IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002387

First-tier Tribunal Nos:
HU/54854/2022
IA/07081/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 7th June 2024

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

The Secretary of State for the Home Department

Appellant

and

Adekoya Babajide Adefowora
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr N Wain, Senior Home Office Presenting Officer
For the Respondent: Ms A Jones, instructed by Moorehouse Solicitors

Heard at Field House on 2 January 2024
Dictated on 16 February 2024

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Brannan promulgated on 30 May 2023, allowing the respondent's appeal against the decision of the Secretary of State made on 18 July 2022 to deport him from the United Kingdom as a foreign criminal.

2. The respondent's history is set out in the decision of Judge Brannan. It is unnecessary to repeat it here but in brief, on 3 April 2020 the appellant made a further application for leave to remain under the parent route.

3. On 16 March 2021 the appellant was convicted following a guilty plea of seven counts of fraud, for which he was, on 29 March 2021, sentenced to fifteen months' imprisonment.

4. The Secretary of State accepted the respondent has five British citizen children with whom he has a genuine and subsisting parental relationship and that their mother has systemic lupus erythematosus. It was not, however, accepted that the respondent was the primary carer for the children, provided for them financially and met their daily care needs, took them to or from school, attended school meetings; or, that his partner was reliant on him or physically disabled by her medical condition.

5. The judge heard evidence from the respondent and his partner. He also had a bundle of documents before him, including a report from an independent social worker, dated 23 March 2023. The judge found that the respondent and his partner were exaggerating the impact of lupus on her, although accepting that her condition causes tiredness and requires ongoing treatment and that the partner provides material care for the children. He accepted that the condition can flare up and if it does so, it leaves her with difficulty walking and caring for the children, but these flareups have not been a sufficient frequency or duration to leave her housebound for a significant period.

6. The judge also found that the respondent, his partner and their children all live together and have done throughout the respondent's residence in the United Kingdom from 2009. He also found that the respondent is the coparent and is important in the day-to-day care of the children, the eldest daughter having to take on household responsibilities including shopping, cooking and cleaning when he was in prison and that this impacted on her education. The judge directed himself in respect of the law [39] to [45].

7. The judge found as follows:-

> "48. It is clear to me that for all the children, the Appellant's deportation would be uncomfortable, inconvenient, undesirable and difficult. They would all lose a father who they are close to and who cares for them. It would be traumatic. It would leave them with inferior living circumstances.
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> 49. It would, however, have a particularly serious impact on the eldest child. This is for two reasons. First, she would have to take on additional responsibilities as she did during her father's imprisonment. She is at a key stage in her education and it is a severe outcome to sacrifice her education and potential to contribution to British society as a well-educated adult because of the need to deport the Appellant. Second, there is an ongoing risk of a flare-up rendering [the Respondent's partner] unable to effectively care for her children. In such circumstances the eldest child would need to step into the role of

> parent to four younger siblings. It is not a role she has chosen. The fear of it happening would have a serious impact on any child. If it did happen the consequences would be very severe for her. If she were not to support her younger sisters, the consequences would be severe for them.

8. The Secretary of State sought permission to appeal on the grounds that the judge had erred in failing to provide adequate reasoning as to how the elevated threshold of "unduly harsh" was met, the paragraphs at, 49 to 52 not providing sufficient detail to demonstrate that the test was met. He submitted also that the judge did not take into account the fact that the respondent's partner provides material care for the children when considering whether the unduly harsh test was met.

9. The Secretary of State avers also that in finding that the eldest daughter would have to step in, as she did in the past, had failed to consider the earlier findings made at 29 and 36 and why they could not receive support from friends, wider family and Social Services. He noted also that the partner did not claim disability living allowance and they should be advised to do so and it was argued she should be entitled to some support if the respondent were deported.

10. In assessing the First-tier Tribunal's approach to this matter I bear in mind what was said in Volpi v Volpi [2022] EWCA Civ 464 at [2]

> The appeal is therefore an appeal on a pure question of fact. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:
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> i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
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> ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
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> iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
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> iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.

11. I bear in mind also what was held in HA (Iraq [2022] UKSC 22 at [72]:

> It is well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal. In particular:
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> (i) They alone are the judges of the facts. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. It is probable that in understanding and applying the law in their specialised field the tribunal will have got it right. Appellate courts should not rush to find misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently - see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49; [2008] AC 678 per Baroness Hale of Richmond at para 30.
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> (ii) Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account - see *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49; [2011] 2 All ER 65 at para 45 per Sir John Dyson.
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> (iii) When it comes to the reasons given by the tribunal, the court should exercise judicial restraint and should not assume that the tribunal misdirected itself just because not every step in its reasoning is fully set out - see *R (Jones) v First-tier Tribunal (Social Entitlement Chamber)* [2013] UKSC 19; [2013] 2 AC 48 at para 25 per Lord Hope.

12. I bear in mind the uncontroversial propositions that the decision must be read sensibly and holistically and that it is not necessary for every aspect of the evidence to have been addressed, nor that there be reasons for reasons. Justice requires that the reasons enable it to be apparent to the parties why one has won and the other has lost: English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605, [2002] 1 WLR 2409 at [16]. When reading the Decision, I am entitled to assume that the reader is familiar with the issues involved and arguments advanced.

13. The grounds of appeal at [2] said quote selectively from what the judge said at paragraph [48]. It is sufficiently clear that this was just the judge setting out the ground and that he then went on to explain why the unduly harsh test was met in this case, that is the effect on the older daughter, as set out above, which is what set it apart and made it unduly harsh.

14. Contrary to what is averred and submitted, it is sufficiently clear from the decision why the judge allowed the appeal. It was the specific effect on the older daughter whose education would be impaired owing to have to

look after her siblings were the respondent to be deported. That is also in the context of the mother being unable to do so when she had flareups of lupus. It was open to the judge to do so, his other comments notwithstanding.

15. Contrary to what is averred at [4] the judge did apply the correct test. There is no proper basis in the grounds to show that the judge did not take this into account in reaching conclusions nor that he had taken into account the earlier findings made at [29] and [36]. In any event [29] is simply setting out the evidence, it is not a finding of fact.

16. While I accept that at [36] the judge noted that there was no explanation of childcare while he does so, he was dealing with the situation that she has flareups of lupus which are likely to occur and it was on that specific basis whereby she would be unable to assist with the children that he rejected the Secretary of State's case. That was a finding open to the judge on the evidence, and the reasons given are adequate and sustainable.

17. In short, the grounds, as pleaded, are simply a disagreement with the findings of fact, properly reached by the judge and accordingly I dismiss the appeal.

Addendum

18. Although I gave my decision extempore, the recording was lost. On that basis, I dictated another version from my notes and had it circulated to both representatives for comments. Neither had anything of substance to add. Owing to another administrative failure, the decision was not promulgated promptly.

Notice of Decision

(1) The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed Date: 7 June 2024

Jeremy K H Rintoul
Judge of the Upper Tribunal