IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004056

First-tier Tribunal No: HU/02191/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 6th of December 2024

Before

UPPER TRIBUNAL JUDGE LOUGHRAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DW
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms J Isherwood, Senior Home Office Presenting Officer
For the Respondent: Ms M Foxley, Counsel, instructed by AJA Solicitors

Heard at Field House on 18 November 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant, his partner and son are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant, his partner or his son. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Secretary of State for the Home Department ('SSHD') appeals with the permission of Upper Tribunal Judge Gill against a decision of First-tier Tribunal Judge Burnett ('the judge') dated 6 August 2024 allowing the appellant's appeal against the refusal of his human rights claim.

2. I shall refer to BW as the appellant and the SSHD as respondent as they were in the First tier Tribunal. I shall also refer to the appellant's wife as BB and the appellant's son as AA as in the First tier Tribunal determination.

Factual Background

3. The appellant was born on 10 June 1981 in Jamaica.

4. On 3 December 2009, the appellant married his wife, BB. On 19 March 2010, the couple's son, AA, was born.

5. On 22 October 2010 the appellant was granted a multiple spouse visa valid until 22 January 2013. He arrived in the UK on 1 December 2010.

6. On 15 January 2013 he was granted indefinite leave to remain as the spouse of a settled person.

7. On 8 December 2021 the appellant was convicted of possession with intent to supply a controlled drug of class A – heroin, possession with intent to supply a controlled drug of class A – cocaine, possession of a controlled drug of class B – cannabis/cannabis resin and to acquire, use and possess criminal property.

8. On 21 February 2022 the appellant was convicted of being concerned in the supplying of controlled drug class A – cocaine.

9. On 22 February 2022 the appellant was sentenced to a total period of four years and nine months' imprisonment. That sentence also included a sentence of three months' imprisonment to be served consecutively.

10. On 17 May 2023 the appellant was served with a notice of decision to deport. He provided a response to that notice on 23 May 2023 raising a human rights claim.

11. On 13 July 2023 his legal representatives, namely AJA Solicitors, submitted additional representations, again relying on Article 8 ECHR grounds.

12. On 14 November 2023 the appellant's human rights claim was refused and a deportation order was signed in respect of the appellant on the same day.

The appeal to the First tier Tribunal

13. The appellant appealed against the refusal of his human rights claim and the appeal came before First-tier Tribunal Judge Burnett on 31 May 2024. The appellant was represented by Ms Foxley of Counsel and the respondent was represented by Mr Main, a Home Office Presenting Officer. The appellant and his partner gave oral evidence.

Issues

14. Under the heading 'Identified Issues' the judge records at [9] that at "the beginning of the hearing Ms Foxley and Mr Main identified the issues the Tribunal needs to resolve."

15. In respect of private and family life the judge notes at [10] that it "does not appear that the respondent has taken issue as to whether the appellant is the

father of AA", but that the respondent does dispute whether there is a genuine and subsisting parental relationship between them and that the respondent does not accept that it would be unduly harsh for AA to remain in the UK without the appellant. The judge notes at [11] that the respondent does not accept that the appellant and BB are in a genuine and subsisting relationship or that it would be unduly harsh for BB to remain in the UK without the appellant.

16. Importantly at [12] the judge notes "that no issue is taken that it would be unduly harsh for the child AA and the appellant's wife BB, to go to Jamaica" and references paragraph 7 of the respondent's skeleton argument.

17. In respect of private life the judge notes at [13]-[14] that the respondent does not accept that the appellant is socially and culturally integrated into the UK or that there would be very significant obstacles to his reintegration into life in Jamaica and that the appellant accepts that he has not lived lawfully for most of his life in the UK.

18. In respect of very compelling circumstances the judge records at [15] that the respondent does not accept that the appellant's circumstances are such to outweigh very compelling circumstances and does not accept that they are sufficient to outweigh the public interest in the deportation of the appellant.

19. The judge reiterates at [16] that he went through the issues in the case with the parties before any evidence was called and at [17] notes that the primary issue is whether the appellant's circumstances amount to very compelling circumstances and the factors identified in the case were as set out in the appeal skeleton argument. He records at [18] that reliance is placed on the appellant's family life, the relationship with the appellant's child and his wife, his length of residence and ties to the UK and that there were very significant obstacles to his reintegration in Jamaica.

Evidence and Submissions

20. The judge notes at [19]-[20] that the appellant and his partner both gave evidence and that each of the witness were asked questions in turn.

21. The judge briefly outlines the documentary evidence before him at [21]-[22] and states that he will only refer to the documents and evidence in so far as it is necessary in stating his decision. He outlines the respondent's refusal letter at [23], the parties' submissions at [24]-[25] and he reminds himself of the burden and standard of proof at [26]-[28].

Findings

22. Under the headings "Findings" and "Article 8" the judge outlines the relevant provisions of the Immigration Act 2014 at [30]. The judge reminds himself at [31] that because the appellant has been sentenced to a period of imprisonment of more than four years he cannot meet the exceptions outlined in the legislation and he must therefore look to see whether there are very compelling circumstances over and above those described in the exceptions. The judge cites the following cases at [32]-[35] **MA (Somalia)** [2015] EWCA Civ 48, **HA (Iraq)** [2016] UKSC 60, **MM (Uganda) [2016] EWCA Civ 450** and **RJG** [2016] EWCA Civ 1042 and notes that the authorities establish that in order for a claim to succeed it must be "a very strong claim indeed" for Article 8 to prevail. The judge notes that there have been "numerous cases" regarding the approach to

be taken in such cases including **Secretary of State v SS (Jamaica) [2018] EWCA Civ 2871**. The judge confirms that he has applied the principles outlined in the legislation and case law to the appellant's case.

23. The judge considers the appellant's family life and background situation at [38]-[43]. In respect of AA the judge notes that he is now 14 and has educational and medical needs and has a care plan as is evidenced by the letter from an NHS Trust. The judge considers that it can be gleaned from the letter that AA is registered on the Special Educational Needs register under the category Social and Emotional Mental Health, that he has anxiety and autistic traits and can worry about small things and that such worries can escalate and escalate his anxieties which AA struggles to recover from. The judge finds that AA has a relationship with his father and his father provides him with emotional support.

24. The judge considers the independent social worker relied on by the appellant at [44]-[49] before returning to his consideration of AA at [50]-[54] The judge finds that the independent social worker was not provided with the full picture and the report is too brief regarding the background facts and circumstances. He therefore concludes that he is only prepared to give it limited weight.

25. The judge also notes that AA has expressed a desire for his father to stay at home with him and notes that the appellant is now living with AA. He records that AA has complex needs and is not a mature 14 year old boy, his educational and emotional needs render routine very important to him, he struggles understanding change. In addition the judge notes that BB, the appellant's partner's health needs have increased and that has also caused worry for AA. The judge concludes notwithstanding his concerns about the independent social worker report that there would be a very significant detrimental impact upon AA if the appellant was deported.

26. The judge concludes that it is in AA's best interest to have both parents in his life on a day-to-day basis and that due to the nature of the evidence he is prepared to accept that the appellant has returned to a primary role in AA's life. On the basis of the information before him he concludes that it would be unduly harsh for AA to remain in the UK without the appellant.

27. The judge considers the appellant's relationship with BB at [55]-[61] and BB's health conditions at [62]-[64]. The judges accepts that the appellant and BB have reconciled and live together again at the same address and that they provide each other with mutual support. The judge notes that BB has a complex medical history and is in receipt of PIP at the enhanced rate for both mobility and daily living components. He also records that BB's mother is her registered carer and BB works part-time. At [64] the judge concludes that it would be artificial to separate the needs of AA from consideration of whether it would be unduly harsh for BB to remain in the UK without the appellant. The judge notes that the appellant now provides emotional and caring support for AA and emotional and caring support to BB with her health needs. The judge concludes that it would be unduly harsh for BB to remain in the UK without the appellant.

28. The judge considers other family life and the appellant's private life at [65]-[66]. He notes that the appellant has lived in the UK for almost fourteen years, but concludes that there would not be very significant obstacles to the appellant's integration into life in Jamaica. He records again that "it is accepted that it would be unduly harsh for BB and AA to be required to go and live in Jamaica permanently."

29. The judge considers the appellant's criminal offending at [67]-[73]. He notes that the OASys Report completed on 28 June 2023 concludes that the risk of reoffending was low in all categories. He also notes that the report indicates that the appellant has taken responsibility for his actions and has attended courses to address his offending behaviour and that the appellant obtained enhanced IEP status and progressed to open conditions whilst he was in custody.

30. The judge considered aspects of the appellant's private life further at [74]-[86]. He acknowledges that although there would be some obstacles to his integration into life in Jamaica he concludes that there would not be very significant obstacles.

31. The judge considers whether there are very compelling circumstances in the appellant's case at [87]-[102] reminding himself of the case of **Akinyemi v SSHD** [2019] EWCA Civ 2098. He notes the considerable public interest in the appellant's deportation. At [101]-[102] the judge concludes

> "In forming my written decision, I have separated out the various factors but in making the decision as to whether there are very compelling circumstances, I have taken a holistic view of the totality of the case. I find that the appellant met the exceptions but he was required to show very compelling circumstances in his case. I find when taking all the features together there is a compelling case such that would outweigh the public interest.
>
> Having carefully scrutinised the evidence before the Tribunal, and balancing the competing interests, I find that the decision of the respondent is a disproportionate response and it would breach the appellant's article 8 rights. "

32. The judge allowed the appellant's appeal on human rights grounds.

The appeal to the Upper Tribunal

33. The respondent applied for permission to appeal to the Upper Tribunal. The grounds are unparticularised and difficult to follow, but the following grounds are raised.

Ground 1: The judge erred in finding that there were compelling circumstances over and above the exceptions by:

a. failing to adequately reason why the public interest in the appellant's deportation is outweighed and to apply the principles in **NA (Pakistan) v SSHD** [2016] EWCA Civ 662 in the circumstances where the judge's findings in relation to whether there are very compelling circumstances are "essentially no different to those made concerning the exceptions";

b. failing to identify (i) why the appellant's length of residence in the UK carries such weight in the circumstances where he has spent less than half his life in the UK, frequently travelled back to Jamaica and would not experience very significant obstacles to his integration to life in Jamaica and (ii) what family members other than AA and BB would be affected by the appellant's deportation to make it disproportionate;

c. failing to adequately reason why the appellant's deportation was not justified for reasons that go beyond the exceptions in the circumstances where the judge found the public interest in the appellant's deportation was not reduced

by his length of residence and noted that the appellant's index offences were particularly serious.

Ground 2: The judge failed to adequately reason why the appellant's deportation would be unduly harsh and result in anything severe or bleak for AA by:

a. failing to reference the case of **HA (Iraq) v SSHD** [2022] UKSC 22, which endorsed the approach adopted in both **KO (Nigeria)** and **MK (Sierra Leone)** that the term 'unduly harsh' denotes something severe or bleak that goes beyond mere inconvenience or difficulty for either the individual's partner or child;

b. failing to adequately reason how the appellant's absence would negatively impact his son or cause "serious emotional harm" to the extent it would make a material difference to AA's mental or physical health in the circumstances where the judge only attached limited weight to the independent social worker report and found that AA's needs were met while the appellant was in prison;

c. failing to reference the evidence from AA's school.

Ground 3: The judge failed to adequately reason why the appellant's deportation would be unduly harsh and result in anything severe or bleak for BB by failing to adequately consider that the BB's mother was her registered carer, while the appellant was in prison and AA is now registered as a young carer.

Ground 4: The judge failed to address whether it was unduly harsh for AA and BB to go with him to Jamaica.

34. In a decision dated 21 August 2024 permission to appeal was refused by the First-tier Tribunal. However, in a decision dated 15 September 2024 permission was granted by Upper Tribunal Judge Gill. The appellant relied on a detailed Rule 24 response dated 11 October 2024.

35. At the hearing on 18 November 2024 I heard submissions from Ms Isherwood on behalf of the Secretary of State and Ms Foxley on behalf of DW.

Discussion

36. Having considered the arguments made by the parties and the evidence before the Upper Tribunal I am not satisfied that the grounds disclose a material error of law in the First-tier Tribunal decision that would justify setting the decision aside.

37. I have set out the judge's findings in detail above. It is clear from that summary that the judge gave careful consideration to all of the evidence before him, correctly identified and applied the appropriate legislation and case law and gave adequately clear and appropriately concise reasons for his findings.

Ground 1

38. I am satisfied that the judge did not err in finding that there were compelling circumstances over and above the exceptions.

39. The First tier Tribunal is an expert tribunal. The judge identified and applied the relevant case law. The respondent has not been able to identify any language in

the decision that indicates that judge was not aware of or failed to apply the relevant authorities.

40. The judge conducted a detailed balancing exercise. He considered factors that fell in favour of the appellant's deportation and noted the considerable public interest in his deportation.

41. The judge gave clear reasons why he found in this case there were very compelling circumstances over and above his finding that it would be unduly harsh for both the appellant's son and his partner to remain in the UK without him.

42. The judge considered additional factors including the length of time he has been in the UK and his other family members and his private life. However, what the judge placed significant weight on was the serious impact the appellant's deportation would have on AA and to a lesser extent BB.

43. After acknowledging that he has already found that it would be unduly harsh for AA to stay in the UK without the appellant the judge concludes at [93] that given the emotional and educational needs of AA the appellant's deportation would impact on AA detrimentally and that the separation had the potential to cause serious harm to A and "serious emotional harm" The judge also considered the appellant's relationship with his partner and her health needs.

44. At [96] the judge records that he has looked at the totality of the features in the appellant's case and at [98] he concluded that the totality of the factors that fell in the appellant's favour just overcame the considerable public interest in this case.

45. It is clear from reading the determination why the judge found that there was something over and above the exceptions in this particular case. I am therefore satisfied that the judge gave adequate reasons for his conclusion.

Grounds 2 and 3

46. I am satisfied that the judge adequately reasoned why the appellant's deportation would be unduly harsh and would result in something severe or bleak for both AA and BB.

47. In respect of AA, I note that at [39] the judge set out in detail the AA's needs as evidenced in a letter from an NHS Trust. Having considered all of the evidence the judge at [50] undertakes an assessment of the appellant's son's best interests and concludes that the appellant has returned to a primary role in AA's life.

48. It was open to the judge to find that it would be unduly harsh for AA to remain in the UK without the appellant, notwithstanding his finding that he only placed limited weight on the independent social worker report. The judge clearly referred to other evidence that addressed AA's needs.

49. In respect of BB, the judge notes at [61] that she and the appellant provide mutual support for each other. The judge outlines the BB's health conditions and that the emotional and educational needs of AA brought the couple back together. The judge concludes at [64] that the appellant provides emotional and caring support to BB with her health needs and that taking all of the

circumstances of BB and her family into account it would be unduly harsh for her to remain in the UK without the appellant. This was also open to the judge on the evidence before him, notwithstanding the evidence that BB's mum and AA were her registered carers.

50. The judge was not required to refer to every piece of evidence before him. I note that the judge indicated at [22] that he would only refer to evidence "in so far as it is necessary" in stating his decision. I am therefore not persuaded that the judge failed to have regard to the evidence from AA's school or that if he did not it would have materially impacted his decision.

51. The reasons the judge provided were proportionate to complexity of the issues before him.

Ground 4

52. I am not persuaded that the judge erred by failing to consider whether the appellant's partner and son could go with the appellant to Jamaica. I accept that this issue was raised in the respondent's reasons for refusal letter, however I am satisfied that that issue was conceded by the respondent prior to the hearing in the First-tier Tribunal.

53. The judge refers to the respondent's skeleton argument at [12] noting that "no issue is taken that it would be unduly harsh for the child AA and the appellant's wife BB, to go to Jamaica."_The judge also records at [51] that "the respondent has now accepted that it would be unduly harsh to require the child to leave the UK and go and live permanently in Jamaica."

54. It is clear therefore that that issue was conceded by the respondent when the issues were narrowed subsequent to the reasons for refusal letter. I am satisfied that the judge determined the disputed issues that represented the scope of the appeal.

55. For the reasons given above I conclude that the First-tier Tribunal decision did not involve the making of an error of law.

Notice of Decision

56. The SSHD's appeal is dismissed. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

57. The decision allowing the Appellants appeal stands.

G. Loughran

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 December 2024