



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08242/2017

THE IMMIGRATION ACTS

Heard at Field House
On 29 JANUARY 2018

Decision & Reasons Promulgated
On 30 JANUARY 2018

Before

UPPER TRIBUNAL JUDGE FREEMAN
UPPER TRIBUNAL JUDGE LANE

Between

[D J]
(~~ANONYMITY DIRECTION NOT MADE~~)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Nizami, instructed by Duncan Lewis & Co solicitors
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, [DJ], was born on [] 1981 and is a male citizen of Jamaica. He appealed to the First-tier Tribunal (Judge Rowlands) against a decision of the Secretary of State dated 17 May 2016 to deport him from the United Kingdom under section 32(5) of the UK Borders Act 2007. The First-tier Tribunal, in a decision promulgated on 19 October 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. We find that the appeal should be allowed. The Secretary of State has responded to the grant of permission by filing a statement under Rule 24 indicating that she does not oppose the appeal. It is apparent from our reading of the First-tier Tribunal decision that the judge has wholly failed to deliver a thorough and properly structured analysis of the appeal on Article 8 ECHR grounds. There has been no consideration of paragraphs 398 and 399 of HC 395 (as amended) or of section 117C of the 2002 Act (as amended). The judge has failed to make any assessment of the best interests of the children concerned in the appeal pursuant to section 55 of the Borders, Citizenship and Immigration Act 2009. In consequence the judge's decision is vitiated and will need to be remade.

3. We discussed the disposal of the appeal with the advocates. Although the primary errors in the decision concern the judge's failure to apply the law, we accept that the findings of fact are, as a consequence of that failure, incomplete. We find that we should set aside such findings of fact as the judge has made and that a *de novo* assessment of the evidence is now required. That is a task better undertaken by the First-tier Tribunal to which the appeal is now returned for the remaking of the decision. We raised with Mr Tufan the accuracy of the criminal record of the appellant, in particular an offence in 2006; the record before us indicated (improbably) that the appellant had received a 30 month sentence from a Magistrates Court. That record, in turn, may have influenced the submission made to the First-tier Tribunal (but not contained in the refusal letter) that the appellant is a persistent offender. We are sure that the Secretary of State will address these matters prior to the next hearing.

Signed

Date 29 January 2018

Upper Tribunal Judge Lane