Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/00029/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 January 2018	**On 24 January 2018**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PATRICK GEORGE ROWE

Respondent

Representation:

For the Appellant: Mr. S. Kandola, Home Office Presenting Officer

For the Respondent: Mr. W. Rees of counsel, instructed by Chris & Co. Solicitors

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Respondent, who was born on 24 September 1975, is a national of Jamaica.

2. First-tier Tribunal Judge Griffith allowed his appeal in a decision, promulgated on 11 September 2017. The Appellant appealed and First-tier Tribunal Judge Phillips refused her permission to appeal on 17 October 2017. The Appellant renewed her application to the Upper Tribunal and on 30 November 2017 Upper Tribunal Judge Rimington granted her permission.

ERROR OF LAW HEARING

3. Both the Home Office Presenting Officer and counsel for the Respondent made oral submissions and I have referred to the content of these submissions, where relevant, in my decision below.

ERROR OF LAW DECISION

4. Upper Tribunal Judge Rimington found that it was arguable that First-tier Tribunal Judge Griffith had failed to consider the weight that should be afforded to the public interest and that the reasoning in relation to whether the Respondent's deportation would result in unduly harsh circumstances for his partner and children was incomplete or inadequate.

5. At the hearing before the First-tier Tribunal the Appellant had accepted that the Respondent had a genuine and subsisting parental relationship with his partner and their three children.

6. In paragraph 52 of her decision the First-tier Tribunal Judge also reminded herself that the deportation of a foreign criminal is in the public interest and the more serious the offending the greater the public interest in deporting him. She also noted that in *MM (Uganda) v Secretary of State for the Home Department* [2016] EWCA Civ 450 the Court of Appeal had found that "the expression "unduly harsh" requires regard to be had to all the circumstances including the criminal's immigration and criminal history".

7. At paragraph 55 she also reminded himself that in paragraph 50 of *Hesham Ali v Secretary of State for the Home Department* [2016] UKSC 60 it was held that

> "The critical issue for the Tribunal will generally be whether, giving due weight to the strength of the public interest in the deportation of the offender in the case before it, the Article 8 claim is sufficiently strong to outweigh it. In general, only a claim which is very strong indeed – very compelling, as it was put in *MF (Nigeria)* – will succeed".

8. She also reminded herself that in *Rexha (S.117C – earlier offences)* [2016] UKUT 00335 (IAC) the Upper Tribunal found that:

> "The purpose and intention of Parliament in incorporating section 117C of the Nationality, Immigration and Asylum Act 2002 was to ensure that all of the criminal convictions providing a reason for the deportation decision are to be examined within the framework provided by that section.
>
> What is required when undertaking the exercise required by sections 117C(1) to (6) is careful scrutiny of those offences which are on a person's criminal record which have provided a reason for the decision to deport".

9. Therefore, it was necessary to take into account the totality of the Respondent's criminal history and not just his more recent offences.

10. Between 7 November 2007 and 20 May 2009 the Respondent was cautioned for possession of cannabis, fined £200 for possession of a Class C and a Class A drug, fined £75 for possession of a Class C drug and given a conditional discharge for obstructing a drugs search. On 22 July 2009 he was sentenced to three years and four months imprisonment for the supply of Class A drugs. This led to a deportation order being signed against him on 20 January 2011 but his subsequent appeal was allowed on Article 8 grounds and his deportation order was revoked on 26 September 2011 and on 30 September 2011 he was granted discretionary leave to remain until 29 March 2012.

11. In addition, on 13 May 2013 the Respondent was cautioned for possessing cannabis, on 6 February 2014 he received a conditional discharge for possession of cannabis and on 9 December 2015 he was fined and disqualified for 13.5 months for failing to provide a specimen.

12. First-tier Tribunal Judge Griffith referred to these offences in detail in paragraphs 4 to 7 of her decision. She then considered the weight to be given to the various offences in paragraphs 59 and 60 of her decision and also reminded himself of the sentencing remarks made in 2009 when the Respondent was sentenced to imprisonment.

13. In paragraph 61 she then stated that:

> "... in order to assess proportionality I have considered the countervailing factors. The appellant has not been in trouble arising from any drugs offences since 2014 and there is no evidence before me that today he presents a risk to the public. As to his immigration history, he has not overstayed and has made applications for leave which have been granted. It also took the respondent three years to decide the appellant's application for further leave. In *EB (Kosovo)* the court referred to the development of close personal and social ties during a period of delay which could serve to strengthen an Article 8 claim. Furthermore, the delay in taking action to deport him must serve as an indication of the lack of any pressing public interest in doing so".

14. The First-tier Tribunal Judge then explained in paragraphs 63 to 68 why it would be unduly harsh to deport the Respondent relying on the very strong and compelling features relating to his family life, which included the fact that his children were all British, he had played a central role in their lives, his partner would struggle to effectively parent them without him and Romeo, in particular, would be risk if the Respondent was absent. Therefore, I do not accept the Home Office Presenting Officer's submission that First-tier Tribunal Judge Griffith had failed to apply the substance of the case law referred to. It is also my view that the First-tier Tribunal Judge's findings on best interests in paragraph 66 of her decision were merely a part of her overall balancing exercise and not a substitution for such an exercise.

15. As a consequence, I find that the decision reached by First-tier Tribunal Judge Griffith was one that was open to her on the evidence before her and in light of current case law although it was not one which all First-tier Tribunal Judges would have reached. Therefore, she did not err in law in her decision.

DECISION

(1) The Appellant's appeal is dismissed.

(2) First-tier Tribunal Judge Griffith's decision is upheld.

Nadine Finch

Signed Date 22 January 2018

Upper Tribunal Judge Finch