Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: DA/01130/2013
DA/01131/2013
& DA/01132/2013

THE IMMIGRATION ACTS

Heard at : Royal Courts of Justice	**Determination Promulgated**
On : 25 January 2016	**On : 27 January 2016**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SR
RC
SC
(ANONYMITY ORDER MADE)

Respondents

Representation:
For the Appellant: Ms T Wilding, Senior Home Office Presenting Officer
For the Respondent: Mr A B Sesay, instructed by Duncan Lewis & Co Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing the appeals of SR and her two children, RC and SC, against a decision to deport them from the United Kingdom. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and SR, RC and SC as the appellants,

reflecting their positions as they were in the appeals before the First-tier Tribunal.

2. The appellants are citizens of Jamaica, born on 17 December 1987, 9 October 2011 and 1 August 2007 respectively. The second and third appellants are the son and daughter of the first appellant. The first appellant (to whom I shall refer as "the appellant") arrived in the United Kingdom in July 2000 as a visitor and was subsequently granted indefinite leave to remain as the dependant child of her father.

3. On 13 January 2006 the appellant was convicted of possession of Class A drugs (crack cocaine) with intent to supply, and was sentenced to three years' imprisonment in a Young Offenders Institution. That sentence was reduced on appeal to 21 months' imprisonment. A decision was made to deport the appellant in August 2006, following which she made an unsuccessful appeal. A deportation order was then signed against her in March 2007, but could not be served on her as she absconded.

4. On 10 December 2009 the appellant was convicted of theft and breach of conditions and was sentenced to 4 months and 20 days' imprisonment and had a suspended sentence activated. The deportation order previously signed against her was then served on her, on 2 May 2010.

5. The appellant applied for revocation of the deportation order. Her application was refused on 13 December 2010 but she successfully appealed against the decision on Article 8 grounds. She was then granted 3 years' Discretionary Leave on 30 June 2011.

6. On 1 December 2011 the appellant was convicted on two counts of burglary and theft and sentenced to 14 months' imprisonment. She was then served with a notice of liability to automatic deportation. A deportation order was signed against her on 17 May 2013 and on 20 May 2013 the respondent made a decision that section 32(5) of the UK Borders Act 2007 applied. Decisions were also made to deport her two children, the second and third appellants, pursuant to section 3(5)(b) of the Immigration act 1971.

7. The appellants appealed against the decisions and the appeals came before the First-tier Tribunal on 3 October 2014. The appeals were dismissed by First-tier Tribunal Judge Clayton on 31 October 2014, but the judge's decision was subsequently set aside in the Upper Tribunal by reason of error of law, on 20 January 2015. The appeals were remitted to the First-tier Tribunal to be heard afresh and came before First-tier Tribunal Judge Wyman on 24 June 2015.

8. In a decision promulgated on 16 July 2015, Judge Wyman allowed the appeals on Article 8 grounds.

9. The respondent sought permission to appeal that decision to the Upper Tribunal and permission to appeal was granted on 11 August 2015.

10. Thus the appeals came before me. There was some discussion as to whether the deportation decision for the main appellant had in fact been before the First-tier Tribunal, as the only decisions contained in the files before me were for the children. Mr Wilding provided a copy of that decision for the court file.

11. I heard submissions from both parties on the error of law and advised the parties that in my view there were errors of law in the judge's decision such that the decision had to be set aside in its entirety and re-made. I reached that decision for the following reasons:

12. It was the respondent's case that the appellant could not meet the requirements of paragraph 399(a) and (b) or 399A of the immigration rules and that it was therefore for the appellant to demonstrate very compelling circumstances over and above those in paragraph 399 and 399A, for the purposes of paragraph 398 of the immigration rules, which she could not do.

13. With regard to the two children, the second and third appellants, the respondent's case was that paragraphs 365, 366 and 368 of the immigration rules applied as they were children of a person against whom a deportation order had been made. The respondent also considered that the children fell for refusal under the suitability provisions of the rules, in section S-LTR 1.6 of Appendix FM because of their association with the appellant.

14. However the judge gave no consideration to any of these provisions. She proceeded on the basis of the principles in R (Razgar) v SSHD [2004] UKHL 27, applying the same principles and immigration rules to all three appellants, and without reference to the rules relating to deportation. Indeed the only apparent application of the provisions relating to deportation appear to be at [128] where she referred to the provisions in section 117C of the Nationality, Immigration and Asylum Act 2002 and concluded that it would be unduly harsh to deport the children and that the effect of the appellant's deportation on the children would be unduly harsh. However that conclusion was not supported by any reasoned findings, was on the erroneous basis that the children were British and failed properly to engage with the "unduly harsh" test.

15. For all of these reasons the judge's decision contains material errors of law and cannot stand. In the absence of any properly reasoned findings it seems to me, as Mr Wilding submitted, that the decision has to be set aside in its entirety and re-made once again. Mr Sesay did not disagree.

16. Accordingly, the most appropriate course would be for the appeals to be remitted to the First-tier Tribunal again, for the decision to be re-made.

DECISION

17. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeals are remitted to the First-tier Tribunal, pursuant to section 12(2)(b)(i) of the Tribunals, Courts

and Enforcement Act 2007 and Practice Statement 7.2(b), to be dealt with afresh, before any judge aside from Judges Clayton and Wyman.

DIRECTIONS

18. In light of the fact that this is the second time the appeals have been remitted to the First-tier Tribunal, it would appear appropriate for there initially to be an oral case management review hearing, in particular because the appellants have new representatives and thus clarification of the availability to all parties of all the documents relevant to the appeals would therefore be helpful. It may also be appropriate for the appeals to be heard before a panel.

Signed
Upper Tribunal Judge Kebede