Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01172/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 28th October 2014	**On 31st October 2014**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And
CCVT-W
(Anonymity order made)

Respondents

Representation:

For the Appellant: Ms M Cleghorn, counsel, instructed by Dickson solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant (hereafter the SSHD) was granted permission to appeal a determination of the First-tier Tribunal which allowed the appeal of the respondent (hereafter the claimant) on the grounds that the First-tier Tribunal judge failed to give adequate reasons for finding that the effect of the deportation of the claimant would be unduly harsh and failed to have adequate regard to the public interest in deportation.

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2. The judge found that the claimant fell within Exception 2 of s117C Nationality Immigration and Asylum Act 2002. The judge found [27]

   "I have good evidence before me from the Appellant and his parents that he sees [S] two or three times a week and further that the family as a whole contribute financially to [S's] upkeep. In these circumstances I find that his relationship is one where the effect of the Appellant's deportation on his child would be unduly harsh."

   Background

3. The claimant arrived in the UK on 23rd July 2005 aged 15 and was given indefinite leave to enter. His son S, a British citizen, was born on 19th January 2012. On 1st November 2012 the claimant was convicted of possession of Class C drug and using threatening behaviour for which he received a community order on 1st February 2013. On 2nd November 2012 (when his child was some 9 months old) he was sentenced to 2 years imprisonment following conviction for robbery.

   Error of law

4. I indicated prior to submissions that I had some difficulty identify the reasons for the finding that the effect of deportation on the child was unduly harsh. Ms Cleghorn said that there had been substantial and significant oral evidence as a consequence of which the claimant's case was compelling and could and should succeed. She submitted that it was clear (for example from [22] of the determination) that the judge had had very much in mind the factors to be considered and it could not thus be successfully submitted that the judge had failed to take account of the public interest in deportation. She further submitted that the evidence before the judge was such that the effect on the child was evidently unduly harsh.

5. Mr McVeety referred to the lack of any mention whatsoever of the public interest in deportation, the lack of reference to the oral evidence and the social workers report and the lack of identification of any factors that could lead to a conclusion that it was unduly harsh on the child for the claimant to be deported.

6. The First-tier Tribunal judge found that the claimant had a genuine and subsisting relationship with his son that is on-going. The failure of his former partner (his son's mother) to attend the hearing, the judge said, undermined the quality of that relationship. The child's mother is the primary carer of the child. He commenced his relationship with his son when he had indefinite leave to remain. He has the support of his mother, father and siblings and they have contact with the child, which continued during the claimant's imprisonment.

7. On the basis of those facts the judge found that the effect of deportation on the child would be unduly harsh. There is a dearth of reasoning for that conclusion. It is self evident that the removal of the claimant from contact with his son would be harsh but the possibility of deportation is a consequence of committing crime, which results in imprisonment. The claimant has not resided with his former

partner since the child was 8 months old and he had spent 11 moths in prison. It is simply not possible from the determination to establish on what basis the judge reached the conclusions he did. He makes no reference to the public interest in deportation and although it appears he was aware of s117 there is no engagement with the criminality of the claimant or what the consequences to the child may or may not be or what the nature of his relationship with the child is.

8. I am satisfied that there is an error of law by the First-tier Tribunal judge in failing to give any or any adequate reasons for the conclusions reached such that it is not possible to understand on what basis he has reached the conclusions he has.

9. In the light of the Practice Direction of the Immigration and Asylum Chamber dated 25th September 2012 and the lack of findings by the judge, this appeal is suitable for redetermination by the First-tier Tribunal. I remit the appeal to the First-tier Tribunal to be reheard; no findings, such as they are, preserved.

Conclusions:

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

I set aside the decision and remit the appeal to be heard afresh by the First-tier Tribunal.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008)

Date 28th October 2014

Upper Tribunal Judge Coker