Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/02315/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26th November 2015	**On 4th January 2016**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR J C S
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr C Avery, Home Office Presenting Officer
For the Respondent: Mr A Sesay, Duncan Lewis & Co Solicitors (Harrow Office)

DECISION AND REASONS

1. In this case the Secretary of State appeals to the Upper Tribunal with permission against a Decision of Judge McIntosh in the First-tier Tribunal. By a Decision promulgated on 19th May 2015 the judge allowed Mr S's appeal against the Secretary of State's Decision to deport him under the automatic deport provisions of the UK Borders Act 2007, following a conviction for possession of class A drugs with intent to supply and a sentence of 28 months' imprisonment.

2. The case presented to the First-tier Tribunal was that the Appellant's current partner and her children's situation justified the appeal being

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allowed. The facts as found by the judge in the Decision was that the Appellant and his partner were in a subsisting and committed relationship, that the stepchildren, and I will call them that for want of a better phrase, view him as their father, he has a child with the same partner, he also has a number of other children with whom he has varying degrees of contact, his partner suffers from sickle cell anaemia and she has had various crises and admissions to hospital as a result and her son also has sickle cell anaemia.

3. When the Appellant was in prison Social Services had to become involved due to her inability to care for her children. The Appellant is her carer and receives carer's allowance in relation to that. There was evidence before the judge from Probation and from a prison officer that the Appellant presented a low risk of reoffending and detailing the efforts that he had made to improve and to rehabilitate himself. On the above facts the judge found that it was unduly harsh for the children and his partner to go to Jamaica with him and also or alternatively to remain in the UK without him.

4. It is true that the judge's reasoning is unstructured and difficult to follow and it does not address in terms the various parts of Rules 398 and 399A of the Immigration Rules and, as Mr Avery pointed out, in fact is contradictory between paragraphs 46 and 47. At paragraph 46 the judge says that he has had regard to the provisions of paragraph 398 and in particular 399(b) finding that the Appellant is in a genuine and subsisting relationship with his partner and the children but then at paragraph 47 completely contradicts that by saying he does not meet the requirements of the Rules. However, the findings that he makes are reasoned in relation to the factual circumstances and the situation that would be faced by the family.

5. So far as the Secretary of State's argument that the COIR makes clear that there are treatment facilities available in Jamaica, that is neither referred to in the refusal letter nor was there any evidence put before the judge to that effect, so the only evidence he had was that put forward by the Appellant. Therefore the Judge cannot be criticised for not dealing with evidence that the Secretary of State did not produce or put before him. It is quite clear from the various findings that the Judge does make that he found that the exception in paragraph 399A is met and so any error of law in the rather difficult to follow and unstructured Decision and Reasons is not material.

6. The sickle cell anaemia condition, while for some people has minimum impact on their lives and is well-controlled, that clearly is not the case for the Appellant's partner in this case, and for those reasons the judge came to the conclusion that his presence was necessary in the United Kingdom and it would be unduly harsh on the remainder of the family, in particular the children, if he was not. The likelihood is, based on the evidence, that the children would have to be taken into care when she has crises, and indeed there is evidence today that she has recently had another one and she is unable to care for the children. It is clearly the case that children in

care or being taken into care as an alternative to remaining at home with a parent is unduly harsh.

7. Taking the public interest into account; the Immigration Rules tell us that it is in the public interest to deport somebody unless the exceptions apply. If the exceptions apply, that is the end of it. In this case the judge clearly found that the exceptions applied and therefore I find no material error of law and the Secretary of State's appeal is dismissed.

Notice of Decision

The appeal is dismissed

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 21st December 2015

Upper Tribunal Judge Martin