



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/20859/2019

THE IMMIGRATION ACTS

Heard at Field House
On 7 December 2021

Decision & Reasons Promulgated
On 10 December 2021

Before

THE HONOURABLE MRS JUSTICE J FARBEY
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CAR

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms S Cunha, Home Office Presenting Officer

For the Respondent: Ms A Jones, Counsel instructed by Thakur Solicitors

DECISION AND REASONS

1. The Secretary of State appeals against a decision of the First-tier Tribunal (FTT) promulgated on 14 July 2021 allowing the respondent CAR's deportation appeal on human rights grounds. The FTT itself granted permission to appeal.
2. CAR is a Zambian national born on 19 September 1992. She entered the UK on 25 September 2003 as a visitor when she was 11 years old. She was subsequently

granted leave to remain as the dependant of her mother and on 30 November 2006 she was granted indefinite leave to remain with her mother and siblings. On 11 September 2017 CAR was convicted on one count of blackmail in the Crown Court at Guildford. In the circumstances, we do not need to set out the facts of the offence. On 2 October 2017 she was sentenced to sixteen months' imprisonment. The Secretary of State made a decision to deport her on 9 October 2017 and a deportation order was signed on 14 November 2019. CAR appealed to the First-tier Tribunal on the grounds that her deportation would breach her right to respect for private and family life under Article 8 of the European Convention on Human Rights.

3. The appeal was heard on 29 June 2021. From what we have read it appears that the appeal hearing was centred around CAR's family life in the UK and focussed in particular on the situation of CAR's son, whom we shall call N. He was born on 22 June 2009 and is a British citizen. CAR was at the date of the hearing before the FTT no longer in a relationship with N's father. The Secretary of State agreed that it would be unduly harsh for N to relocate to Zambia but contended that it would not be unduly harsh for him to remain in the UK while his mother was deported. The FTT heard brief evidence from N, who confirmed that he wanted to live with his mother. CAR also gave evidence which is recorded at paragraphs 11 to 13 of the determination:

“11. ... In summary she said she currently lives with her mother, son and brother. She has been living there for about two years. After she was released from custody in May 2018 until January 2019 she initially lived with her stepfather, as this was her probation approved address. [N] did not start living with her straightaway, this was so that he could get used to living with her again. After about four months of her release, he began to live with her for half the time. After she moved to her mother's address from January 2019 to date, [N] continued to stay with her for half the week.

12. [N] lived with her before she went to prison. He went to live with his father when she went to prison. She and his father share custody of [N], and they have arranged this amicably between themselves. They did not attend the family courts. At present he spends from Mondays to Wednesday with his father, and from Thursday to Monday days with her.

13. [N] wishes to continue to live with her as arranged. He is aware that she may be sent back to Zambia, she made the decision to tell him that this was a possibility to prepare him in case that happens. It will have a really negative impact on him if this were to happen because they are very close, he will lose his mum and they spend a lot of time together. He did not cope well when she was in prison because it was quite sudden, and she was not expecting that she would receive a custodial sentence. He had a counsellor at school assigned to him at this time, and he became quiet and withdrawn.”

4. In its written reasons the FTT set out the relevant legal framework, reminding itself of relevant case law. It properly directed itself that it is in the public interest that foreign criminals are deported from the UK. In relation to N, it went on to consider Exception 2 in section 117C of the Nationality, Immigration and Asylum Act 2002

and the unduly harsh test together with paragraph 399(a) and (b) of the Immigration Rules. The FTT concluded that the unduly harsh test was satisfied primarily on the basis of the report of a clinical psychologist, Dr Peter Maggs. The Secretary of State challenges that conclusion.

5. It is right to note, however, that as a separate matter and as set out in paragraphs 32 and 33 of the FTT's determination, the Tribunal considered Exception 1, which applies where a person has been lawfully resident in the UK for most of that person's life, where the person is socially and culturally integrated in the UK and where there would be very significant obstacles to integration into the country to which the person would be deported. In writing, the Secretary of State sought to challenge the FTT's conclusion that there would be very significant obstacles to CAR's integration in Zambia, which is the country where it is proposed that she should be deported.
6. Before us today, however, in her oral submissions Ms Cunha on behalf of the Secretary of State has candidly accepted that paragraphs 32 and 33 of the determination do not give rise to any error of law. We bear in mind that our jurisdiction is an error of law jurisdiction and in these circumstances, where the Secretary of State cannot challenge the findings of fact and does not raise any challenge in law in relation to Exception 1, this appeal will be dismissed.
7. We would observe that the FTT judge who granted permission to appeal failed to give any reasons as to why it was arguable that the decision in relation to Exception 1 revealed any error of law, concentrating her fire on one part of the decision's reasoning in relation to Exception 2 with which she disagreed. We would take this opportunity to emphasise that the Upper Tribunal will only allow an appeal on the basis of a material error of law. Mere disagreement by a different judge of the FTT with the reasoning or conclusions in an appeal is not sufficient for the grant of permission to appeal to the Upper Tribunal. We do not think that permission to appeal should have been granted in this case.

Notice of Decision

The appeal is dismissed. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

We do not set aside the decision of the First-tier Tribunal.

Signed THE HON MRS JUSTICE FARBEY

Date 08/12/2021

Mrs Justice Farbey
Sitting as a Judge of the Upper Tribunal