



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

Appeal Number: OA/05547/2014

THE IMMIGRATION ACTS

**Heard at Field House
On the 23rd April 2015**

**Decision & Reasons Promulgated
On the 14th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR DONOVAN FULLWOOD
(ANONYMITY DIRECTION MADE/NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer

For the Respondent: Miss M Vidal, Counsel, Duncan Lewis & Co Solicitors

DECISION AND REASONS

1. Mr Fullwood is a citizen of Jamaica with a lengthy and I can safely say unimpressive immigration and criminal history. He was deported from the UK so he was illegally in the UK when to be returned at one point in breach but has since returned to Jamaica. Since 1998 he has accrued no further convictions and is now a man who has maintained that status since then.
2. This appeal comes about because in 2012 he successfully challenged the deportation that had been made some years before. His appeal on that occasion was heard in Field House on the 12th April 2012 by Upper Tribunal

Judges Warr and Kekic. For reasons that they gave in a lengthy determination promulgated on the 25th April 2012 placing reliance not only on the evidence that showed that he had reformed and had changed. It was also decided that the Article 8 rights of others, principally his wife and son, were such that the deportation order could no longer be sustained. Reliance was placed on several other determinations that preceded theirs and they found that the original Tribunal which had dismissed his application to revoke had made an error of law. That decision was set aside and the Upper Tribunal remade the decision allowing it on Article 8 grounds.

3. That decision has not been challenged and remains extant. I also noted that there is no evidence to show other than the fact that they have been separated for now longer and that his son is now older that there have been no other material changes of circumstances.
4. The Appellant applied under Appendix FM for entry clearance to join his wife and son. It is accepted that he meets all of the requirements of Appendix FM except that the Secretary of State followed the Entry Clearance Officer and placed reliance on the suitability requirements of Appendix FM and in particular S.EC.1.4. That reads as follows:
 - “(a) The exclusion of the applicant in the UK is conducive to the public good because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least four years or,
 - (b) have been convicted of an offence for which they have been sentenced to a period of imprisonment for at least twelve months but less than four years unless a period of ten years has passed since the end of the sentence, or
 - (c) being convicted of an offence for which they have been sentenced to a period of imprisonment of less than twelve months unless a period of five years has passed since the end of the sentence.”
5. Where this paragraph applies unless refusal would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees it will only be in exceptional circumstances that the public interest in maintaining the refusal will be outweighed by compelling factors.
6. The first of those exceptions was the basis on which the Tribunal Judge allowed the appeal, namely that it would be a breach of Article 8 that his exclusion would absolve him and so therefore he fell within that paragraph which provided the exception to the suitability requirement.
7. The Secretary of State has challenged that. The grounds argue that the Judge had not considered whether or not S.EC.1.4A applied. The category

I have stated is the decision maker and the ISE are joined to first assessment of the refusal of entry would be contrary to the ECHR or the Refugee Convention and then if not to go on to consider whether there are exceptional circumstances. The grounds were considered and permission was granted by Judge Mark Davies. He noted that the Judge had qualified her mind as to whether the exclusion of the Appellant was conducive to the public good.

8. It seems to me that they have missed the central point. Clearly SE1.4 applies to this Appellant because of the nature of his convictions but the exception is that unless refusal would be contrary to the Human Rights Convention it would only otherwise be in exceptional circumstances that the public interest in maintaining refusal would be outweighed by compelling factors. That paragraph has to be read as meaning that where it is contrary to the Human Rights Convention then the suitability requirements are displaced. Full consideration has been given to the background of Mr Fullwood on several occasions and he has the benefit of the Upper Tribunal determination promulgated on the 13th April 2012 and signed by Dr Kekic in that it was found then that his continued exclusion would be a breach of Article 8. Applying Devaseelan that was a finding which the First-tier Tribunal in this case was obliged to follow.
9. Accordingly the Judge was obliged to find that Mr Fullwood's continued exclusion was a breach of the Human Rights Convention and therefore the exception to the suitability requirement automatically came into play. It was not then necessary to consider whether there were any exceptional circumstances the breach of the Human Rights Convention answered the public interest point that would otherwise have been made.
10. In those circumstances I am obliged to find that the decision was not only one that was open to the Judge, it is a decision that the Judge was obliged to make, relying on the determination of Judges Kekic and Warr and accordingly in those circumstances there is no error contained within the determination. The decision of the First-tier Tribunal is upheld and the appeal of the Secretary of State is dismissed.

NOTICE OF DECISION

The appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal stands.

No anonymity direction is made.

Signed

Date 28 April 2015

Deputy Upper Tribunal Judge Parkes