



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/13790/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 25 June 2019**

**Decision & Reasons
Promulgated**
On 28 June 2019

Before

**LORD BOYD OF DUNCANSBY
(Sitting as a Judge of the Upper Tribunal)
UPPER TRIBUNAL JUDGE CANAVAN**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**J A O A
(ANONIMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr T Lindsay; Home Office Presenting Officer
For the Respondent: Mr Shoye, Solicitor; CW Law Solicitors

DECISION AND REASONS

1. The Secretary of State appeals with leave against a decision of FTTJ Saunders dated 16 April 2019. For convenience we shall refer to the parties as they were designated before the FTT.
2. The appellant is a Nigerian aged 45. His immigration history is set out in paragraph 1 of the FTT decision. On 24 April 2015 he was convicted at Snaresbrook Crown Court of making false representations for gain and

supplying articles for use in fraud. He was sentenced to 30 months imprisonment on each count to be served concurrently. On 18 October 2016 the respondent made a deportation order. He was subsequently served with removal directions but he made a verbal claim for asylum. Following a judicial review being lodged and refusal of his claim for protection a fresh decision was served on 12 December 2018.

3. The appellant appealed the decision on both protection and human rights grounds. The protection claim was not pursued before the FTT and he relied on article 8.
4. The appellant is in a relationship with Mrs A. She has two children, D, who is 7 and J who is 6. They are British citizens. They have no contact with their biological father. The appellant has a parental relationship with them. The appellant and Mrs A also have another child born in July 2018. Mrs A has health difficulties resulting from a medical accident during the birth of her latest child when her bladder was accidentally cut during a caesarean section. D is on the autistic spectrum and receives 1:1 support at primary school.
5. The grounds of appeal can be summarised as follows; the FTTJ failed to give adequate reasons as to why it would be unduly harsh for D if the appellant was deported and D remained in the UK; that the FTTJ gave no consideration as to the possibility of accessing assistance from social services; and that the expected harsh consequences that the appellant's partner and D will suffer from the appellant's deportation do not meet the threshold of unduly harsh consequences.
6. Mr Lindsay adopted the grounds of appeal. He acknowledged that the decision was a careful and balanced one but that nevertheless the facts did not support a conclusion that the threshold of unduly harsh as described in **MK (Sierra Leone) [2015] UKUT 223 (IAC)** and approved by the Supreme Court in **KO (Nigeria) [2018] UKSC 53** had been met. Nor had the FTTJ considered the availability of social services to assist if required.
7. We did not need to hear from Mr Shoye. We are satisfied that there is no error of law in the FTTJ Saunders determination. As Mr Lindsay conceded this was a careful decision. D is a child with special needs who has full time 1:1 adult support in class. While he has good expressive skills he has difficulty with listening, understanding and following instructions. He also has difficulties with social interaction and behaviour. His teacher is concerned that his behaviour may become more challenging if not managed appropriately. He needs stability, routine and familiar people and places. The evidence from the school was that the appellant played a significant role in D's parenting. Mrs A, who impressed the FTTJ, described a close, loving relationship between the appellant and D; he is supportive of his special needs and plays an active role both at home and at school in both physical and emotional terms.

8. Mrs A's physical problems include significant pain and ongoing difficulties with everyday functions such as housework and lifting, and holding her newborn baby. Although she was about to begin a new full time job, with reasonable adjustments being made for her medical condition she did not know how well she would cope.
9. While the appellant was in prison Mrs A had been placed in a situation of very considerable difficulty, both practically and emotionally. She had struggled to cope with D's complex needs and his distress at what was obviously a significant change in his routine. Her initial attempt to have overnight sleep-in-care while she was at work failed because the childminder was unable to cope with D. The FTTJ found that this was not a sustainable long term solution. Both children had displayed emotional distress when their step-father was not there with D in particular misbehaving at school. Childminders, who would inevitably change over time were not appropriate for a significant caring role in D's life.
10. FTTJ Saunders concluded (at paragraph 37) that the impact on D of losing the appellant would be greater than purely emotional. The appellant plays an important role in keeping the family functioning. He is the primary carer enabling his wife to go to work. He is an important source of discipline. At both home and school he can be effectively invoked to calm D. Mrs A only just coped while the appellant was in prison but there was an adverse impact on D during this time. The system of child care that Mrs A put in place would not be viable in the long term, especially given her reduced physical health and stamina. FTTJ Saunders found that for all these reasons the multiple effects on D of losing his father would be so severe as to be unduly harsh.
11. In **KO (Nigeria)** Lord Carnwath, giving the opinion of the court said, in respect of the test of unduly harsh in section 117C of the Nationality, Immigration and Asylum Act 2002, "One is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent." It is clear that the effects on D go well beyond the harshness that would be ordinarily expected. As Mr Lindsay acknowledged FTTJ Saunders decision is careful and well-reasoned. He was unable to point to any factor not taken into account or any material omissions. The decision was rational. We see no error of law.
12. As for the contention, based on **BL (Jamaica) [2016] EWCA Civ 357** (paragraph 53), that the FTTJ had failed to consider the availability of social services for assistance with D there was no evidence that social services had ever been involved with the family. More importantly however the clear evidence was that D required stability and familiar figures in his life. That was clear from the impact on D during the appellant's imprisonment. Childminders had been used in the past but that was not a long term solution. There is no evidence that social services could replicate the long term familiarity and stability that D requires and which the appellant provides. Again we see no error of law on this point

Notice of Decision

The appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 26 June 2019

Lord Boyd of Duncansby
Sitting as a Judge of the Upper Tribunal