Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00405/2018

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On 22 January 2019	**On 14 March 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

G--- F--- D--- S---
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr D Mills, Senior Home Office Presenting Officer
For the Respondent: Mr V Jagadeshal, Counsel instructed by Turpin Miller Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter "the claimant", against the decision of the Secretary of State on 24 May 2018 to make her the subject of a deportation order.

2. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the claimant. Breach of this order can be punished as a

contempt of court. I make this order because the merits of the case concern the welfare of two children who are British citizens, a son who I identify as "F" who was born in July 2003 and so is now 15 years old and a daughter "E" who was born in December 2006 and so is now 12 years old. The respondent is their mother and is a national of Belgium. She was born in July 1976 and says that she entered the United Kingdom in 1994 when she was 18 years old.

3. The claimant says that she has lived in the United Kingdom since then and has been exercising treaty rights. She is married to a British national and on 3 October 2017 they were each sent to prison for two and a half years. They had been convicted of cheating the public revenue. In simple terms, they had run a business and collected tax and national insurance payments that they did not forward. Although the offence was a joint enterprise this appellant had cheated the public purse out of something in the order of £254,000.

4. The First-tier Tribunal allowed the appeal out of concern for the claimant's children.

5. I begin by looking carefully at the First-tier Tribunal's decision and reasons.

6. The judge noted that the Secretary of State accepted (eventually) that the claimant has a genuine and subsisting parental relationship with her children. It was not accepted that she had a similarly genuine subsisting and relationship with her husband who is a British national. According to the First-tier Tribunal Judge, it was not accepted that it would be "unduly harsh" for the children to move to Belgium to live with their mother or to remain in the United Kingdom and have such contact with their mother as they could arrange.

7. The claimant represented herself before the First-tier Tribunal. It may be that some of the inconsistencies in her evidence were the result of careless preparation rather than an intention to deceive because the corrected version appears to have emerged without difficulty during the hearing but she had claimed to have had no relationship with her family in Belgium and then changed her evidence to say she had some contact with her father and brother.

8. The judge found her an "intelligent, articulate and confident woman".

9. The judge was particularly interested in what had happened to the children. In anticipation of a prison sentence the claimant had arranged for them to live with their paternal uncle and aunt but that relationship broke down and the children went into foster care.

10. The judge noted that in the local authority's papers it was contemplated that the claimant's partner would be released from prison and would live subject to electronic tagging in a place where he could not accommodate the children. It was the claimant's son's case that he "didn't really know" his father. His father used to stay with the family most weekends. He spent a of time in London running the business. The judge noted that F had been out of school for seventeen months and his education had suffered.

11. It was said that the children's father had "inconsistent contact" since being imprisoned. There was a long letter from a key social worker stating that the father maintained regular telephone and sporadic postal contact with the children. It was the father's declared intention to move together to a house in Yorkshire after his release.

12. The judge noted that the children do not speak French fluently but had seen school reports indicating the children do speak German although she accepted they had only very limited knowledge of Dutch. The social worker was anxious that the children remained in the United Kingdom, being of the opinion that "we would like to stress the importance of both children to remain in the country of their birth so as to avoid any disruptions or possible distress caused by social dislocation". This recommendation was based without regard to the criminality of the mother but solely on the needs of the children.

13. The judge was not satisfied that the claimant had acquired a right of permanent residence in the United Kingdom. This appears to be based on uncertain evidence about her economic activity. The judge noted too that the children's father was born in 1949 so he will be 70, in fact very soon.

14. The judge said at paragraph 44:

> "I have assessed the evidence as a whole and having done so I find that the [claimant] has been the children's primary carer since they were very young children. The children do know their father, but he is a distant figure and does not have a strong relationship with them, being a distant figure in their lives who has only visited them in their home once a week from about 2007 onwards when they moved to Suffolk with their mother."

15. The judge was not satisfied that there was a genuine and subsisting relationship between the parents. She noted too the claimant's evidence that their children's father did not feel able to look after them. The judge found that he had said different things at different times about his proposals for the children and concluded that she was:

> "Not satisfied that [the claimant's husband] is committed to caring for the children after his release from prison and I accept that he has told the [claimant] that he does not think he can care for them as he is too old. His becoming the sole or primary carer of the children really does not fit in with his plans to move to Yorkshire. These children have endured two changes of home and school since last October and I find it significant that [the claimant's husband] is not prioritising trying to keep them in their current school over his plans."

16. The judge noted too that the claimant's husband had supported the family financially from the business.

17. The judge found the prospects of rehabilitation for the claimant equally good in the United Kingdom and Belgium but she was satisfied that the claimant *did* present a "genuine, present and sufficiently serious threat affecting one of the fundamental

interests of society" (paragraph 51). This was based on the apparent failure to come to terms with the conviction and to accept responsibility for what had happened.

18. At paragraph 53, the judge, rightly, noted that the real issue in the appeal is whether the decision is proportionate having regard to the best interests of the minors.

19. The judge continued at paragraph 56:

> "Social Services have made it very clear that they consider the removal of the two children from the UK to be contrary to their best interests". There was a caveat to this in that they did not know the extent of the criminal offending, but it would be difficult to avoid finding that a forced move for these children would be contrary to their best interests, given that these two children are 14 and 11, are British nationals, were born here and have never lived in Belgium. I am satisfied that they both speak French but speaking it and coping with an education system using French and Flemish are two very different things. They have had to endure great upset in their young lives due entirely to their parents' behaviour. They have been removed from school and home-schooled for a time although I am not satisfied that this was done in a satisfactory way. They were placed with relatives when their parents were imprisoned and when this did not work out, they were put into foster care. Their father is elderly and feels he cannot look after them and while it may seem surprising, given that they are currently in foster care, the fact remains that he has never been their day-to-day carer. Their mother has been their sole day-to-day carer throughout their childhood. I am satisfied that their father is neither willing nor able to take on their day-to-day care."

20. Mr Mills did not draft the grounds. To the extent that they challenge the lawfulness of the First-tier Tribunal Judge's conclusion that the children would not be looked after by their father, they are wholly inept. It might be thought a poor reflection on the children's father that he did not show more enthusiasm for becoming their carer but the facts are that he has never been their carer, he is now 70 years old and the children are teenagers. He has honoured his responsibilities to the children by providing for them financially but the finding that he had never done much more is plainly open to the judge and it is unarguable that she was entitled to conclude that they would not be subject to his care.

21. The judge then had to decide whether it was best for the children that their mother remained in the United Kingdom. She had no hesitation in concluding that it was. This is completely uncontroversial. The children have never lived anywhere else and, as has been explained rather carefully by the judge, that had considerable disruption in their lives it is very desirable that they have no more than is necessary.

22. Of course, the clear finding about the best interests of the child is not determinative of the appeal. All things have to be considered. The judge, correctly, concerned herself with the proportionality of the decision. She found that the children should not be expected to go and live in Belgium. She did not regard this as completely unthinkable. She considered how they might cope and noted they have some language in common and of course they would have a supportive mother but the

judge was concerned about the disruption they had experienced in the recent past and noted that all of their understanding and cultural development has been in the United Kingdom. Mr Jagadeshal accepted there might have been room for this issue to have been decided differently but that is not the point. It was decided in the way it was. Mr Mills properly reminded me of the important public interest in removing people who are due to be deported and it is plain that the judge only had to consider proportionality because she was satisfied that the appellant was still a risk.

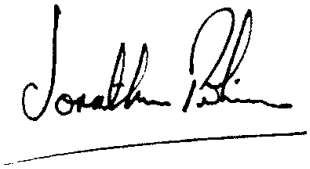
23. The judge's view was that the best interests of the children were clear and outweighed the public interest in removing the mother. I reflected carefully on the grounds and Mr Mills' reflective and apt submissions. The fact remains that this is a considered decision where the correct law was identified and where the public interest was clearly in the mind of the judge. It was not mentioned in passing but referred to more than once in the decision and was very much in her mind before she reached her conclusion. It is an entirely sensible decision that the children should not be expected to leave the United Kingdom and an entirely sensible decision that their best interest lies in their mother remaining with them to give the care and guidance that is necessary in their teenage years. The decision that removal was not proportionate and that more weight should be given to the interests of the children than the public interest in removal was a considered and the conclusion was open to her.

24. It would have been better if the judge had referred expressly to schedule 1 of the Immigration (European Economic Area) Regulations 2016 but the judge clearly appreciated the importance to the public of removing criminals as well as the best interests of the British citizen children. The offending involves dishonesty. It does not have aggravating feature of involving particularly abhorrent crimes such a trafficking or drug abuse and it is not international crime. The relationship with the children was not forged cynically when the claimant could have expected her conduct to have attracted the attention of the authorities.

25. All in all, I find no material error of law in the decision.

Notice of Decision

There is no error of law here and I dismiss the Secretary of State's appeal against the First-tier Tribunal's decision.



Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 11 March 2019