



IAC-AH-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/10570/2019**

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On: 19 August 2021

On: 3 September 2021

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RDS

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: Ms S Azhar, counsel instructed by UK Migration Lawyers Ltd

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Abebrese, promulgated on 18 January 2021. Permission to appeal was granted by First-tier Tribunal Judge Ford on 3 February 2021.

Anonymity

2. Such a direction was made previously and is reiterated below for the benefit of the respondent's minor child.

Background

3. The respondent arrived in the United Kingdom aged 5 on a visit visa during 2002. No application was made on his behalf to regularise his stay until 2 April 2015 when he applied for settlement outside the Immigration Rules. That application was refused however, the respondent was granted limited leave to remain until 10 December 2017 owing to his family ties in the United Kingdom. He was granted further leave to remain until 25 November 2020.
4. The respondent has acquired two convictions. The first was for possession of an imitation firearm during 2017 which attracted a community disposal. On 1 November 2018, he was convicted of conspiracy to supply controlled drugs, namely cocaine, heroin and cannabis and was sentenced to a total of 40 months' imprisonment.
5. The Secretary of State signed a deportation order against the respondent on 6 June 2019. An accompanying notice of decision explained that it was not accepted that the respondent had a genuine and subsisting parental relation with his British daughter R who was then aged 1 year and 8 months. Nor was it accepted that it would be unduly harsh for R to live in Jamaica or remain in the UK while the respondent was deported to Jamaica. It was accepted that the respondent had a genuine and subsisting relationship with his partner, T but not that it would be unduly harsh for her to live in Jamaica or remain in the UK without the respondent. Consideration was given to whether the respondent could meet the private life exception because he had not been lawfully resident in the UK for most of his life, his convictions indicated that he was not socially and culturally integrated in the UK and it was not accepted that there would be very significant obstacles to his integration. The Secretary of State could not detect any very compelling circumstances such that the respondent should not be deported.

The decision of the First-tier Tribunal

6. At the hearing before the First-tier Tribunal, the respondent, his partner T, his mother and sister S gave evidence. Reliance was also placed on a report from an independent social worker, Angeline Seymour. It was accepted on behalf of the Secretary of State that the respondent had a genuine and subsisting relationship with his child. The First-tier Tribunal concluded that it would be unduly harsh for both the child and partner to go to Jamaica or remain in the UK without the respondent.

The grounds of appeal

7. The grounds of appeal argued that the First-tier Tribunal failed to give adequate or any reasons regarding his findings and secondly, that the judge materially misdirected himself on the current caselaw regarding the threshold required for undue harshness to be established.
8. Permission to appeal was granted on the basis sought.
9. The respondent filed a Rule 24 response, opposing the Secretary of State's appeal and which robustly defended the decision under appeal.

The hearing

10. I heard succinct submissions from both representatives which I have taken into account in full.
11. In essence, Mr Melvin relied on the original grounds. In relation to the first ground, he emphasised that the judge's reasons for finding that it would be unduly harsh for the respondent's child to remain in the United Kingdom without him occupied just two paragraphs of the decision and reasons. Furthermore, he noted that the judge's assessment of the report of the independent social worker was limited to a throwaway comment at the end of the decision. As for the second ground, while the judge had mentioned *HA (Iraq)* [2020] EWCA Civ 1176, he had not applied this judgment in full, with particular reference to paragraph 56 which set out the range of circumstances to be considered in relation to Exception 2.
12. Ms Azhar valiantly attempted to defend the decision and reasons. She took me to the independent social worker's report, made reference to the judge's record of the evidence he heard and argued that the judge made findings which were supported by the evidence. As for *HA*, the judge had referred to the case at [24] and stated at [25] that he had applied it. She invited me to find that there was no error of law in the decision and reasons.
13. At the end of the hearing, I announced that the decision and reasons was materially flawed owing to the judge's failure to provide adequate reasons. I expand below.

Decision on error of law

14. It is uncontroversial that it is incumbent on a judge to give adequate reasons on material matters. In this case, the appeal turned on whether it would be unduly harsh for the respondent's daughter to accompany him to Jamaica and/or whether the respondent's removal was likely to have an unduly harsh impact on her. The judge's finding on the latter point were contained in one sentence, as follows:

"I am of the view that the effects of the appellant's deportation from the UK would be unduly harsh on his daughter who recently has become accustomed to living with both parents and for this to be cut at this time would in my view be detrimental to her progress and emotional state of mind."

15. In making the foregoing finding, the judge gave no reasons and referred to none of the evidence before him. While there was an independent social worker's report, a considerable appellant's bundle and several witnesses had attended the hearing and some this evidence might have supported the judge's findings, he did not draw the strands of the evidence together.
16. While the judge accepted the evidence of the witnesses as to the respondent's relationship with his partner and child and "*attached weight*" to the social worker's report, there was no analysis of this evidence nor explanation of what detriment would be caused to the child. The judge's reasons in relation to why the child could not accompany her father to Jamaica were similarly lacking. It may well be that the judge took into consideration the non-exhaustive factors set out in *HA* in arriving at his conclusions, however if he did so it is not apparent from the decision.
17. The decision and reasons disclosed material errors of law without which it cannot be said that the judge would have arrived at the same conclusion.
18. Mr Melvin urged me to remit the appeal to the First-tier Tribunal. Ms Azhar did not object to this disposal. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the parties have yet to have an adequate consideration of this deportation appeal at the First-tier Tribunal and it would be unfair to deprive them of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of 4 hours by any judge except First-tier Tribunal Judge Abebrese.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:
Upper Tribunal Judge Kamara

Date 25 August 2021