Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06590/2019 (P)

THE IMMIGRATION ACTS

Decision under Rule 34
Without a hearing
28th September 2020

Decision & Reasons Promulgated
On 29th September 2020

Before

UPPER TRIBUNAL JUDGE COKER

Between

RS
(anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as RS. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. FtT Judges Chohan and Groom dismissed RS' appeal against the refusal of his human rights claim for reasons set out in a decision promulgated on 11th February 2020. Permission to appeal was granted by UTJ Owens on 1st May 2020. Directions for the further conduct of the appeal were sent on 8th July 2020

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and, in the circumstances surrounding COVID 19, provision was made for the question of whether there was an error of law and if so whether the decision of the FtT Judges should be set aside, to be determined on the papers.

2. Both parties complied with the directions; the appellant sought an oral face-to-face hearing "to ensure that there would not be any problems with witnesses giving evidence". That of course is a relevant consideration if an error of law were to be found, the decision of the FtT set aside and a direction made that oral evidence was required. In submissions in connection with error of law, the appellant submits that "In view of the fact the human rights claim in the case was raised after the making of the deportation order and given the importance of the final outcome to the Appellant, a hearing is necessary". This submission is not elaborated upon save to state that any additional points raised by the Tribunal can be addressed. The respondent has not expressed a view on whether the decision on error of law can be taken on the papers.

3. No significant reasons have been put forward why the decision on a straightforward error of law in a deportation appeal cannot be taken on the papers. Full grounds of appeal were submitted by the appellant and further detailed written submissions were made by counsel on the appellant's behalf. I am satisfied that the submissions made on behalf of the appellant and the respondent together with the papers before me[1] are sufficient to enable me to be able to take a decision on whether there is an error of law in the decision of the FtT and if so whether the decision should be set aside, on the papers and without hearing oral submissions.

4. For the sake of completeness I note that various copy emails and letters were received by the Tribunal after the promulgation of the decision of the FtT. I have not read those letters/emails; they do not form any part of my decision whether there is an error of law in the decision of the FtT judges, such decision being taken by them on the basis of evidence that was before them on the date of the hearing.

Background

5. On 2 August 2017 RS was convicted following a trial by jury of possession with intent to supply crack cocaine and heroin. The judge, in his sentencing remarks concluded that RS had a leading role within a small business operation and sentenced him to 54 months concurrent for each type of drug. RS, a Jamaican citizen date of birth 18th of December 1974, had 8 previous convictions none of which had resulted in a sentence of imprisonment in the UK, but he had received a sentence of 18 months' imprisonment in Jamaica for supplying cocaine in 2002.

6. RS arrived in the UK on 27th January 2008 with a two-year spouse Visa to join his wife VS after having initially made an application for entry clearance in December 2005. He was granted indefinite leave to remain as a spouse on the

[1] (a) the respondent's bundle; sentencing remarks and PNC record; (b) the bundle filed on behalf of the appellant, witness statements of the mother of two of his children (SS), witness statement of NO (friend), report by Charles Musendo (social worker) and skeleton argument; (c) the decision of FtT judges Cohan and Groom; (d) the application for permission to appeal; and (e) the grant of permission to appeal.

24th of February 2010. Following his conviction in August 2017 he was served with a notice of decision to deport letter dated the 16th of December 2017. On 31 January 2018 he gave reasons, through solicitors, why he should not be deported and made representations on Article 8/human rights grounds. A deportation order was signed on 22 March 2019 and his human rights claim was refused for reasons set out in a letter dated the 25th of March 2019.

7. RS married VS in 2005. VS has five children from an earlier relationship who are all over aged 18. RS is the biological father of two children with SS who has another child from an earlier relationship. RS also has four other children in the UK with different mothers, all of whom save one were born in the UK after his marriage to VS. All the children are British citizens, five are aged under 18.

8. The FtT judges concluded that the relationship between RS and his spouse was not genuine and subsisting, that he does not have a genuine and subsisting parental relationship with any of his children, with whom he does not live. The children do not rely upon him for their day-to-day welfare or their financial support and such arrangements as the children have with him are "informal to the point of being transient, the details provided were vague." The judges concluded that RS was neither a credible nor consistent witness and that although claiming to be scared for his life he had not made a protection claim and had, since being in the UK, returned to Jamaica.

9. The judges concluded that having made a finding that he does not have a genuine and subsisting relationship with his wife it follows that it could not be considered unduly harsh for her to remain in the UK if he were to be deported.

10. The judges concluded that there would not be any significant obstacles to his integration into Jamaica, that he does not have a genuine and subsisting relationship with any of his children or his wife and the interference in the right to respect for his private and family life was not disproportionate in the circumstances. The appeal was dismissed.

Error of law

11. The application for permission to appeal was out of time by four days, Time was extended and permission granted on the basis that it was arguable that the FtT Judges misdirected themselves in law on the issue of whether there was a "genuine and subsisting parental relationship" between the appellant and at least two of his children." Permission was also granted on the basis that it was arguable that the panel had failed to take into account the risk of reoffending which was a relevant factor in the proportionality exercise. Other grounds were pleaded, and permission was granted on all grounds.

Ground 1

12. RS submits that the findings by the first-tier tribunal in connection with the two children he had with SS were not supported by evidence and was against the welfare and best interests of the children. The appellant submits that on the basis of the evidence that was before the first-tier judges, including the assessment by the expert there was a close relationship and the social worker

identified the likely impact on them if they lost contact with RS, the judges' findings were unlawful. It was submitted that these matters had not been taken into account by the panel.

13. The first tier Tribunal judges set out the evidence that was before them in relation to these two children. The judges considered and referred to the social work report and referred to the lack of specific detail of the visits and contact that the appellant has with the two children of SS. The judges refer to SS providing for the children's physical needs but that she would like the children to grow up having a relationship with RS but that it was her mother who helped her with childcare and the appellant assisted if she needed him to. The judges concluded that there were no formal arrangements in place, that the bulk of the childcare rested with SS and her mother and that from her evidence the appellant, although having a biological relationship, was a mere presence in the children's lives.

14. The appellant submitted that all of the mothers had provided witness statements with evidence and that the judge should have found that it was in the best interests of the children for him to remain in contact with them.

15. The findings by the judge that he does not have a genuine and subsisting parental relationship with any of his children was a finding that was clearly and plainly and obviously open to the panel on the evidence before them, including the social work evidence which the judges refer to in great detail. The submissions made in the grounds seeking permission to appeal and the submission made subsequent to directions are nothing more than a disagreement with the findings made by the panel. There is no error of law in the finding that there is no subsisting parental relationship with any of the children and that it cannot be unduly harsh for the children to remain in the UK even if the appellant were to be deported given that the children have lived and continue to live with their respective mothers, that it is in their best interests for the children to remain with their respective mothers and the contact the appellant has with any of them is informal, vague and non-specific.

Ground 2

16. The appellant submitted that the panel had erred in three respects with regard to the relationship between him and his wife. Firstly that the panel had erred in law in misconstruing the evidence when he had lived apart from his wife at a different address because of bail and probation issues; that the discrepancy in the evidence of the appellant and his wife was insufficient to warrant an adverse finding in connection with their claimed relationship; and that the tribunal should not have held against him that he did not mention his wife as one of the reasons why he should not be returned to Jamaica when he had done so in his witness statement.

17. The judges took into consideration in reaching their findings the whole of the appellant's evidence which included a significant discrepancy in terms of what his wife knew about his other children. The panel was entitled to weigh all the evidence in the context of the documentary and oral evidence before them. The ground relied upon does not identify an error of law and is simply a

disagreement with the conclusions reached. The panel were entitled to reach the findings they did on the evidence that was before then.

Ground 3

18. The appellant submits that the judges failed to consider the risk of reoffending and that he had reformed himself in real terms so that he was not a danger to the public.

19. Although the panel did not make a specific finding on the likelihood of the appellant reoffending, such a lack of finding is not material given that the appellant had been sentenced to 2 concurrent sentences of 54 months of possession with intent to supply class A drugs (and it seems was still on licence at the time of the hearing and there was no OASys report or Probation report) . The public interest requires removal unless there are very compelling circumstances over and above those of Exception 1 and Exception 2. There are sustainable and adequately reasoned findings that the appellant does not meet either Exception 1 or Exception 2; the issue before the tribunal was whether there were very compelling circumstances. They were not. The issue of re-offending was not a matter that could impact upon this appellant. There is no error of law by the judges in failing to consider the risk of reoffending such as would merit the setting aside of the decision of the first-tier tribunal.

Ground 4

20. The appellant submits that the judges lost focus on the children and partner and that there was no requirement to balance the severity of the parent's offence or show very compelling reasons. This ground is misconceived. The appellant has been convicted of two offences with a sentence of 54 months for each to run concurrently. The issue before the judge was whether there were very compelling reasons.

Ground 5

21. The appellant submits that the use of the judges sentencing remarks as a basis for finding that he was not a credible witness was neither proper nor fair. The judges were entitled to take note of the sentencing judge's remarks in reaching their conclusion on the appellants credibility. In reaching that conclusion the first tier Tribunal judges considered the evidence that he had given to them and having reached a conclusion also confirmed that the jury who convicted him did not believe him. The sentencing judge described the appellant's defence as "utterly ludicrous". The judge stated that he had "repeatedly lied to the jury and it was quickly rejected by them." The tribunal reached a similar conclusion on the basis of the evidence before them and did not as submitted in the grounds appeal rely solely or primarily upon the judge's sentencing remarks.

Conclusion

22. The grounds upon which permission to appeal was granted are of no legal merit. They are nothing more than a disagreement with the conclusions reached

by the judges in finding that the decision to reject the appellant's human rights plan was proportionate. The appeal is dismissed.

Decision:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the appeal is dismissed. The decision of the FtT stands.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Jane Coker
Upper Tribunal Judge Coker
Date 28th September 2020