



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

Appeal Number: HU/10048/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 11 March 2020**

**Decision & Reasons Promulgated
On 15 April 2020**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A A

(ANONYMITY DIRECTION MADE)

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

It is appropriate to make an anonymity order because the case involves child welfare issues. I make clear that the order is not made to protect the appellant's reputation following a conviction for a criminal offence, but to protect his family members. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent

Representation:

For the Appellant: Ms J. Isherwood, Senior Home Office Presenting Officer

For the Respondent: Mr R. Wilcox, instructed by ASK Solicitors

DECISION AND REASONS

1. For the sake of convenience I shall refer to the parties as they were before the First-tier Tribunal although technically this is an appeal by the Secretary of State to the Upper Tribunal.
2. The appellant (AA) appealed the respondent's (SSHD) decision dated 06 September 2017 to refuse a human rights claim in the context of deportation proceedings. First-tier Tribunal Judge Loke ("the judge") allowed the appeal in a decision promulgated on 31 October 2019. She set out the factual background of the case including the appellant's immigration history and those of his wife and children. She outlined the nature of the index offence that led the Secretary of State to begin deportation proceedings. She noted that it was a serious offence against one of his children for which he received a two-year prison sentence. His wife received a twelve-month sentence, which was suspended for eighteen months with a supervision requirement. As a result of the offences the appellant's children were placed under child protection plans. The judge noted that after the appellant was released from prison, arrangements were made for him to return to the family home and that two more children were born in 2017 and 2019.
3. The judge considered the nature of the criminal offences [11-13]. She outlined the serious harm done to the appellant's son (P) by his father and the concerns that were expressed by P's teachers about the injuries he received. She also took into account the damning remarks made by the sentencing judge. The sentencing judge indicated that he was alarmed to read the letters from the school and Greenwich Council, which outlined the negative impact that the offence and the subsequent proceedings had on the child. The sentencing judge also commented on the lack of insight or any remorse shown by the parents at the time.
4. The judge's decision was confined to consideration of the effect of deportation on the appellant's child P and did not consider the situation of any other members of the family. The judge noted that the length of sentence allowed the appellant to rely on the exception to deportation under section 117C(5) of the Nationality, Immigration and Asylum Act 2002 ("NIAA 2002"). She set out the provisions at [22] to [27].
5. The Secretary of State accepts that the judge directed herself to correct statements of the law at [27] but argues that she erred in her assessment of whether it would be 'unduly harsh' on the child if his father were to be deported. I find that the judge's summary of the law at [27] is correct and demonstrated that she had in mind the high hurdle required to show that deportation would be unduly harsh on the child.
6. The judge outlined her findings at [24-28]. She took into account the evidence given by the appellant as well as the child's witness statement. She also took into account what was said in a report by an independent social worker who concluded that it would not be in the best interests of

the four children for the appellant to be deported. It was open to the judge to take into account the fact that the independent social worker observed that it was likely to have had a negative effect on P's wellbeing when he was separated from his father while he was in prison. The judge found:

“Notwithstanding the criminal offences having been committed against P, it is plain that as a matter of fact P was and is attached to his father. Whilst the Appellant was in custody, not only did P suffer from his father's physical absence, but he also would have experienced entirely misplaced guilt in relation to the circumstances of his father's imprisonment; all of which clearly had a significant impact on his emotional health.”

7. The judge went on to note that the appellant and his wife completed parenting programmes in May 2017. She went on to say:

“As indicated, social services deemed it appropriate for the Appellant to return to the family home in July 2017. In fact, correspondence referred to in Mr Dooley's report indicate that the family's social worker's view was that the children need to be reunited with the Appellant, which indicates the level of attachment between the appellant and his children. At the date of the hearing the appellant had returned to the family home for over two years. Mr Dooley's report confirms that the Appellant, and his wife, have benefited enormously from the parenting programme, that the Appellant has made adjustments to parenting practices and is now a warm and nurturing father to his children.”

8. The judge went on to say [25]:

“There have been no issues of concern raised since the Appellant's return to the family home. On this evidence, I accept that the family have made significant progress since the Appellant's return, which has led to a great improvement in P's emotional and behavioural well-being”.

9. The judge considered whether the circumstances would be unduly harsh on P if he relocated to Nigeria with his parents and siblings. The judge noted that P had already suffered as the victim of his parents' criminal offences. She found that if he were to move to Nigeria this would impose an additional punishment of disrupting his education and life in the United Kingdom. She noted his age, the fact that he was about to enter secondary school, and was therefore at a critical stage of his education. The judge also took into account background evidence relating to Nigeria noting that the type of physical chastisement that he had already suffered was common in schools in Nigeria. In the circumstances, being uprooted to live in Nigeria would merely add to the suffering he had already experienced.

10. The judge then went on to consider what the situation would be for P if he remained in the UK and his father was deported. She concluded that in light of the behavioural issues that developed while his father was in prison that it was *“eminently likely that this would signal a return to P’s emotional and behavioural issues and that therapeutic intervention will once again be required”*. The judge concluded that the child’s separation from his father, albeit he was the victim of the offence, would merely add to the difficulties that he had already faced.

11. At [28] she stated:

“At present, P is currently progressing and moving on from the circumstances which led to his father’s incarceration. Whether or not P is required to go to Nigeria, or remain in the United Kingdom without his father, either circumstance is very likely to undo the progress P has made to date, and lead to a significant regression in P’s mental state. P will be prevented from drawing a line under these proceedings from which his allegation emanated, which will certainly lead to a significant deterioration in his emotional health. P has already suffered physically and emotionally as a result of being the victim of the Appellant’s criminality. The effect of the Appellant’s deportation will be to further and significantly victimise P; the effects of which in my assessment would be over and above what is generally expected in circumstances where a child is separated from a foreign national parent, and to the extent that the high threshold of being unduly harsh has been met in this case.”

Decision and reasons

12. The grounds make general submissions without particularising any errors of law in the First-tier Tribunal decision. At the hearing, the oral submissions expressed general disagreements with the findings but did nothing to articulate any discernable, let alone material, errors of law.

13. As far as I can discern any legal points from the grounds, the first point appears to be that the judge was not entitled to come to the conclusions she did because of the damning comments made by the sentencing judge. The Secretary of State argues that it was not open to her to take into account the conclusions of the independent social worker. Clearly the judge considered the remarks of the sentencing judge. She took into account the serious nature of the offence and the detrimental effect it was likely to have had on the appellant’s child. However, it was open to the judge to go on to consider up to date evidence of what has happened since sentencing. The evidence indicated that the appellant and his wife made progress in developing their parenting skills, which was monitored by children’s services. It was open to the judge to take into account evidence that showed that children’s services were satisfied that the appellant could return to the family home and indeed it appeared to be in the best interests of the children for the family to be reunited. Nothing in the judge’s findings was outside a range of reasonable responses to the evidence.

14. The second point I could discern from the grounds relates to an assertion that the judge failed to give adequate reasons for concluding that it was unduly harsh for P to relocate with his family to Nigeria. The second point does not begin to disclose an error of law in the judge's decision. It was open to the judge to take into account the unusual circumstances of this case whereby the child in question was the victim of the crime. It was rational for the judge to conclude that the further upheaval of relocating to Nigeria, and the conditions that P would face there, would be unduly harsh given his history as the victim of the offence. Similarly, when the judge turned to consider whether it would be unduly harsh for the child to remain in the UK without his father it was open to her to consider the evidence relating to the bond between father and child. The evidence showed that the child continued to have a loving relationship with his father. Despite the past history of violence towards him, he was still negatively affected by his father's absence while he was in prison. It was open to the judge to find that further separation and upheaval would compound the difficulties the child had already faced over and above the usual negative effects of deportation. It was clear that children's services had been involved in the case and that it was considered to be in the children's best interests for the family to be reunited. There is nothing in the judge's findings at [28] that could possibly be described as irrational or outside the range of reasonable responses to the evidence.
15. When properly analysed, the Secretary of State's grounds of appeal do no more than disagree with the judge's conclusions and fail to identify any arguable errors of law in her decision that would have made any material difference to the outcome of the appeal.
16. I conclude that the First-tier Tribunal decision did not involve the making of an error on a point of law. The decision shall stand.
17. The appellant succeeds in his appeal on this occasion. The threat of deportation arose as a result of his violent behaviour towards his child. The appellant should be aware that if he commits any further offences, especially if they relate to domestic abuse of his wife or children, it would be open to the Secretary of State to consider further deportation proceedings. Any evidence of continued abuse might lead to a different conclusion as to what is in the best interests of his children and where a fair balance might lie in relation to deportation.

DECISION

The First-tier Tribunal decision did not involve the making of an error of law

The decision shall stand

Signed 
Upper Tribunal Judge Canavan

Date 23 March 2020