



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

Appeal Number: AA/11551/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons**

**Promulgated**

**On 12 October 2015**

**On 3 November 2015**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR ANTOINE KABEMBE MUKALA**

Respondent

**Representation:**

For the Appellant: Mr Tom Wilding, Senior Home Office Presenting Officer

For the Respondent: Mr Alasdair Mackenzie, Counsel, instructed by Wilson Sols. LLP

**DECISION AND REASONS**

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.
2. The appellant (hereafter the Secretary of State) appeals against the decision of the First-tier Tribunal (Judge Buckwell) allowing the

respondent's appeal against a decision taken on 10 December 2014 to deport the respondent from the UK and to refuse his asylum and human rights applications.

### **Introduction**

3. The respondent is a citizen of the DRC born in 1974. He was convicted on 18 November 2011 at Canterbury Crown Court for possession and control of identity documents with intent and was sentenced to 15 months imprisonment. He previously entered the UK in November 2007 with a Belgian passport that was not his. He was sentenced to 9 months imprisonment at Horseferry Road Magistrates' Court on 18 January 2008 for bring in possession of a false instrument. The first deportation order was made on 10 July 2013 but that was withdrawn on 8 January 2014. A second deportation order was made on 2 March 2014 but was withdrawn on 10 September 2014. The third deportation order was made on 10 December 2014.
4. The Secretary of State accepted the respondent's identity and nationality but concluded that in light of his offending that deportation was appropriate. The respondent's partner suffered from major depressive disorder and dissociative disorder and was almost totally dependent upon the respondent but she might recover and would have access to public services to support her. The removal decision was not disproportionate.

### **The Appeal**

5. The respondent appealed to the First-tier Tribunal and attended an oral hearing at Taylor House on 15 June 2015. He was represented by Mr P Haywood, Counsel. The First-tier Tribunal found that the respondent was a credible witness and the medical evidence in relation to his partner was unchallenged. The partner was not capable of acting as a carer for her children because of her illness. There could be an even greater deterioration in her health if the respondent was removed. The respondent also had a productive, genuine and subsisting parental relationship with I, the partner's young teenager son. There were likely to be potential savings to the public purse if the continued presence of the respondent was allowed. There was a risk that I would be taken into care at vast public expense if the home support and care for him was judged to be inadequate. The continued presence of the respondent was very positive for I. It would be detrimental for his interests to have to take care of his mother.
6. The respondent's appeal was dismissed on asylum and humanitarian protection grounds but allowed on human rights grounds under paragraph 399 of the Immigration Rules.

### **The Appeal to the Upper Tribunal**

7. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law because the analysis of undue hardship did not balance the adverse impact of the respondent's offending with the adverse impact on his family or consider the potential mitigation of the adverse effects by state services and a more detailed assessment of the effect on the partner's children was required. The entire family appeared to be dependent upon public funds and the assessment of the respondent's ability to support himself in the UK was inadequately reasoned.
8. Permission to appeal was granted by First-tier Tribunal Judge Parkes on 12 August 2015. The first two grounds were not particularly strong, however the economic well-being of the UK was relevant and so an analysis of the respondent's ability to support himself was required and any decision would need justification. Permission to appeal was granted on all grounds.
9. A detailed rule 24 response supporting the decision was submitted by Mr Haywood on 25 August 2015.
10. Thus, the appeal came before me

### **Discussion**

11. Mr Wilding submitted that the first two points in the grounds are building blocks for the third point. Paragraph 70 of the decision makes reference to removal damaging the public purse but there is then no reference in paragraph 77. The risk of I going into care is a speculative assessment.
12. Mr Mackenzie made detailed submissions which I do not need to set out in full. Mr Wilding did not make any further submissions in response. There is no challenge to the medical evidence or to the positive credibility findings made by the judge. There is also no challenge to the very competent analysis of the relevant provisions of the Immigration Rules and the 2002 Act which appears at paragraphs 71-78 of the decision. The challenge is narrow and primarily based upon the failure to analyse the ability of the respondent to support himself in the UK.
13. I find that the decision is comprehensive and well-reasoned. The assessment and conclusions on the facts are detailed and make it readily apparent why the decision was made. The adverse effects of deportation on the family were properly considered and it is clear that the judge had in mind the impact of the respondent's offending. The conclusions in relation to the risks to the family emerged from unchallenged evidence. The issue as to whether telephone contact could be maintained with I is not material to the outcome of the appeal. It was properly open to the judge to find that the respondent was the carer for his British citizen partner and the only effective parent for I, so as to remove the risk that he might have to go into care. I find that to be a realistic rather than speculative assessment.

14. I reject the submission that the failure to analyse the respondent's ability to support himself financially in detail if allowed to remain demonstrates a material error of law. The judge has given adequate reasons for finding that removal of the respondent would not positively further the economic well-being of the UK and those reasons are soundly based upon the evidence. No material error of law arises.
15. Thus, the First-tier Tribunal's decision to allow the respondent's appeal under the Immigration Rules did not involve the making of an error of law and its decision stands.

**Decision**

16. Consequently, I dismiss the appeal of the Secretary of State.

Signed 

Date 31 October 2015

Judge Archer  
Deputy Judge of the Upper Tribunal