IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002495
First-tier Tribunal No:
HU/08221/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 May 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

LAMORNE AUGUSTUS TREASURE
(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr B Adekoya, Legal Representative, Atlantic Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on Tuesday 23 May 2023

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Hobson promulgated on 20 April 2022 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 25 September 2020, refusing his human rights claim. The human rights claim and refusal of it were made in the context of a decision by the Respondent to deport the Appellant to Jamaica.

2. The Appellant is a national of Jamaica. He came to the UK in January 2004 then aged sixteen to join his mother who was resident in the UK. On 20 August 2005, the Appellant was granted indefinite leave to remain. Over the course of the period from October 2005 to February 2020, the Appellant committed a number of criminal offences,

culminating in the index offence of dangerous driving and driving whilst disqualified for which he was sentenced to a period of eighteen months in prison.

3. The Respondent served the Appellant with notice of her intention to make a deportation order against him on 16 June 2020. He made the human rights claim on 6 July 2020 which was refused on 25 September 2020. On the same date, the Respondent made a deportation order against the Appellant.

4. The Appellant relies on his family life with his partner, Ms Sophie Evans-Essam and her children, two of which the Appellant says are his biological children ("the twins"). Ms Evans-Essam also has a child from a previous relationship. The Appellant also has children from previous relationships but has no ongoing contact with them. The Appellant also relies on his private life formed since arrival in the UK in 2004, that he has no connections with Jamaica and that all his family live in the UK.

5. The Respondent did not accept that the Appellant has a genuine and subsisting parental relationship with the children from previous relationships. She also did not accept that the Appellant is the biological father of the twins but did not accept in any event that the Appellant's deportation would have an unduly harsh effect on those children. Nor did the Respondent accept that the effect on Ms Evans-Essam would be unduly harsh. The Respondent did not accept that the Appellant could meet the exception in relation to his private life.

6. In that latter regard, the Judge found that the Appellant could not meet the exception relying on his private life. He has been lawfully resident for half his life. However, the Judge did not accept that the Appellant is socially and culturally integrated in the UK. Nor did she accept that there would be very significant obstacles to the Appellant's integration in Jamaica. There is no challenge to those findings.

7. The Judge was "not entirely satisfied" that the Appellant is the biological father of the twins ([24(d)] of the Decision). However, she accepted that the Appellant had assumed the role of their father since June 2020. It is worth noting the Judge's findings that the Appellant was not permitted to have any unsupervised contact with the twins or his stepchild until "the first half of 2021" ([24(e)]). He did not live with Ms Evans-Essam and the children until the end of 2021 ([24(g)]. Those restrictions arose from a domestic incident in 2016 when the Appellant had attacked his younger sister.

8. The Judge found that although there were "concerns" about one of the twins, neither child had "any particular condition" because there was no supporting evidence in that regard. Nor was the Judge satisfied "that the Appellant's presence is especially important for the

management of their behaviour and development" ([24(h)]). The Respondent conceded that Ms Evans-Essam and the children could not be expectedto move to Jamaica with him. The Judge found that it would not be unduly harsh for the children to remain in the UK with Ms Evans-Essam and without the Appellant ([37] of the Decision).

9. The Judge went on to consider the impact of the Appellant's deportation on Ms Evans-Essam. She accepted that they are in a genuine and subsisting relationship. However, for the reasons given at [41] to [44] of the Decision, building upon the findings made at [24] of the Decision, the Judge concluded at [45] of the Decision that it would not be unduly harsh for Ms Evans-Essam to remain in the UK without the Appellant.

10. The Appellant made an application purportedly for "reconsideration" of the Decision. The grounds are brief in the extreme. Having cited from the judgment in R v Immigration Appeal Tribunal ex parte Mahmud Khan [1983] 1 QB 790 as to the basis on which an error of law can be found (broadly lack of evidential substantiation for a finding and perversity), the Appellant's grounds continued as follows:

> "The Tribunal in accepting that the relationship between the Appellant and his partner is genuine and subsisting erred by not following the evidence that there were substantial difficulties created by the Appellant's imprisonment which will be made worse by the Appellant's deportation and therefore will be unduly harsh on the Appellant's partner if he were to be deported."

The Appellant does not descend into any particulars as to the evidence which it is said that the Judge failed to follow or even what were the "substantial difficulties" experienced by Ms Evans-Essam when the Appellant was in prison. The grounds do not point to any evidence said to have been ignored. The Appellant seeks "a reversal" of the Decision in consequence of the asserted error.

11. Permission to appeal was granted by First-tier Tribunal Judge Karbani on 16 May 2022 in the following terms so far as relevant:

> "3. At §39 the Judge notes that the respondent did not argue that it would not be unduly harsh for the partner to live in Jamaica. The Judge accepts that the partner would be distressed at the prospect of deportation. He finds could manage well as a parent without support [§43] and there will not be any financial disadvantage as the appellant is unable to work.
>
> 4. It is arguable that the Judge has erred in law for failing to provide adequate reasons that deportation will be unduly harsh on the partner.
>
> 5. Permission to appeal is granted."

12. The matter comes before me to decide whether the Decision contains an error of law. If I conclude that it does, I must then decide whether the Decision should be set aside in consequence. If the Decision is set aside, I must then either re-make the decision in this Tribunal or remit the appeal to the First-tier Tribunal for re-determination.

13. I had before me a core bundle of documents relating to the appeal, the Appellant's bundle ([AB/xx]) and Respondent's bundle ([RB/xx]) before the First-tier Tribunal together with the Appellant's skeleton argument before the First-tier Tribunal. I observe that neither the Appellant's bundle nor the Respondent's bundle was on the Tribunal's electronic file, and both had to be requested from the parties prior to the hearing.

14. Having heard submissions from Mr Adekoya and Mr Clarke, I indicated that I found there to be no error of law in the Decision and therefore that I would uphold it (with the consequence that the Appellant's appeal remains dismissed). I indicated that I would provide my reasons in writing which I now turn to do.

DISCUSSION

15. As I have already observed, the Appellant does not take issue with the Judge's findings in relation to the private law exception. Those findings therefore stand unopposed.

16. Although, as Mr Clarke pointed out, the Appellant's ground as pleaded and the grant of permission to appeal relies solely on the position of Ms Evans-Essam, the impact of deportation on the children has some overlap with that position. Mr Clarke sensibly conceded as much. I therefore permitted Mr Adekoya to develop his oral submissions in relation to the position of both the Appellant's partner and his children.

17. Before turning to those submissions and the Decision itself, it is worthy of note that the Appellant's documentary evidence before Judge Hobson was extremely limited. The bundle consists of a total of 76 pages. The Appellant's own witness statement runs to one page ([AB/4]). That of Ms Evans-Essam runs to three pages ([AB/8-10]). Neither is in proper form, or attested to by a statement of truth.

18. Those statements aside, there is next to no evidence in relation to the impact of deportation on either the Appellant's partner or his children. There is no independent social worker's report. There is no medical evidence nor any evidence from the children's schools, particularly in relation to the allegation that one of the twins is on the autistic spectrum. There are some pictures of the family, a few reference letters (only one of which relates to the Appellant's family life) and the birth certificates and deed poll documents in relation to the children. The Respondent's bundle contains a letter from Ms Evans-Essam ([RB/33-35]) but otherwise the documents sent to the Respondent with the human rights claim replicate those in the Appellant's bundle.

19. It is worth reminding the Appellant and those representing him that the burden of proving that he falls within one of the exceptions to deportation lies on him, in terms of showing that the impact of deportation would be unduly harsh or would involve very significant obstacles.

20. Turning then to Mr Adekoya's submissions, he relied on the grounds of appeal such as they are and the grant of permission to appeal.

21. Mr Adekoya began with [24] of the Decision where the Judge's findings appear. As he pointed out, the Judge found that Ms Evans-Essam had managed her children alone when the Appellant was in prison. She had no family support as her mother was working long hours at the time. Ms Evans-Essam and the children were in receipt of state benefits ([24(f)]).

22. Mr Adekoya next made reference to [24(h)] of the Decision. He drew my attention to what he said was an acceptance by the Judge that there are medical and behavioural concerns about one of the twins. There is no such acceptance. The Judge there records the Appellant's evidence "that one of the twins is being screened for autism because of behavioural concerns and delays in his speech". The Appellant "said that his support of the twins was very important, particularly for the twin about whom there are concerns".

23. The Judge did not accept that evidence. Her finding in that paragraph is as follows:

> "There was no other evidence to support the Appellant's assertion about this. While I accept that there are 'concerns' about one of the twins, there was no evidence from a medical or other professional to support a finding that the child does in fact have a developmental delay or that he is on the autistic spectrum. There was no evidence at all to support the Appellant's assertion as to his role in providing structure to the child. I was not satisfied, on the evidence before me, that either of the twins has any particular condition, or that the Appellant's presence is especially important for the management of their behaviour and development."

24. Before moving on from [24] of the Decision, I mention the other findings made by the Judge in relation to the Appellant's family life. As Mr Clarke pointed out, those factual findings form the backdrop to the Judge's assessment whether the exceptions are met and are therefore a necessary part of that assessment.

25. At [24(d)] the Judge found that the relationship between the Appellant and the twins amounted to a genuine and subsisting parental relationship. Although there was no DNA evidence in relation to the parentage of the twins (aged three at the time of the hearing), the Judge accepted that their names had been changed to that of the Appellant by deed poll and she therefore accepted that the Appellant had assumed the role of their father. Ms Evans-Essam's elder

daughter from a previous relationship was at the date of the hearing aged thirteen years. Her father is British.

26. Notwithstanding the acceptance of the relationship between the Appellant and the twins and between him and Ms Evans-Essam, the Judge noted that the Appellant had not been permitted unsupervised contact with any of the children until early 2021 and had not lived in the family until the end of 2021 ([24(e)] and [24(g)]). The Judge rejected the oral evidence of the Appellant and Ms Evans-Essam about any earlier co- habitation due to inconsistencies in their accounts (see [24(e)] and [24(g)] of the Decision).

27. The Judge appropriately directed herself as to the law which applies, giving consideration to the children's best interests as a primary consideration ([26]) and reminding herself as to the legal principles, and the Immigration Rules which govern deportation cases ([27] to [31] of the Decision). Of particular importance is the Judge's reference to the case of KO (Nigeria) and others v Secretary of State for the Home Department [2018] UKSC 53 and the citation in that judgment in relation to the threshold which applies to the "unduly harsh" test, taken from MK (Sierra Leone) v Secretary of State for the Home Department [2015] UKUT 223. As the Judge noted from that citation, the term "'unduly harsh' does not equate with uncomfortable, inconvenient, undesirable or merely difficult". It involves "a considerably more elevated threshold". The term "'[h]arsh' in this context, denotes something severe, or bleak". That threshold is elevated still further by the use of the word "unduly". The Judge clearly had that threshold in mind when reaching her assessment.

28. Moving on then to that assessment, the Judge gave a number of reasons for finding that the Appellant's deportation would not have an unduly harsh effect on the children (at [32] to [37] of the Decision) and on Ms Evans-Essam (at [38] to [45] of the Decision).

29. In relation to the children, the Judge noted that the Appellant had lived with the children for only about six months as at date of hearing (which is the relevant date for error of law purposes since this is not at this stage a re-hearing). The Judge accepted that the Appellant provides some care for them and that "they have become accustomed to his presence in the family home" ([32]). However, she also found that the Appellant's presence in their lives had been "limited". The Appellant cannot have spent any time with Ms Evans-Essam's daughter until 2021. The Judge had already found that the Appellant did not have unsupervised contact with the twins until they were aged 2 ½ to 3 years ([24(e)]).

30. The Judge went on at [34] to refer to the twins' young ages and that they had been brought up by their mother alone until recently. The Judge repeated her rejection of the Appellant's assertion that he provides "vital support and structure" for the one twin who the

Appellant said was being screened for autism. Mr Adekoya accepted in that regard that the Appellant has provided no medical evidence nor any evidence from the children's school (if they attend one as yet).

31. The Judge accepted that the Appellant's deportation would be "upsetting" for the children but did not accept that this was sufficient to reach the high threshold which applies ([35]).

32. The Judge further noted that the family were supported financially, and that the Appellant's deportation would make no difference in that regard since he was not permitted to work. There were no social services' concerns about Ms Evans-Essam's ability to care for the children alone. The position would be no different from that which pertained when the Appellant was in prison ([35]).

33. Turning then to the position of Ms Evans-Essam, the Judge reiterated that she accepted the relationship to be a genuine and subsisting one ([40]). That is of course not enough for a finding to be made that separation would be unduly harsh.

34. The Judge pointed out that Ms Evans-Essam had lived without the Appellant for most of the twins' lives, not simply when the Appellant was in prison but since his release when the Appellant was not permitted unsupervised contact with children ([41]). It will be recalled that the Judge had already found that the Appellant did not live with the family until the end of 2021. The First-tier Tribunal hearing was in April 2022. The Judge therefore found that Ms Evans-Essam had only had the benefit of six months of co-parenting.

35. The Judge then went on to make the following assessment:

> "42. I accept that Ms Evans-Essam will be distressed at the prospect of the Appellant's deportation. However, I had to consider whether it would be 'unduly harsh' for her to live in the United Kingdom without him.
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> 43. Ms Evans-Essam has demonstrated, in my judgment, that she can manage well as a parent without support: her own evidence was that, throughout the Appellant's imprisonment and the national lockdown, she was alone with the children, an experience she found very difficult, but which she plainly managed. In my judgment, she is likely to find her role as a sole parent easier as the twins grow older and start school.
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> 44. For the reasons already outlined, there is unlikely to be any financial disadvantage to Ms Evans-Essam if the Appellant is deported: he has been unable to work since his release from prison and so has not contributed to the household finances.
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> 45. For those reasons, I did not find that the effect on Ms Evans-Essam of the Appellant's deportation meets the high standard of

being 'unduly harsh'."

36. Mr Adekoya criticised the Judge's reason in the final sentence of [43] of the Decision. He said there was no evidence to support that view. However, it is difficult to see what evidence there could be as to developments in the future. As a matter of common sense, absent medical or other behavioural difficulties (which the Judge did not accept exist in this case), it stands to reason that as children grow older and more independent of their parents, the caring responsibility will generally be less. At the very least, that reasoning cannot be described as perverse. It was open to the Judge to give that as one of the reasons for her assessment.

37. The Judge gave reasons for her assessment. She found that Ms Evans-Essam would be distressed but that she had coped with the children on her own both when the Appellant was in prison and during lockdown. Her financial position would be unaffected. There had been no concern from the authorities about her ability to look after the children as a single parent. Those were the factors which the (very limited) evidence raised. The Judge was right to point out that distress (or upset in the case of the children) did not reach the high threshold which applies.

38. The basis for the grant of permission to appeal was the arguable inadequacy of reasons. However, the reasons given have to be considered in the context of the paucity of evidence provided by the Appellant. In that context, those reasons were sufficient. As Mr Clarke pointed out, the Judge made comprehensive findings in relation to the law and facts which supported the assessment made and gave reasons for that assessment. The Judge's self-direction as to the legal principles was impeccable.

39. It is striking that at one point towards the end of his oral submissions, Mr Adekoya said that the Judge's finding that Ms Evans-Essam's distress would not amount to undue harshness was one with which the Appellant disagreed. That is not the test. Whilst it is undoubtedly the case that the Appellant disagrees with the outcome and some of the Judge's findings, a disagreement does not constitute an error of law.

40. The Appellant has failed to identify any error of law in the Decision. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

NOTICE OF DECISION

There is no error of law in the decision of First-tier Tribunal Judge Hobson promulgated on 20 April 2022. I therefore uphold the decision with the consequence that the Appellant's appeal remains dismissed.

L K Smith
Upper Tribunal Judge Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 May 2023