



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

Appeal Number: IA/21795/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 25 September 2014**

**Determination
Promulgated
On 1st October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**MR ANDREW BARRETT
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert, Counsel
For the Respondent: Mr S Allen, Home Office Presenting Officer

DECISION

1. No anonymity direction has been made in these proceedings hitherto and nothing has been put before me today to suggest that one should now be given.
2. The appellant is a citizen of Jamaica. His application for leave to remain was refused by the respondent who went on to give directions for the appellant's removal from the United Kingdom to his home country. The

respondent's decision was made on 14 May 2013 and was the subject of an appeal. That appeal was heard by Judge of the First-tier Tribunal E B Grant at Hatton Cross. In a determination promulgated on 29 July 2014 she dismissed it.

3. The appellant was granted permission to appeal by Judge of the First-tier Tribunal Shimmin on 18 August 2014. His reasons for so doing are as follows:-

- “1. The appellant seeks permission to appeal, in time, against a decision of a Panel chaired by First-tier Tribunal Judge E.B. Grant who, in a determination promulgated on 29 July 2014, dismissed the appellant's appeal against the Secretary of State's decision to refuse him leave to remain.
2. The respondent's decision was based on the view that the appellant's presence in the UK was not conducive to the public good.
3. The grounds of appeal argue that the panel erred in:
 - (1) Failing to record the gist of the appellant's evidence accurately, not least the nature of his evidence with his children;
 - (2) Failing to give any/adequate reasons in support of the conclusion that the appellant had not given a credible explanation as to the personal nature of his cannabis use;
 - (3) Failed to consider a relevant matter, namely an independent social worker report;
 - (4) Misdirected itself/speculated in finding that the residence order of 2009 was not the final order;
 - (5) Misdirected itself in holding that the trigger for consideration of proportionality under Article 8 was 'exceptional and compelling' circumstances and not arguably good grounds (MM and Others [2014] EWCA 985); and the appellant's 12 year presence, his lack of recent convictions and 3 British children's best interests were sufficient to trigger the proportionality exercise.
4. The determination does not consider material evidence, namely the independent social worker's report of 30 September 2013.
5. The grounds of appeal disclose an arguable error of law.
6. All grounds remain open.”

4. Mr Gilbert relied on all the grounds put forward in the application seeking permission to appeal and in particular submitted that not only was there a failure by the judge to consider expert evidence in the form of an

independent social worker's report but also all three witness statements of the appellant.

5. Mr Allen was referred by me to the respondent's response to the grounds of appeal under Rule 24, and in particular paragraph 4 which states:

"The appellant's grounds contend that the Panel failed to consider material evidence, namely the independent social worker's report of 30 September where the determination makes no mention of the existence of such a report and there is no evidence that such a report was before the Panel at the time of the hearing, nor is there any record of any witness/oral evidence regarding this report ..."

I referred Mr Allen to the report which is contained within the appellant's bundle which was put before the First-tier Tribunal.

6. That report is germane to the issues that fell to be considered by the Tribunal as of course are the balance of the witness statements provided by the appellant himself.
7. Whilst there is of course no general requirement for the judge to set out the totality of the oral evidence considered it is a matter of good practice to summarise at least the material parts of the evidence which the judge has heard so as to enable an informed reader to ascertain the nature and content of that evidence and also to enable the appellant to be satisfied that the judge has directed his mind properly to the material aspects of the evidence. It is also incumbent upon the judge to make clear findings of fact on the material issues and to give proper intelligible and adequate reasoning for arriving at those findings. (See **AK (Failure to assess witnesses' evidence) Turkey [2004] UKIAT 00230**.)
8. Having failed to engage with this evidence the judge has materially erred having failed to give adequate reasons for findings on material matters.
9. The determination is therefore set aside in its entirety and the appeal will proceed to a de novo hearing.
10. In deciding whether to satisfy the decision of the First-tier Tribunal under Section 12 of the Tribunals, Courts and Enforcement Act 2007, I can dispose of the appeal in one or two ways, either by remitting the case to the First-tier Tribunal or by remaking the decision. The choice is regulated by paragraph 6 of part 3 of the Practice Directions of the Immigration and Asylum Chamber of the Upper Tribunal which only contemplates remittal in very limited circumstances though this so is such a case. The effect of the cumulative errors detailed above have been to deprive a party - the appellant - before the First-tier Tribunal of a fair hearing, or other opportunity for the parties' case to be put to and considered by the First-tier Tribunal. In those circumstances I remit this case to the First-tier Tribunal subject to the attached directions. I do so with the consent of both representatives before me today.

Signed

Date 1 October 2014.

Deputy Upper Tribunal Judge Appleyard

DIRECTIONS FOR REMITAL TO THE FIRST-TIER TRIBUNAL

1. The appeal is to be listed at Hatton Cross on 23 March 2015.
2. The time estimate for the hearing is five hours.
3. No interpreter is required.
4. In the event of either party wishing to file and serve additional evidence this must be done so no later than 21 days prior to the date of hearing.

Signed

Date 1 October 2014.

Deputy Upper Tribunal Judge Appleyard