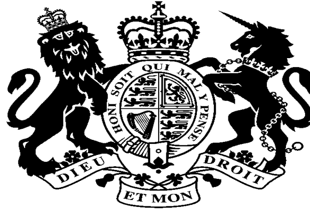

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12870/2017

THE IMMIGRATION ACTS

Heard at Field House
On 13th August 2018

Decision sent to parties on
On 15th October 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

J C H
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr Emeka Pipi, Counsel instructed by Samuel Ross Solicitors
For the respondent: Mr Esen Tufan, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, his wife or children, whether directly or indirectly. This order applies to,

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amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission against the decision of the First-tier Tribunal to deport him to his country of origin and to refuse him refugee protection, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The appellant is a citizen of Jamaica.

2. The appellant is a foreign criminal subject to automatic deportation pursuant to section 32 of the UK Borders Act 2007. He challenges the deportation order on human rights grounds.

Background

3. The appellant has a poor immigration history. He entered the United Kingdom as a visitor on 8 November 2000, when he was 39 years old. When his visit visa expired, he overstayed, making no attempt to resolve his immigration situation for about 2 years. The appellant is 56 years old now.

4. On 20 April 2002, the appellant married his wife, who had a daughter and a son from a previous relationship. On 31 January 2003, the appellant was granted discretionary leave until 18 March 2007, based on his marriage. The appellant and his wife have two daughters together, born in 2003 and 2005. The appellant also claims to have family life with his stepson born in 1997.

5. On 16 March 2007, the appellant applied for further leave to remain which was refused, as his marriage was not considered to be subsisting: he successfully challenged that decision on appeal and was granted further discretionary leave expiring on 14 January 2011.

6. On 7 November 2007, the appellant was convicted at Camberwell Green Magistrates Court on charges of driving a motor vehicle with excess alcohol, using a vehicle whilst uninsured and driving otherwise than in accordance with a licence, for which he received a community sentence.

7. On 12 June 2012, the appellant was convicted at the Central Criminal Court of raping his step-daughter in 2002, when she was just 11 years old, before his marriage to her mother. The child's evidence was that the rape was not an isolated incident: the sentencing remarks noted that 'there were ...further instances of sexual misbehaviour on your part, albeit nothing that justified any … charge'. He was sentenced to 9 years' imprisonment and to being placed on the Sex Offenders Register for an indefinite period.

8. His former partner and all three children are British citizens and there is still an injunction preventing him from living with them. The children live with their mother. The appellant's step-daughter and stepson are both adults now.

9. On 19 May 2016, the respondent made a deportation order with a one-stop notice. Following the deportation order, the appellant alleged for the first time that he was at risk in Jamaica on return because he had been involved in a financial arrangement for a Jamaican person then in the United Kingdom, in which he was supposed to transfer £20,000 in cash via Western Union from the United Kingdom to Jamaica. When challenged by Western Union and told that such a large sum could not be transferred without a money laundering investigation, the appellant informed his client (who was now in Jamaica) that he could not carry out the instructions and would dispose of the money. He says he shredded it and that if returned to Jamaica, he would be at risk of serious harm from the client.

10. The appellant claimed that he could not be deported on human rights grounds and was entitled to the benefit of Exception 1 in section 33(2) of the 2007 Act.

11. On 25 January 2017, the respondent rejected the appellant's human rights claim. He accepted that it would be unduly harsh to expect the children to live in Jamaica, but not that it was unduly harsh for them to remain in the United Kingdom without the appellant. The respondent did not accept that it was in the children's best interest for the appellant to remain in the United Kingdom: they were safely cared for by their mother. The appellant's outstanding application for indefinite leave to remain as the spouse of a settled person was also refused.

First-tier Tribunal decision

12. The First-tier Tribunal Judge heard evidence from the appellant and his estranged wife, whose accounts were not consistent. She did not believe the money laundering account, considering it to be a fabrication to enable the appellant to remain in the United Kingdom. In the alternative, she considered that there was a sufficiency of protection in Jamaica.

13. The Judge did believe the wife's account of having forgiven the appellant for his treatment of her daughter but not that he had any relationship with his two daughters, whom he had not seen for over six years:

> "39. I accept also that the appellant has a genuine and subsisting relationship with his wife, albeit they are unable to live together because of the appellant's circumstances and will be unlikely to be able to do so in the foreseeable future. I cannot be satisfied that he has such a relationship with his children. It is apparent form the evidence that I heard that for some time prior to his incarceration, the appellant was only permitted to see the children under supervision of social services. I am satisfied that it is likely that this will be the case in the future. In this regard, I have seen what is in the parole board report. Further, I have to take account of the fact that the appellant has enjoyed no direct contact with the children for a period of over six years. Indirect contact of the type the appellant has enjoyed up to now can continue if the appellant is deported to Jamaica.
>
> 40. In evidence the appellant's wife indicated she would be prepared to go to Jamaica, once the children were old enough. In the meantime, she may continue to be

in contact with the appellant by way of telephone calls, Skype etc. It may well also be that she can visit the appellant in Jamaica. "

14. The Judge applied sections 117A, 117B and 117C, before concluding that the appellant had not shown very compelling circumstances preventing his deportation, having regard to his offending, the public interest, the lack of ability to have a family life of any great substance on release, his immigration history in the United Kingdom, and his prospects of reintegration in Jamaica on return.

15. The appellant appealed to the Upper Tribunal.

Permission to appeal

16. Permission to appeal was granted on the question whether the First-tier Tribunal Judge had considered properly the best interests of the appellant's children, although the Judge who granted permission noted that section 55 was not relied upon in the appellant's skeleton argument before the First-tier Tribunal.

17. Permission was not granted in relation to the Judge's consideration of the section 72 certificate.

Rule 24 Reply

18. There was no Rule 24 Reply.

19. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

20. For the respondent, Mr Tufan accepted that the children were in the United Kingdom. He pointed out that the children were British citizens and could remain in the United Kingdom with their mother. The second decision from the respondent dated 20 November 2017 dealt with their circumstances.

21. In order to succeed, paragraph 398 of the Rules required the appellant to demonstrate very compelling circumstances over and above the existence of a genuine and subsisting relationship, as it had not been established that it would be unduly harsh for the children to remain in the United Kingdom without the appellant. The First-tier Tribunal Judge had not been satisfied that there was a genuine and subsisting relationship between the appellant and his children. Paragraph 399(a) of the Rules fell at the first hurdle. The appellant could not now be heard to say that it was not in the children's section 55 best interests for the appellant to be deported, having made no oral or written submissions to that effect before the First-tier Tribunal.

22. For the appellant, Mr Pipi relied on the First-tier Judge's failure to mention section 55 and the wife's witness statement, which reflected difficulties at school and letters written by the children to the appellant in custody, saying how much they missed him. There had been no application under the Family Court Protocol to admit evidence from the family court proceedings, but Mr Pipi confirmed that the injunction remained

in place and that before his incarceration, the appellant was permitted only supervised contact.

23. A report had been requested, but not obtained, from the school psychologist involved with the children. Mr Pipi submitted that it was not inevitable that another Judge would reach the same conclusion on the best interests of the children as the First-tier Tribunal Judge had done.

24. Mr Pipi accepted that he had made no section 55 submissions to the First-tier Tribunal, either in his skeleton argument or orally. Section 55 was also not dealt with in the refusal letter, as the Secretary of State did not accept that the children were in the United Kingdom. The Judge had found that they were. Mr Pipi said that the children had not visited their father in prison, with contact being limited to telephone calls and so on.

Discussion

25. I remind myself that it is only the question of the section 55 best interests of the children for which permission to appeal was granted. The appellant did not argue that question, either in writing or orally, at the First-tier Tribunal hearing. Nor has the appellant disclosed why the Family Court maintains the injunction, six years after his conviction.

26. The First-tier Tribunal made a finding of fact, having heard oral evidence and submissions, that the appellant has no genuine and subsisting relationship with his children. I am not satisfied that the First-tier Tribunal Judge erred in law in the brief but cogent reasoning in paragraphs 39-40 of the decision, nor in reaching that finding of fact.

27. The First-tier Tribunal's reasoning on this issue is proper, intelligible, and adequate. There is no material error of law in her conclusion and I uphold her decision.

DECISION

28. For the foregoing reasons, my decision is as follows:

    The making of the previous decision involved the making of no error on a point of law I do not set aside the decision but order that it shall stand.

Date: 27 September 2018 Signed *Judith AJC Gleeson*

Upper Tribunal Judge Gleeson