



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

Appeal Numbers: DA/01067/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 18 June 2014**

**Determination
Promulgated
On 01 July 2014**

...
Before

The President, The Hon. Mr Justice McCloskey

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HENRY BJORN MITCHARDO BELL

Respondent

Representation:

Appellant: Ms Lesley Longhurst-Woods (of Counsel)
Respondent: Mr John Parkinson, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against the Determination of the First-tier Tribunal (the "FtT") promulgated on 20 February 2014. By this Determination the FtT allowed the Appellant's appeal under the Immigration Rules. The decision which was thereby successfully challenged was the Secretary of State's decision to refuse to revoke a deportation order in respect of the Appellant.

2. The presentation of the appeal on behalf of the Secretary of State by Mr Parkinson has helpfully refined, or telescoped, the written grounds of appeal. Mr Parkinson correctly agreed with the Court's suggestion that the centrepiece of the Secretary of State's appeal may be summarised as follows.
3. In paragraph 238 of an impressively detailed determination the FtT acknowledged, firstly, that the best interests of the children affected constituted a primary consideration to be weighed in the balancing exercise. Secondly, the Tribunal identified the public interest in removing this Appellant as a very weighty factor in the proportionality assessment. It is appropriate to observe that the FtT was directing itself impeccably having regard to the decided cases.
4. Next the FtT made a specific finding, which was that the Appellant had established a very strong relationship with his partner and with the relevant children that he had done so during a lengthy period of 11 years and that strong bonds had been formed. This prompted the tribunal to say that the Appellant's removal would cause permanent emotional harm to the children concerned and, further, that their family life with the Appellant would be permanently destroyed by his removal.
5. The statement to which I have just referred forms the core of the Secretary of State's appeal. It is, in my view, correctly described as an evaluative assessment or judgment. It is incorrectly described as a finding of fact: that is plainly not appropriate. I am in no doubt that the appropriate touchstone to be applied to this evaluative assessment is the Wednesbury principle. Thus the question of law for this Tribunal in this error of law appeal is whether this key evaluative assessment is vitiated by irrationality. The answer to that question is provided fundamentally by a combination of the evidence which was available to the Tribunal, the facts which were not in dispute and the facts in respect of which the Tribunal made findings, explicit or implicit. Viewed through this prism, I conclude that this evaluative assessment lay within the range of reasonable assessments open to the Tribunal having regard to the factual matrix. Specifically, I reject the argument that this conclusion was open to the Tribunal only with the support of expert evidence of some kind, whether medical or psychiatric or social work or a combination of all these. That contention is putting the matter altogether too strongly. Expert evidence is desirable in some cases, expert evidence can assist in some cases but this particular assessment is based upon a combination of life experience, common sense and judicial notice. In the particular circumstances of this case it did not require supporting expert evidence in my view.
6. The secondary ground of appeal which featured to a substantially lesser extent in Mr Parkinson's submissions was that the Tribunal may not have applied the correct test in law. It is quite clear from a consideration of the determination as a whole and, in particular, from a consideration of

paragraph 238 as a whole that the Tribunal did not lapse in this manner. Accordingly, emphasising once again that this is an error of law appeal and that this court's opinion of what the Tribunal decided and this court's opinion of the factual matrix are both irrelevant, I find no substance in this ground.

7. I conclude that the First-tier Tribunal's determination is not vitiated by any error of law in the manner suggested on behalf of the Secretary of State. Accordingly the appeal must be dismissed.

Signed:

Seamus McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE

UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER

Date: 26 June 2014