



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

Appeal Number: DA/00517/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
on 18th June 2014**

**Determination
promulgated
on 20th June 2014**

before

UPPER TRIBUNAL JUDGE MACLEMAN

between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BRUCE DOUGLAS COOK

Respondent

For the Appellant: Mr A Mullen, Senior Presenting Officer
For the Respondent: Mr S Winter, Advocate, instructed by Bruce Short,
Solicitors

No anonymity order requested or made

DETERMINATION AND REASONS

1. This determination refers to parties as they were in the First-tier Tribunal.
2. The SSHD appeals against the determination by a panel of the First-tier Tribunal comprising Judge Dennis and Dr Winstanley, promulgated on 3rd September 2013, allowing the appellant's appeal against deportation to South Africa under the Immigration Rules and on human rights grounds

3. The SSHD's grounds of appeal are framed on a misreading of the determination. They take it that the appeal was dismissed under the Immigration Rules, and allowed only under Article 8. There are no grounds which go to any error in the appeal having been allowed under the Rules. Mr Mullen did his best to persuade me that an attack on the outcome under the Rules could be derived from the grounds, but they are based on a misconception and give no scope for such an attack.
4. For what it is worth, and as I observed at the hearing, the panel's conclusion at paragraph 21 that the Appellant had not shown "a particular disregard for the law" in terms of paragraph 398(c) of the Rules seems highly debatable. I am also doubtful of the panel's reading of paragraph 399 as to whether the condition that there should be no other family member able to care for the child in the UK applies only to a child who has lived in the UK continuously for seven years, and not to a child who is a British citizen. There are no grounds of appeal raising those points. Again for what it is worth, I suspect that the panel has tended to "reason back" from its conclusion in favour of the appellant, trying to accommodate the facts of his case within the scope of the Rules.
5. The panel also allowed the appeal under Article 8 of the ECHR. Mr Mullen suggested that this was unnecessary, because once an appeal had succeeded within the Rules there is no need to look outside, and Article 8 is for almost all purposes now incorporated within the Rules. That may be so, but a Tribunal is required to reach a decision on all grounds of appeal properly before it, and it is good practice to give reasons for alternative outcomes, even if in short form, when an appeal has succeeded otherwise.
6. The Article 8 outcome was plainly within the scope of the panel, and the grounds do not show that it is affected by any error of law. Although he has been a persistent criminal nuisance the Appellant has been in the UK since 1997 when he was aged 17, has all his family roots and connections here, has no ongoing connection to South Africa, has three children in the UK with whom he has a relationship, and they are at least reasons to entertain hopes that he will refrain from further criminal conduct and fulfil a parental role to his children. (It can only be hoped that the panel has not been over-optimistic in these matters, and if the appellant did not realise previously that he is liable to deportation, he knows now.)
7. The SSHD's grounds of appeal do not show error of law in the panel's determination either as to the Immigration Rules or as to Article 8 of the ECHR, and the determination shall stand.

A handwritten signature in black ink that reads "Hugh Maclemon". The signature is written in a cursive style with a large, stylized initial 'H'.

19 June 2014
Judge of the Upper Tribunal