UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

THE IMMIGRATION ACTS

Heard at: Birmingham
On: 7 July 2013

Decision Promulgated:
On 31 July 2014

Before

Upper Tribunal Judge Pitt

Between

Secretary of State for the Home Department

Appellant

and

AB
(Anonymity Order Made)

Respondent

Representation:

For the Appellant: Mr Mills, Senior Home Office Presenting Officer
For the Respondent: Ms Norman, instructed by Ravi Dilan & Hayer Solicitors

DETERMINATION AND REASONS

1. The appeal is brought against the decision promulgated on 12 May 2014 of First-tier Tribunal Judge Ferguson and Mr GF Sandall which allowed the appellant's appeal against the respondent's decision of 13 November 2013 to make a deportation order against AB.

2. For the purposes of this decision, I refer to the Secretary of State as the respondent and to AB as the appellant, reflecting their positions before the First-tier Tribunal.

3. The appellant is a citizen of Kosovo.

4. The appellant's history is not in dispute. The appellant and his wife entered the UK illegally on 10 March 2000. They came with their two older children, LB and EB. Their asylum claims failed. Two further children were born in the UK, FB and PB. On 24 April 2004 the family were granted indefinite leave to remain.

5. On 26 August 2005 AB was convicted of assault occasioning actual bodily harm and sentenced to 18 months imprisonment. He was at the same time convicted of dangerous driving, using a vehicle whilst uninsured, driving otherwise than in accordance with a licence and driving a motor vehicle with excess alcohol for which he received an additional 8 months imprisonment to run concurrently. He was disqualified from driving for 3 years. He was released from prison in 2006.

6. In March 2010 the family applied for British nationality. AB was refused but the rest of the family are now British citizens.

7. As above, on 13 November 2013 the respondent made a decision that it was conducive to the public good to deport AB.

8. The ground of appeal before me was narrow. The respondent accepted that the appellant had a genuine and subsisting relationship with his British minor children and that it was not reasonable to expect those children to leave the UK. The respondent did not accept that there was no other family member who was able to care for the children in the UK. The respondent's view was therefore that the requirements of paragraph 399(a)(i)(b) were not met and the appellant's relationship with his children could not prevent deportation.

9. The First-tier Tribunal found otherwise at [26] of its determination, concluding that the appellant's wife was not able to care for the children in the UK without the appellant. The respondent challenged that finding, maintaining that the panel was not entitled to find that the wife's medical conditions precluded her from caring for the children where there was little medical evidence of this. The panel referred at [23] to it being "difficult" for her to care for the children but this was not sufficient to meet the test in paragraph 399(a)(i)(b)

of being “unable” to care for them.

10. In my judgement, the First-tier Tribunal identified quite rightly at [21] that the question of whether the wife could care for the children was “at the heart of the appeal”. The panel was equally correct in indicating at [22] that there was limited medical evidence before it on the wife’s medical conditions.

11. It remains the case that the panel was entitled to place weight on the letter dated 11 September 2013 from the GP which was consistent with the evidence of the appellant and his wife that she would be unable to care for the children alone as she suffers from a number of medical conditions including “type 2 diabetes mellitus with neuropathy, asthma, osteoarthritis, vitamin D deficiency, headache and obesity” and had had a “thigh lipoma excised, joint injections for arthritic pain and carpal tunnel release” and was on a large number of medications. It was a matter for the panel to place what weight they saw fit on the illness of the wife in their assessment of whether she would be able to care for the children without the appellant.

12. In addition, the First-tier Tribunal had further evidence before it supporting the claim that the wife was not able to look after the children. There was a letter dated 10 December 2013 from EB’s head teacher at page 64 of the appellant’s bundle. This confirmed that the appellant played a fundamental role in supporting EB who had significant educational and behavioural difficulties and had previously been excluded from mainstream education. The letter stated that the appellant was contacted on a daily basis about EB and was working with the school to support the child. The head teacher also confirmed the school’s view that the appellant’s wife found it difficult to manage the children and that the appellant should be allowed to stay in order to continue to be able to offer support to EB.

13. There was also a letter dated 10 December 2013 from PB’s school at page 65 of the appellant’s bundle confirming that the appellant’s wife was not well. The letter stated that the school “strongly” disagreed with the decision to deport the appellant as he was “vital to [PB]’s emotional and behavioural condition as he does most of the looking after of the children.” The school was also “firmly of the opinion that [PB]’s behaviour and academic progress would seriously deteriorate if he were to lose his father through deportation.”

14. There was a further letter dated 11 December 2013 at page 66 of the appellant’s bundle from Barnado’s who were supporting the family. That letter also confirmed that the appellant’s wife had

medical problems and that the family needed support with household budgeting and parenting.

15. There was clearly, in my view, sufficient evidence before the First-tier Tribunal, notwithstanding the absence of detailed medical evidence, to allow it to find that the appellant's wife was unable to care for the children in the absence of the appellant and that paragraph 399(a)(i)(b) was met. I did not find that the decision disclosed an error on a point of law in so finding, the grounds really only seek to reargue the point.

Decision

16. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed:  Date: 12 November 2014
Upper Tribunal Judge Pitt

Anonymity

I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, his wife or his children. I do so in the best interests of the children in order to protect their identities.