procedure (Upper Tribunal) Rules 2008, as amended, for it to be admitted.

ERROR OF LAW DECISION

10. As noted by Upper Tribunal Judge Keith, the Appellant's grounds of appeal were largely general in nature, lacked focus and tended to just recite case law without apply this to the facts of the Appellant's case. They also failed to take into account that the Appellant was subject to automatic deportation and that the First-tier Tribunal Judge was bound to apply the law relating to those subject to a deportation, as outlined in the Nationality, Immigration and Asylum Act 2002 and the Immigration Rules.
11. However, In relation to sub-paragraphs 399(a) and (b) of the Immigration Rules, case law indicates that First-tier Tribunal Judge Swinnerton should have considered whether the Appellant enjoyed a parental relationship with his partner's son, even though he was not the child's biological father. It was clear from his partner's witness statement that she and her son had known the Appellant for three years and that he took her son to school, picked him up from school and supported her to care for him. She also said that a strong father-son bond had developed between them. In addition, in her oral evidence she said that her son had a very good relationship with the Appellant and this was not challenged by the Respondent. It was not sufficient to merely note that the Appellant's relationship with his partner had not been a long one and that her son sometimes saw his biological father at weekends.
12. First-tier Tribunal Judge Swinnerton also failed to consider whether the Appellant's deportation would have an unduly harsh effect on the Appellant's partner's son.

13. In addition, if First-tier Tribunal Judge Swinnerton had properly considered paragraph 399(a) of the Immigration Rules and found that this provision did not assist the Appellant, he should have considered whether the public interest in deportation was outweighed by other factors which would amount to very compelling circumstance. When doing so, he should have taken into account the best interests of the Appellant's partner's son but failed to do so, as can be seen from paragraph 24 of his decision.
14. For all of these reasons, First-tier Tribunal Judge Swinnerton's decision contained errors of law.

DECISION

- (1) The Appellant's appeal is allowed
- (2) First-tier Tribunal Judge Swinnerton's decision is set aside.
- (3) The appeal is remitted to the First-tier Tribunal for a *de novo* hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judges Swinnerton or Chohan.

Nadine Finch

Signed
Upper Tribunal Judge Finch

Date 4 July 2020