



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

Appeal Number: HU/10894/2018

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On the 18 October 2021

On the 22 December 2021

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**K F
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Harris, Counsel instructed by Barnes Harrild & Dyer
Solicitors

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant's children, partner, or former partners. Breach of this order can be punished as a contempt of court. I make this order because one of the children is autistic and one of the former partners is the victim of domestic violence from someone other than the Appellant. The public has no legitimate interest in their identities and publicity might harm them.
2. This is an appeal against a decision of the respondent on 15 May 2018 refusing appellant leave to remain in the United Kingdom on human rights grounds.

The appellant is the subject of a Deportation Order made on 15 May 2018 following his being sentenced to 2 years 6 months' imprisonment for offences relating to possessing class A drugs with intent to supply.

3. This appeal has previously been determined unsatisfactorily. Upper Tribunal Judge Jackson set aside the decision of the First-tier Tribunal and ordered that the appeal be determined again in the Upper Tribunal.
4. The appellant is a citizen of Jamaica. He was born in June 1979. He entered the United Kingdom with leave as a visitor in January 1999 and extended his leave until the end of May 2005. However, an application for leave to remain as a student made at the end of that leave was refused. He appears to have remained in the United Kingdom and was given leave to remain as a husband of a British citizen on 19 April 2008 which leave expired on 19 January 2013.
5. The appellant had a son, Ka, who was born on 12 May 2003. I understand that he now lives with the appellant and the appellant's present partner but he has clearly achieved his majority and is not a "child" for the purposes of Part 5A of the Nationality, Immigration and Asylum Act 2002. The appellant had a daughter with his wife but no longer has contact with the daughter and I see no need to say any more about her or his former wife in this Decision and Reasons. The appellant has a son, K, who was born in January 2011 and is now 10 years old. K is the child of the appellant and one C J. K has autism spectrum disorder and although the appellant no longer lives with the child's and his mother it is the appellant's case, which C J supports, that he is very involved in his child's life.
6. The appellant also has children with a former partner, a Ms A, including children he treats as his own although says they are not. Ms A had previously supported the appellant but their relationship has broken down but he maintains contact with the children of the relationship.
7. He has two children with his present partner, Ms S B. They were born in January 2016 and, I think, 2017. The appellant and Ms B have been in a relationship since 2013.
8. Apart from the matters leading to his deportation the appellant was fined for motoring offences in September 2013.
9. I have reflected carefully about the structure of this Decision and Reasons. I have decided to concentrate on the points that I consider most important. I have read all of the material before me including diverse photographs and diary entries.
10. Ms Harris's skeleton argument rightly takes me to Part 5A of the Nationality, Immigration and Asylum Act 2002. This is plainly a case where the appellant is a "foreign criminal" within the meaning of the Act. It is also a case where the public interest does not require deportation if one of the statutory exceptions applies. Exception 1, relating to lawful residency, plainly does not apply. Exception 2, which applies where the appellant has "a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting relationship with a qualifying child, and the effect of [his] deportation on the partner or child would be unduly harsh", might apply. This is not a case where the complicating factors arising from a term of imprisonment of at least 4 years

have to be considered. I am also alert to the possibility that the particular facts of a case might lead to an appeal on human rights grounds being allowed even if the appellant cannot to show that one of the exceptions applies has been considered.

11. It is for the appellant to prove on the balance of probabilities the facts necessary to support his argument.
12. The “unduly harsh test” ought to be familiar to me and Ms Harris helpfully referred me to well-known quotations from **HA (Iraq) v SSHD [2020] EWCA Civ 1176**, which itself referred to the decision of the Supreme Court in **KO (Nigeria) [2018] UKSC 53**. For the avoidance of doubt I confirm that I accept Ms Harris’s contention that consequences are “unduly harsh” if deportation will cause a partner or a child such an elevated degree of harshness that it outweighs the public interest.
13. I remind myself that the public interest ordinarily lies in deporting foreign criminals and that the best measure of the seriousness of the offence for a Tribunal to consider is the length of any sentence of imprisonment which, as I have indicated, in this case is 30 months.
14. In his statement of 18 October 2019 the appellant made plain his regret at his criminality. He described his experience in prison as “sobering” and said he took advantage of such opportunities as there were for furthering his education and employability and expressing his willingness to work. He has not offended again and I have no reason to doubt that he intends to keep out of trouble. This is not a reason to allow the appeal but it does mean that the reasons for dismissing the appeal are not extended by reason of their being a high risk of further offending.
15. In his statement he referred to his relationship with his sometime partner, R, and his involvement in the lives of the children and that that relationship has now ended. He also talked of his relationship with K, who at that time had only recently been diagnosed with autism spectrum disorder. He understood it had been particularly difficult for K when he was in prison and the appellant was glad that he was able to be a part of K’s life once more.
16. In his supplementary statement the appellant explained that he had pursued an intimate relationship with both R and his current partner S. He confirmed that his relationship with R had ended. He talked about his relationship with S who was very critical of his R’s conduct. I have noted the concerns but they do not make much impact on my decision.
17. The appellant stated that he had not previously disclosed in these proceedings his relationship with S or their two children. This was not pursued with any vigour in cross-examination but shows a willingness on the part of the appellant to edit his evidence in a way that must impact adversely on his general credibility.
18. The appellant also indicated that if he were not around he saw no possibility of the relationship between his children who are half-siblings continuing and that would be bad for them. He also talked about his relationship with his young adult son. He felt he was a good influence on the young man’s life.

19. There are two paragraphs in his statement concerning his relationship with the child K and K's mother that I consider to be particularly important. The appellant said:
- “13. K is now aged 10, and as was the case before the First-tier Tribunal, he suffers autism. This is a condition that is not going to change. The autistic rate has fluctuated from one emotional state to the next and he has experienced changes to his daily circumstances recently as his mother has been subject to domestic violence and has been forced to move to a new house in a new area for her safety and experienced a change of schools. His condition is worsened which I believe is a response to changes in circumstances, for example he has been threatening to self-harm himself. Changes in his day-to-day life, or deviation from routine create chaos, and I am certain that he would suffer greatly if I were to be deported.
14. Furthermore, K's mother C suffers with anxiety and takes medication for this and other mental-related issues. I have put every bit of effort I can spare into having K with me, or involved with his brothers and sisters and I was told by the expert at the time he was statemented that this gives him structure and that this helps greatly. If I [am] deported, the impact on K would be significant as C will lose my support which could only be negative for her mental health and her ability to parent, and K will not continue to benefit by the structure offered by seeing his brothers and sister.”
20. He then talked about his relationship with other children. He insisted that he was involved in their day-to-day lives of all but one of them. He was also worried about Ka, his oldest child, because he did not consider him ready to lead an independent life. He worried about the company he was keeping when Ka lived with his mother in Manchester and believed it was best for him to live with the appellant and his new partner.
21. There was little cross-examination. Mr Duffy elicited answers showing that the appellant would get work if he could and if he got work he would have less time to spend with the children.
22. The appellant's former partner and K's mother, C J, gave evidence before me adopting her earlier statement of 21 October 2019 and a supplementary statement that she signed before me.
23. In the first statement she wrote about her relationship with the appellant and how she was ill whilst pregnant because of hormonal disturbance and said that although there was tension between her and the appellant:
- “I cannot fault [the Appellant] as a father; he is always there for K and they are really close.”
24. She then set out some of the behaviour that had led them to suspect autism, which was eventually diagnosed.
25. In October 2019 she said that the appellant visited K once a week but financial shortages stopped him doing more.
26. K was “really affected and confused” by the appellant's imprisonment and she said how she would worry if the appellant was not present in K's life. Apart from K missing his father now and in the future as he grew up she would miss the appellant's support. She worried particularly about how K would negotiate puberty with the added difficulties of his autism. In her supplementary

statement she said how K was starting to become a moody teenager and that bothered her.

27. However, of particular significance in her statement was her claim that she was under more stress than had hitherto been the case. She said that she had been the victim of domestic violence and she produced a note from Croydon Council tending to support that. She said that she had been diagnosed with mental health problems and had a mental health nurse and a support worker. She spoke in glowing terms of the appellant's role in her life and particularly with the life of her daughters and K. She said that the bond between father and son had strengthened and that K was more reliant on the appellant as he was aware that his mother was having problems which he knew to be the result of domestic violence. She also said how K was experimenting with self-harm and she was petrified.
28. She answered additional questions. She confirmed that the appellant sees K twice a week after school and every other weekend. She believed he would be "suicidal" if his father was removed. She said he had already self-harmed when he was stressed, his "dad is all he knows", and she thought he'd do himself real harm if he were removed. By way of example of the appellant's influence she said how, as she understood to be common with people with autism, in times of pressure K could start hitting his head against a wall and she could not cope but his father would invariably respond to a request for help and would succeed in calming down K. She said that that happens approximately twice a month.
29. K likes routine.
30. She also confirmed that she did not think she would be able to cope without the appellant's support because of her own problems.
31. She was asked in cross-examination how she would cope if the appellant was not there and she said she did have support from social workers but that did not assist because K did not like strangers. The twin girls too had been distressed because of violence in the home and they were grateful to the appellant for his support.
32. The appellant's partner also gave evidence. She was not cross-examined. In her statement that she signed before me she confirmed that she is a British national and that the appellant is the father of two of her children. They came together when an earlier relationship broke down and she said how:

"One of the main things that attracted me to '[the appellant]' was that he is very hands-on with children. I knew this as I had seen how he interacted with mine. He was exactly the same with mine even before we had children together, Os aged 5 and Ou aged 4. He takes them on outings at the weekend and holidays."
33. She then went to say how well the appellant interacted with the children and was good for the children. She would be devastated without him, that they would all be devastated without him. She could see no possibility of the half-siblings keeping in contact without the appellant being there to organise it and she would not be able to continue to accommodate the appellant's adult son if he were not there too.

34. It is a feature of this case that there is very little objective evidence to assist me. Nevertheless, I do have a full copy of the report entitled "Assessment of Social Communication Functioning" for K leading to the diagnosis of autism spectrum disorder. This is dated 7 August 2019.
35. It begins by explaining that K was referred to Croydon Child and Adolescent Mental Health Service with a view to testing for autism. Medical practitioners seemed to have no difficulty in confirming the suspicions and suggested ways in which K can be helped at school and in the home. In the heading "Interview with parent on 16/04/29" there is a description of the family circumstances and it says:

"K sees his father [the appellant] once or twice a month, usually at his grandmother's house. [The appellant] lives with his partner R, and her children M (10), M (8) and T. When K was younger there was a period of separation from his father when he went into prison for two years for selling drugs and has had inconsistent contact with K. K does not stay overnight at [the appellant's] house and [the] K sees his maternal grandmother and two maternal uncles, B(14) and H(13)."
36. Ms Harris also drew to my attention a letter from a lead practitioner at a medical centre dated 6 October 2021 which includes the observation that

"C has 3 children and one of them suffers with Autism and she requires support for him via father and other services."
37. Ms Harris accepted that this was not a conspicuously independent assessment prepared for the Tribunal but it did, at the very least, show that the contention that the appellant supported K and K's mother was not something that had been reserved solely for the Tribunal.
38. There was very little between the parties. There was not much cross-examination. That was not ill-considered. Mr Duffy accepted that there was no foundation on the material before him to cross-examine on the basis that the appellant was making up stories. It was all a matter of nuance and degree. The issue was whether the effect of the removal was unduly harsh.
39. For completeness, I do not accept that the appellant has a parental relationship with any child except K, who he sees frequently and with Os and Ou who live with him. He does have a relationship with the other children and it is probably an important relationship. He is a guiding, possibly rather avuncular figure, that generally tends to do good in their lives but there is no evidence of taking any realistic parental decisions.
40. I find it is in the best interests of each of the children that the appellant remains in the United Kingdom. Where he has an influence it a positive influence and it best that that continues.
41. Save in the case of the children where there is a parental relationship their best interests are not weighty.
42. However in the case of K there is clear evidence that he is very involved in the child's life.

43. This is a case where I would have appreciated independent evidence but I also feel the weight of Ms Harris's observation that it is a privately funded case. I must do my best with material that is not as good as I would like it to be.
44. I remind myself that I am required to balance the public interest, which is clearly in favour of deportation, as a starting point against the particular needs of the appellant's (very) extended family and especially one damaged child suffering from autism.
45. I would not have allowed the appeal for the sake of Os and Ou. Clearly it is best that they continue to be in close contact with their father but the hardship that can be expected to flow from separation is, I find, the normal consequence of deportation. It would be sad but not, I find, unduly harsh.
46. Doing the best I can, I find that the appellant's deportation would fall very heavily on K. He has already suffered considerable disruption in his life because his mother has had to move house and change schools as his mother's partner became violent. He is growing up and his father is important to him. His mother is undoubtedly willing and broadly competent but as she has indicated, she has a propensity to mental health difficulties and is being supported herself. I accept the evidence that there are frequent occasions when the appellant accepts a request for immediate help. If the appellant were not there to assist, and her ability to cope would be diminished and without being over-dramatic, it is conceivable that her family life with K and the others would come under enormous strain. I have no doubt that more help would be provided by social services at the public expense but it would not match the help that the appellant provides. It could not. The bond of affection could not be there.
47. In short, I find it probable that the appellant is in a parental relationship with K, I find it probable that the effects of removal would be unduly harsh and I allow the appeal for the sake of K.
48. It is for the respondent to decide how to give effect to my decision but it is unlikely that he will be granted indefinite leave to remain. This case may be looked at again and if the appellant does not continue to be an important part in K's life it might be hard to succeed in any further application for leave.
49. Nevertheless, for all the reasons given I allow the appeal.
50. For the sake of the child K, this appeal is allowed.

Notice of Decision

The appeal against the Secretary of State's decision is allowed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 15 December 2021