



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00182/2013

THE IMMIGRATION ACTS

Heard at Manchester  
On 11 June 2013  
And 21 August 2013

Determination Promulgated  
On 9 September 2013  
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Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

NEVILLE JACKSON  
(NO ANONYMITY ORDER MADE)

Claimant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Claimant: Mr J Nicholson, Counsel, instructed by Watson Ramsbottom  
For the Respondent: Ms S Marsh, Senior Home Office Presenting Officer (11 June 2013)  
Mr McVeety, Home Office Presenting Officer (21 August 2013)

DETERMINATION AND REASONS

1. The respondent appeals with permission against the determination of the First-tier Tribunal (First-tier Tribunal Judge A S Law and Mrs S A Hussain JP sitting as a panel), promulgated on 5 April 2013 allowing the claimant's appeal against the

decision of the respondent made on 17<sup>th</sup> January 2013 to deport him from the United Kingdom on the basis that he is a person to whom section 32 of the UK Borders Act 2007 applies.

2. The claimant arrived in the United Kingdom in 1998. He was later granted leave to enter as the spouse of Amanda Jackson (formerly Thornber), a British citizen. The couple had a son born in 1999, and 19 June 2000, the appellant was granted indefinite leave to remain. In 2003 the claimant was divorced from Ms Jackson. He formed a relationship with Ms Reeder, and in 2005, they had a child. There is in place a contact order relating to the son. The claimant's case is that he and Ms Reeder are in a relationship akin to marriage.
3. On 2 December 2011, the claimant was convicted of unlawful wounding and sentenced to 12 months' imprisonment. The respondent considered that the appellant is a person to whom section 32(5) of the UK Borders Act 2007 applies. She was not satisfied that paragraph 399(a) was met given that both of his children they were living with their mothers who were able to care for them. The respondent was not satisfied that paragraph 399 (b) was met either as the claimant was not in a subsisting relationship with a spouse or partner
4. The respondent considered also that the claimant did not fall within the terms of paragraph 399A as the appellant had not lived in the United Kingdom for a continuous period of 20 years, and that he had ties to Jamaica.
5. The respondent was not satisfied that there were exceptional circumstances raised which would outweigh the public interest in deporting the claimant, and while bearing in mind her duties pursuant to section 55 of the Borders, Citizenship and Immigration Act 2009, and that the interests of the claimant's children are a primary consideration, that there are other factors in this case which outweigh those, given that the children's mothers could continue to care for them.
6. The claimant appealed to the First-tier Tribunal against these decisions on the grounds that the decision was not in accordance with the immigration rules [1], was not in accordance with the law [2] and was unlawful under section 6 of the Human Rights Act 1998 [3]. It is further submitted that the claimant has a well-established private and family life in the United Kingdom [5]; that he is not a danger to the community [6]; that it would be disruptive to all parties if he were removed; that he is in a relationship with Michelle Reeder [8] and that deportation would not be in the children's best interests [9] and that his removal would be in breach of article 8 of the Human Rights Convention [10].
7. On 5 April 2013 the appeal came before First-tier Tribunal who heard evidence from the claimant, Ms Jackson and Ms Reeder. The Tribunal found:
  - i. That with regard to paragraph 399(a) while there was another family member who could look after the children - their mothers - there is a strong bond

between the claimant and his children [26] which would be breached and it would be disproportionate to remove him.

- ii. That with respect to paragraph 399A, while the claimant had not lived here for a continuous period of 20 years, he had lived here for a substantial time [26]; that he had no ties with Jamaica; and, has a strong family life with his two children and the mother of his younger child[26];
  - iii. That the need to safeguard and promote the welfare of children as set out in section 55 of the 2009 Act is effected by paragraph 399 (a) [27];
  - iv. That the criteria of paragraph 399 (a) is met by both children and it is in their interest that their father should not be removed from the United Kingdom [27] “but to be allowed not only under the Immigration Rules but also under Article 8 to remain “;
  - v. That although the claimant has been convicted of a serious crime and the automatic deportation provisions are engaged, the “safeguards and criteria to prevent the [claimant’s] removal have been established not only under the Immigration Rules but also within Article 8.
  - vi. That it is in the best interests of the children that each should have its full set of parents; [28] and, that this can only be accomplished if the rights of the children and the claimant are “weighed against the deportation and be allowed to stand as against it”[28].
  - vii. That the interests of the children under section 55 can only be guaranteed by the appeal being allowed[29]; that the arguments under paragraph 399 have been considered together with the supporting case law in concluding that the removal by way of deportation would not take into account the Immigration rules .
8. The respondent sought permission to appeal on the grounds that the Tribunal had failed to give reasons of adequate for findings in that it:
- i. Failed to provide reasons for their findings on the claimant’s risk of re-offending or causing him, particularly given that it was noted he showed no remorse [1];
  - ii. Failed to give adequate reasons for finding that the claimant has no ties to Jamaica, given that he had lived there until he was 26 [2];
  - iii. Failed to provide adequate reasons why it would be in the children’s best interests for the claimant to remain in the United Kingdom [3];
  - iv. Failed to provide adequate reasons for finding that the children’s interests outweigh that of the public, particularly as the claimant had been found to be a risk to women [4];

And that in consequence, the Tribunal’s assessment of proportionality is flawed.

9. On 25 April 2013 First-tier Tribunal Judge Nightingale granted permission to appeal on all grounds, having extended time pursuant to rule 24 (4) (a) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.
10. In his response pursuant to rule 24, the claimant submits:
  - i. That Judge Nightingale had erred by extending time [4], and in doing so had acted unfairly [5];
  - ii. That the Tribunal had considered properly the risk posed by the claimant and given proper reasons for this [7-8];
  - iii. That the Tribunal had directed itself properly as to the law, referring in detail to Ogundimu, and had reached conclusions as to the claimant's ties to Jamaica which were open to it [9-11], having made a favourable assessment even under the new rules [9];
  - iv. That there was no merit in the observation that British children should be deprived of one of their parents [12];
  - v. That there were no countervailing reasons of sufficient force to outweigh the children's best interests [13], not least as the claimant represents a low risk, and the reasons for the Tribunal's conclusions are adequately reasoned [14];
  - vi. That there is no merit in the grounds of appeal and the determination should be allowed to stand.
11. When the matter first came before me, I heard submissions from Ms Marsh and Mr Nicholson, and I indicated that I was satisfied that the determination did involve the making of an error of law in respect of the decision to allow the appeal under article 8. On reflection, it appeared that this may not have been material, given that the Tribunal appeared to have allowed the appeal under the Immigration Rules as well as under article 8 and the grounds of appeal made no challenge to findings under the Immigration Rules. I therefore had the matter listed for further argument on this issue and gave directions to both parties to serve skeleton arguments
12. Mr Nicholson submitted that the Tribunal had indeed allowed the appeal under the immigration rule, and that while their decision could have been clearer, it was evident when reading paragraphs 26 and 28 together that they had allowed the appeal under the Immigration Rules and had been entitled, on the particular facts of this case, to have done so.
13. Mr McVeety, relying on his skeleton argument, submitted that it was not clear that the Tribunal had allowed the appeal under the Immigration Rules and, that they could not properly have done so.
14. The Tribunal's determination could have been more elegantly expressed, but it is evident from both paragraphs 26 and 28 that they had concluded that the appellant

met the requirements of the Immigration Rules. I accept that, as Mr Nicholson submitted, that was a conclusion that would have been open to them, and the fact that they did not refer in detail to the provisions, is not a sufficient basis to conclude that they did not do so. Had the respondent challenged the Tribunal's decision to allow the appeal the Immigration Rules, it may well be that permission to appeal on that ground would have been granted, but there was no such ground put forward either in the initial application or subsequent to the directions issued drawing attention to this matter. No application has been made to amend the grounds of appeal.

15. Accordingly, I am satisfied that the Tribunal allowed the appeal under the Immigration Rules. While it may be that the Tribunal erred in failing to give adequate reasons for allowing the appeal under article 8, that error cannot be material.
16. For these reasons, I uphold the Tribunal's decision to allow the appeal under the Immigration Rules.

**Directions**

1. The determination of the First-tier Tribunal did not involve the making of an error of law and I uphold its decision to allow the appeal under the Immigration Rules.

Signed

Date: 27 August 2013



Judge of the Upper Tribunal