



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/01626/2013

THE IMMIGRATION ACTS

Heard at Stoke-on-Trent
On 18 March 2014

Determination Promulgated

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Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RAYMOND LAWRENCE SAPEZEKA

Respondent

Representation:

For the Appellant: Mr McVeety, Senior Home Office Presenting Officer
For the Respondent: Mr P Draycott, instructed by Paragon Law

DETERMINATION AND REASONS

1. The respondent, Raymond Lawrence Sapezeka, was born on 9 August 1978 and is a male citizen of Zimbabwe. I shall refer hereafter to the respondent as “the appellant”

as he was before the First-tier Tribunal; I shall refer to the Secretary of State for the home Department as the respondent. On 31 July 2013, the Secretary of State decided to make a deportation order in respect of the appellant under Section 32(5) of the UK Borders Act 2007. The appellant appealed against that decision to the First-tier Tribunal (Judge North and Mr Yates) which, in a determination promulgated on 23 December 2013, allowed the appeal under the Immigration Rules. Permission to appeal to the Upper Tribunal was granted by Judge Nightingale on 16 January 2014.

2. At the end of the appeal hearing at Stoke-on-Trent on 18 March 2014, I notified the parties that I intended to dismiss the Secretary of State's appeal. I shall now give my reasons.
3. The appellant had been convicted of possessing a Class A controlled drug (crack cocaine) with intent to supply and sentenced to fourteen months' imprisonment. The appellant was released from detention in June 2010.
4. The parties agree that the appellant has a continuing relationship with Miss Stacey Smith (hereafter Miss Smith). The couple have two children, R (born in 2006) and B (born in 2012). Ray Jr has a number of very serious medical conditions, the details of which are set out in the determination at [7]. The child's condition is described in the voluminous medical evidence as "dilated cardiomyopathy with significant hypertrophy and poor functions mitochondrial complex 11 deficiency. Gross motor delay with significant contractures." The prognosis is that his health will get progressively worse and will become "very vulnerable". The parties agreed that it would not be reasonable to expect Miss Smith and the children to relocate to Zimbabwe with the appellant. The Tribunal found [15] that the appellant's relationship with Miss Smith "was significant and had lasted for a number of years". It found that, absent the existence of the two children, the relationship between Miss Smith and the appellant would, *per se*, have led the Tribunal to allow the appeal. The Tribunal noted that Miss Smith also suffers from medical difficulties and had suffered a breakdown. However, it was the presence of the children and the involvement of the appellant in their day-to-day lives, which led the Tribunal to find that the welfare of R, in particular, required the presence of the appellant. It found that the removal of the appellant would be likely to have a "serious detrimental effect" on R's health and welfare. It found (by reference to paragraph 339A of HC 395) that there are no other family member who was able to care for R in the appellant's absence.
5. The grounds of appeal take issue with this latter finding of the Tribunal. The grounds noted that Miss Smith suffers from anxiety and depression but also record that the Tribunal had found that Miss Smith had been able to manage her own and the children's medical conditions during the appellant's absence in prison. The grounds assert that the children's grandparents (notwithstanding the fact that they are themselves unwell and receive Disability Living Allowance) would be able to provide emotional support.
6. As Mr Draycott, for the appellant, submitted, the Secretary of State is, in essence, arguing that, because Miss Smith coped previously with the children during the absence of the appellant, she would be able to do so again. I agree with Mr Draycott

that that analysis ignores the detailed findings of the Tribunal, in particular that the condition of R is likely to deteriorate, possibly rapidly. The Tribunal found at [11] that, “the presence of the appellant is of assistance to [Miss Smith] in managing her condition and that his removal is likely to make it more difficult for her to maintain mental health”. The Tribunal recorded that the appellant's partner’s doctor was of the opinion that the appellant's deportation would “have a significant notable impact on Stacey and her children”.

7. I find that the Tribunal was careful to have regard to the very particular factors in this case and its finding that, notwithstanding that Miss Smith had been able to cope in the past, the physical and mental welfare of Miss Smith and the children would be damaged if the appellant were to leave the country was clearly available to them on that evidence. The argument contained in paragraph (1) of the grounds of appeal did not find favour with the Tribunal. Raised again on appeal, it is little more than a disagreement with the Tribunal's findings.
8. The second ground of appeal asserts that the Tribunal made a material misdirection in law. The grounds cite **SS (Nigeria) [2013] EWCA Civ 550** and **MF (Nigeria) [2013] EWCA Civ 112** and assert, whilst acknowledging that there are “compelling circumstances relating to the appellant's children”, that it was unclear why those circumstances should be “very compelling” in the context of the appeal in general. The grounds suggest that the Tribunal considered the problems of R, in particular, “in isolation” and failed also to have proper regard to the public interest concerned with the appellant's removal.
9. I find that that ground of appeal does not have merit. In a careful and well reasoned determination, the Tribunal has considered all the circumstances both for and against allowing this appeal. It is, in my view, unfair to suggest that excessive weight has been attached to the needs of the child R; the Tribunal, has, quite properly, considered the child’s very serious and complex medical requirements in some detail but it has also tackled the question of public interest head on (see in particular [14]).
10. This is one of those unusual cases where, notwithstanding the appellant's offending, the circumstances are so compelling as to meet the exacting requirements imposed by the Immigration Rules. The Tribunal’s determination of the Immigration Rules appeal and its (admittedly brief) allowing of the appeal on Article 8 ECHR grounds at [16] are free of legal error and I dismiss the appeal.

DECISION

11. This appeal is dismissed.

Signed

Date 24 March 2014

Upper Tribunal Judge Clive Lane