



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/14110/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Birmingham**

**On 20 June 2017**

**Decision &  
Promulgated**

**On 28 June 2017**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**LEROY O'SHANE TAVARIS  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Norman, instructed by J M Wilson

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Leroy O'Shane Tavaris, was born 23 November 1989 and is a male citizen of Jamaica. He appealed to the First-tier Tribunal (Judge Jessica Pacey) against a decision of the respondent dated 23 December 2015 that he should be deported from the United Kingdom under Section 32(5) of the UK Borders Act 2007. The First-tier Tribunal in a decision promulgated on 18 August 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant sought to remain in the United Kingdom on the basis of his relationship and contact with his two children, a daughter (R) and a son (L). In seeking to apply the relevant provision of the Immigration Rules (paragraph 399A) it is clear that the judge was aware both of the existence of R but also L (who, as at the date of the Upper Tribunal hearing, is a little over a year old). She records L's existence in her decision at [9] and refers again to L at [11] when beginning her consideration as to whether it would be unduly harsh for the children to remain in the United Kingdom without the appellant. Thereafter, L drops out of the analysis entirely save for a brief reference at [16]. Indeed, at [45], the judge wrote:

“... here I advance the nature of the appellant's offending, the fact that he has committed more than one offence and the sentence he has been given against his somewhat lukewarm case in respect of R and, for the reasons I have set out above, find that the latter does not outweigh the public interest in deportation ...”.

3. Mr Mills, for the respondent, helpfully conceded that the judge's analysis was flawed by her failure to take account of the existence of L and to apply the relevant provisions to him. Mr Mills submitted that the decision should be set aside and the appeal remitted to the First-tier Tribunal for a new fact-finding exercise and remaking of the decision. I agree with that submission. It is, perhaps, understandable that the judge has focused on the elder of the two children with whom the appellant has enjoyed a longer history of contact but her failure to include in the analysis the child L must mean that the decision cannot stand.

### **Notice of Decision**

The decision of the First-tier Tribunal which was promulgated on 18 August 2016 is set aside. None of the findings of fact shall stand. The appeal is remitted to the First-tier Tribunal (not Judge Jessica Pacey) for that Tribunal to remake the decision.

No anonymity direction is made.

Signed

Date 23 June 2017

Upper Tribunal Judge Clive Lane