Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/21496/2018 (V)**

THE IMMIGRATION ACTS

Heard remotely at Field House	**Decision & Reasons Promulgated**
On 19th April 2021	**On 10 May 2021**

Before

Upper Tribunal Judge Frances

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

TERRANCE MARK ROBINSON
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr T Melvin, Home Office Presenting Officer
For the Respondent: Mr J Plowright (direct access)

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State for the Home Department, I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Jamaica born on 22 September 1976. His appeal against deportation was allowed by First-tier Tribunal Judge Hosie on 3 March 2020 on human rights grounds. The Secretary of State appealed.

2. Permission was granted by Upper Tribunal Judge Kamara on the grounds that the judge failed to make a clear finding as to whether the effect of the Appellant's removal on his partner would be unduly harsh. It was further arguable that the judge erred in placing weight on the alleged lack of reasoning for the present decision to deport.

3. In his Rule 24 response, the Appellant submitted the decision was fully reasoned and the judge was clearly aware of the background to the case. The judge considered whether it would be unduly harsh for the Appellant's partner to remain in the UK without the Appellant at [44], [45] and [58]. The judge took into account all relevant circumstances and her findings were open to her on the evidence before her.

4. The Appellant's immigration history and the procedural history of this case are set out at [1] to [6] of the decision of the First-tier Tribunal. In summary, the Appellant came to the UK in 1999 and was granted indefinite leave to remain in 2001. He was convicted of wounding with intent to cause grievous bodily harm in 2004 and sentenced to four years imprisonment. His appeal against deportation was allowed and he was granted discretionary leave. He made an application for further leave to remain on Article 8 grounds which was refused and a decision to deport was made. His subsequent appeal against deportation was allowed by the First-tier Tribunal but set aside by the Upper Tribunal, on appeal by the Respondent, and the case remitted for re-hearing with a preserved finding that it would be unduly harsh for the Appellant's partner to return to Jamaica with the Appellant.

5. In her decision of 30 March 2020, Judge Hosie made the following relevant findings:

> "40. In terms of the Home Office letter 29 September 2012 the Appellant remains potentially liable to deportation. It was argued on the Appellant's behalf and found by the First-tier Tribunal that the effect of the 2012 letter was that the Respondent no longer considered it to be in the public interest to deport the Appellant. What was not made clear by the Respondent was why it is now in the public interest to deport the Appellant in light of the length of time he has lived in the UK, his relationship and the fact he has not offended since 2003. What has not been considered by the Respondent and forms the subject of criticism by the Upper Tribunal are the three separate elements of the public interest. The First-tier Tribunal was so criticised for failing to properly address the public interest."
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> …

> "44. In relation to the impact on the Appellant's partner under Article 8 ECHR should the Appellant be deported and Ms Wallace remain in the UK, I note that they intend to start a family and have had a specialist referral in relation to assisted conception. Ms Wallace's life is tied to the UK where she is the appointee for her disabled sister. The Appellant assists with this care and supports his partner as a carer for her sister. The level of care provided is 24/7 and given the profound disability of Ms Wallace's sister it would not be easy for her to spend any extended time away from her visiting the Appellant in Jamaica in order to sustain their relationship. In relation to this backdrop, I find it to be significant that there are preserved findings regarding the genuineness and subsistence of the relationship between the Appellant and his partner and that family life between them exists. The viability of sustaining this family life in separate countries is affected by the Appellant's partner's role as the primary carer for her disabled sister in the UK."
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> …
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> "64. Beyond those considerations, I have taken into account the fact that the Appellant has been living in the UK for almost twenty years and that he is in a longstanding genuine and subsisting relationship with Ms Wallace with whom he lives. He supports Ms Wallace in her role as a primary carer for her disabled sister who requires on going 24/7 care due to a lifelong condition. The Appellant has committed no offence since 2003 and he has been rehabilitated. The Appellant and Ms Wallace have developed their relationship in the UK and have taken steps to start a family together in the UK on the basis of notice given by the Respondent in 2012 that, without further reoffending, the Appellant would not be deported. Ms Wallace would be unable to spend extended time in Jamaica with the Appellant if he were deported given her caring responsibility towards her sister in the UK. The Appellant's chances of being granted visit visas are low. There are no ongoing risks to members of the public or to children and it has not been suggested otherwise. The previous Tribunals have already found it would be unduly harsh and that there would be a breach of Article 8 ECHR were the Appellant to be removed from the UK and this decision was not appealed by the Respondent. The Respondent indicated in 2012 that they would not pursue further deportation action in respect of the 2004 conviction and has given no clear reasons as to why this position has now changed."

Submissions

6. Mr Melvin relied on the skeleton argument dated 9 October 2020 and submitted the judge had failed to make a finding that it would be unduly harsh for the Appellant's partner to remain in the UK without the Appellant. Further, she erred in law by relying on the Respondent's letter of 29 September 2012 ['the 2012 letter'] when considering very compelling circumstances and her decision lacked reasons. There had been a change in circumstances and the 2012 letter had no relevance to the Article 8 assessment.

The judge had misdirected herself in law and failed to give adequate reasons on material matters.

7. Mr Plowright relied on his skeleton argument dated 29 May 2019 and the Rule 24 response. He submitted there were two issues: undue harshness and very compelling circumstances. The judge made it clear from the outset that she had appreciated and identified these two issues. She considered the issue of undue harshness on a number of occasions. It was apparent from the uncontested facts that the relationship would come to an end if the Appellant was deported. The Appellant's partner had to care for her sister and therefore she would be unable to visit the Appellant in Jamaica. It was unlikely the Appellant would be granted a visit visa. The judge gave sufficient reasons at [44] to show that it would be unduly harsh for the Appellant's partner to remain in the UK without the Appellant.

8. Mr Plowright accepted that, following MA (Pakistan) [2019] EWCA Civ 1252, the decision to refuse the Appellant's human rights claim and deport him to Jamaica ['the 2018 refusal letter'] was not unlawful and there was no legitimate expectation arising from the 2012 letter. There had been a change to the legal landscape and the Appellant's circumstances since then. However, the judge was entitled to consider the effect of the 2012 letter on the Appellant's actions. The Appellant was granted leave to remain in 2012 and the Respondent indicated that deportation action would not be taken in the absence of further criminality.

9. The 2012 letter was relevant to whether there were very compelling circumstances over and above the immigration rules with respect to its impact on family life taken cumulatively with all other relevant factors. The Appellant had been living in the UK since 1999 and it was 15 years since his conviction. His family circumstances had changed and he was able to develop his family life in the UK in the absence of a deportation order.

10. Mr Plowright submitted the judge was aware of the factual background and she took into account all relevant matters. Her finding that the 2018 refusal letter was unlawful would only be material if her findings were irrational. The judge's findings at [64] were open to her on the evidence before her and she gave adequate reasons for coming to those conclusions. The judge's decision making process was correct notwithstanding she was not made aware of MA (Pakistan) [2019]. The judge had looked at the individual circumstances of the Appellant's case.

11. Mr Melvin submitted that the judge had placed undue emphasis on the 2012 letter and had not considered the case in the alternative. There was no finding that it would be unduly harsh for the Appellant to return to Jamaica without his partner. Although the Appellant had not reoffended, it was clear from the 2018 refusal letter that the Appellant's asylum claim and absconding in 2009

did not form part of the judge's decision. It was in the public interest to deport the Appellant.

Conclusions and reasons

12. There are two issues in this appeal:

    a. Whether the judge has found that it would be unduly harsh for the Appellant's partner to remain in the UK without the Appellant; and

    b. Whether the judge erroneously took into account the 2012 letter in assessing very compelling circumstances.

13. I find that the judge could have been clearer in expressing the conclusion that it would be unduly harsh for the Appellant's partner to remain in the UK without the Appellant, but I am satisfied that [44] read in the context of the decision as a whole is sufficient to support such a finding. Any lack of clarity in expression was not material. There was no material error of law in relation to the first issue.

14. The judge's attention was not drawn to MA (Pakistan) [2019] and she erroneously concluded that the 2018 refusal letter was unlawful. However, for the reasons given below this error was not material to the judge's finding that there were very compelling circumstances in this case.

15. At [59] the judge stated: "Arguably the decision to deport is unlawful and the Respondent is barred from proceeding on this basis, applying the Court of appeal (sic) decision in **TB (Jamaica)**. To the extent that the Respondent is not barred and the deportation order is not unlawful I have considered the relevant legal tests together with the public interest considerations based on the evidence before me."

16. I am satisfied the judge considered whether there were very compelling circumstances without taking into account her erroneous finding that the decision to deport was unlawful. The 2012 letter was relevant to the Appellant establishing family in the UK at a time when he had lawful leave and was not subject to a deportation order.

17. The judge properly directed herself on the weight to be attached to the public interest and she considered all relevant matters at [64]. Her conclusion that there were very compelling circumstances was open to her on the evidence before her and she gave adequate reasons for coming to that conclusion. There was no material error of law in relation to the second issue.

18. I find that there was no material error of law in the decision of 3 March 2020 and I dismiss the Respondent's appeal.

Notice of decision

Appeal dismissed

J Frances

Signed
Upper Tribunal Judge Frances
Date: 29April 2021