Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13380/2019

THE IMMIGRATION ACTS

Heard Remotely at Field House	**Decision & Reasons Promulgated**
On 23rd October 2019	**On 3rd June 2021**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

NOEL [E]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Jones, Direct Access pro bono
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of First-tier Tribunal Judge Hone promulgated on 26th June 2020, dismissing the appellant's appeal against the refusal by the Secretary of State on 25th July 2018 of the appellant's human rights claim against a deportation decision under Section 32(5) of the UK Borders Act 2007. The appellant is a citizen of Jamaica born on 29th December 1974, and on 7th January 2019 was convicted and sentenced to four year's imprisonment for possession with intent to supply a class A drug, namely crack cocaine. The matter has a complicated legal history and not least that as recorded in the decision of Judge Hone the matter

was heard on 21st November 2019 before another Immigration Judge who was unable to produce a decision owing to health issues.

2. The grounds for permission to appeal set out that the appellant had four British children: child J aged 16, child D aged 15, child S aged 5 and child N aged 4. Child J was profoundly disabled and in permanent social care and the remaining children resided in separate households each from the other but enjoyed contact with their half-siblings through the appellant.

3. The appellant is married to a British citizen, Ms Coley, whose health is said to be poor following strokes and period of prolonged hospitalisation mostly in 2019.

4. It was conceded that the appellant had a number of convictions for lesser offences from 2019.

5. In essence, in the application for permission to appeal, it was submitted that the judge had erred in his approach to the assessment of the impact of deportation on the appellant's children. I take the three grounds in turn.

6. In the first ground it was asserted that the judge recorded in his determination the respondent had accepted the appellant enjoyed a genuine and subsisting relationship with each of his four children at paragraph 81. The judge proceeded erroneously to find contrary to that concession that the children did not enjoy a genuine and subsisting relationship with the appellant, at paragraph 85 and 87, and then to conclude, that given the appellant's relationship with the children was not significant enough, it would not be unduly harsh for him to separate from them.

7. I have noted the Secretary of State's refusal decision recorded that there were no personal details of the children's domestic circumstances provided and thus the Secretary of State was unable to consider these children in the decision.

8. I raised the issue with Mr Jones as to whether this was a new matter or not but Ms Cunha conceded that it was not a new matter as the issue of the children was evident at the outset and as Mr Jones identified there was evidence in the file and from live witnesses.

9. I can locate no record of a concession recorded in the Record of Proceedings but the judge clearly records a concession by the Secretary of State at paragraph 81 of the determination that the respondent had accepted that the appellant enjoys a genuine and subsisting parental relationship with all four children.

10. The judge then proceeds to make a conflicting finding stating that at paragraph 87 his involvement with their lives is limited. At no point does he appear to raise the fact that he is intending to go behind the concession recorded and put this to the appellant's representative. Indeed, at paragraph 29 the judge recorded that "it is accepted that he has a relationship with each child".

11. This interacts with second ground, that the assessment of the best interests of the appellant's children was flawed because the judge failed to consider the individual circumstances of the three remaining children D, S and N when determining the implications of deportation of the appellant, ruling out the significance of the same solely on the basis that the children's relationship with their father was not significant.

12. As the grounds illustrate the judge nowhere averred to or recorded a finding on the evidence of Ms Brown, mother of the child S, speaking to the impact of the child's separation from her father with reference to her statement dated 9th July 2020. The judge also failed to consider the written evidence of Ms James, mother of child D, who attested to the child's deteriorating behaviour which she attributed to the loss of his father. In oral evidence Mr Jones submitted that the evidence of Bianca McLean, one of the children's former carers, had also made a statement which had not been addressed.

13. In view of the guidance given in **HA (Iraq) v SSHD [2020] EWCA Civ 1176,** I find that the individual circumstances of the children must be considered when assessing whether the decision to deport the appellant would have an "unduly harsh" effect on the children.

14. I appreciate, as Mr Jones indicated, that the preparation of the case had been somewhat haphazard, and the background complicated which did not assist the judge. However, I find that there was an error of law in failing to address the relevant evidence and to the legal approach to the position of the children by a failure to resolve the conflict within the decision as to the appellant's relationship with those children and a failure to consider all the relevant evidence as explained in the first two grounds. There were material errors of law.

15. The third ground of appeal was in relation to the appellant's wife and whether it would be unduly harsh for her to relocate to Jamaica. As the judge found in the alternative and that it would not be unduly harsh for the spouse to remain in the UK, the challenge in relation to the relocation is not sustainable, but it is apparent that the judge did not consider the evidence of the appellant's wife's sister to the effect that she could no longer assist her. Thus, the impact of the appellant's removal on the wife is in issue. Whether the appeal is ultimately successful on this basis is debatable but there is a material error of law because the judge failed to address a relevant piece of evidence.

16. I find therefore that the judge has materially erred in law and that the decision should be set aside. Both parties agreed that the matter should be remitted to the First-tier Tribunal.

17. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter

should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

No anonymity direction is made.

Signed *Helen Rimington* Date 18th November 2020

Upper Tribunal Judge Rimington