IAC-AH-CJ-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01455/2014

THE IMMIGRATION ACTS

Heard at Nottingham Magistrates' Court	**Decision & Reasons Promulgated**
On 17 November 2015	**On 28 January 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

FED EDWARD DRUMMOND
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Vokes, instructed by Ian Henry Solicitors Ltd
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Fed Edward Drummond, was born on 1 December 1972 and is a male citizen of Jamaica. The appellant appealed against the decision to deport him dated 21 July 2014 to the First-tier Tribunal (Judge A J Parker/Mr G H Getlevog) which, in a decision and reasons promulgated on 8 June 2015, dismissed the appeal on all grounds. The appellant now appeals, with permission, to the Upper Tribunal.

2. The grounds are helpfully summarised in the grant of permission of Judge Osborne which is dated 10 July 2015:

> "The grounds assert the panel erred and that it made a misdirection of law at [13] by misquoting paragraph 339(a) of the Immigration Rules – the panel stated that it required a child to be British **and** have resided in the United Kingdom for seven years. This is wrong as the Rule states **or** and not **and**. The panel then went on to misquote the rest of the Rule. This was a material consideration as the respondent submitted the children are not British. The finding at [41] does not apply the correct test and is inadequately reasoned. The panel failed to properly consider Section 55 of the 2009 Act and the best interests of all the appellant's children. At [20] the panel found that there was no evidence that the children's mothers could not provide the four care points listed in the Children's (sic) Act 2004. This was inadequate. At [33] the panel cited paragraph 398(c) and then at [41] found that the appellant is a persistent offender. This is perverse. The appellant has a previous conviction from 2007 and a caution from 2009 which the panel wrongly described as a conviction at [11]. The appellant cannot rationally be described as a persistent offender. This was a case where the appellant was sentenced to sixteen months' imprisonment and so paragraph 398(b) applies. The panel's findings at [42] are confused and inadequate in relation to Section 117C(5) of the 2002 Act."

3. I find that the grounds have merit. As Judge Osborne observed, the Tribunal misquoted paragraph 399(a) of HC 395 (as amended) at [13]; the Tribunal appeared to believe that it was necessary under the Rule for there to be a genuine and subsisting relationship between an applicant and a child under the age of 18 years who is in the United Kingdom, is a British citizen and who has lived for seven years preceding the date of the immigration decision in the United Kingdom. For the reasons stated by Judge Osborne, this is not correct. The nationality of the children concerned was material; at [44] having received the written submissions from the representatives the panel decided that the children were not British citizens and that their passports had been revoked "as they were issued on the basis of false documentation". It was difficult to see how the Tribunal could have applied the Rule accurately if it believed (wrongly) that the children had to have resided in the United Kingdom for seven years and be British citizens (whilst at the same time finding that their British citizenship had been revoked). It is unclear how this misinterpretation of the Rule may have played out in the Tribunal's analysis. As a result of its misinterpretation, the Tribunal has fallen into serious error.

4. As Mr Vokes, for the appellant, pointed out, there are also serious factual inaccuracies in the decision. At [15] the Tribunal recorded that one of the appellant's former partners (Donnaree) had been "residing in the appellant's home from Monday to Friday with her children". At [40] the Tribunal stated that the appellant had been separated from his children and had "not lived with any of their mothers since 2007 when he parted from Donnaree". It may be the case that the Tribunal rejected Donnaree's evidence regarding living with the appellant and the children Monday–Friday but, if that is the case, the Tribunal should have given reasons for

doing so. It must be said, however, that the factual matrix in this case is extremely complicated with the appellant having had a number of relationships over the years and children by different women. However, it is all the more important in such cases for the fact-finding Tribunal to make every effort to record the evidence accurately.

5. I refer to the comments made above in the grant of permission by Judge Osborne as to the Tribunal's finding at [41] that the appellant is a persistent offender. At [41] the Tribunal has made no attempt to explain why it considers the appellant's offending to be persistent; it simply asserts that it has been. I find that the lack of any proper analysis on this matter represents a serious flaw in the decision.

6. I also agree that the Tribunal's analysis in respect of Section 55 is inadequate. The Tribunal records the somewhat cryptic remark of the Secretary of State in the refusal letter that "there is no evidence that the children's mothers cannot provide the four care points listed in the Children's Act 2004" [20]. It is not at all clear (least of all, I imagine, to the losing party, the appellant) what is meant by that statement; the Children Act 2004 is not referred to again in the refusal letter or, indeed, in the Tribunal's decision. The basis of the Tribunal's reasoning is far from clear.

7. In the circumstances, I set aside the decision of the First-tier Tribunal. I set aside the findings of fact of the Tribunal. There will need to be a new fact-finding exercise which is best conducted by the First-tier Tribunal.

Notice of Decision

8. The decision of the First-tier Tribunal promulgated on 8 June 2015 is set aside. None of the findings of fact shall stand. The decision is returned to the First-tier Tribunal (not Judge A J Parker/Mr G H Getlevog) for that Tribunal to remake the decision.

9. No anonymity direction is made.

Signed Date 1 January 2016

Upper Tribunal Judge Clive Lane