IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01170/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 3rd December, 2014	**On 18th December, 2014**
Given extempore	
Signed on 16th December, 2014	

Before

Upper Tribunal Judge Chalkley

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR W W
(Anonymity Direction Made)

Respondent

Representation:
For the Appellant: *Mr Harrison, a Senior Home Office Presenting Officer*
For the Respondent: *Ms Riaz of Manchester Legal Services Limited*

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008) and consequently, this determination identifies the appellant by initials only.

DETERMINATION AND REASONS

1. The appellant in this appeal is the Secretary of State for the Home Department and to avoid confusion I shall refer to her as "the claimant". The respondent is a 36 year old male citizen of Jamaica. He landed at Gatwick Airport on 12th June, 1998 and sought entry for two months to visit his mother, who at the time was resident in the United Kingdom. Entry was refused and removal directions were set for 14th June, 1998, but on 13th June, the respondent claimed asylum. His claim was refused on 23rd November, 1998, and on 23rd December that year the respondent appealed.

2. The respondent claims to have married J M, a British citizen, on 29th April 1999, but no certificate was submitted to the Home Office to verify this claim. On 12th October, 1999, the respondent's asylum appeal was dismissed. On 20th December, 1999, the respondent applied for an extension of stay as the husband of a settled person and on 16th August 2001, he applied for indefinite leave to remain in the United Kingdom as the spouse of a settled person, J W. The respondent was granted indefinite leave to remain on 14th September, 2001.

3. On 18th June, 2002, the respondent was convicted at Manchester Crown Court of possessing a controlled drug with intent to supply, class A heroin, and with possessing a class A drug with intent to supply, class A crack cocaine, and he was sentenced to three years six months in respect of both offences. The appellant served his sentence and was released from custody on 8th December, 2003.

4. The respondent's first child, L-W W was born in the United Kingdom to his then partner, S S. His second child, L W was born on 15th June, 2006, to J B. On 17th April, 2008, the respondent's third child, Y W was born in the United Kingdom to S S. The respondent married J B on 25th January, 2011, from whom he is now separated. Unfortunately on 22nd July, 2011, the respondent was convicted of handling stolen goods and given a twelve month conditional discharge and ordered to pay costs of £85 at Manchester City Magistrates' Court. On 10th June, 2012, the respondent's fourth child, D'A W was born in the United Kingdom to his wife, J W.

5. On 14th April, 2013, the respondent submitted an application for a no time limit stamp be endorsed on his passport and it appears that this application prompted the claimant to issue a form ICD0350, liability for deportation letter, addressed to the respondent. The claimant made a decision on 10th June, 2014 to make a deportation order under Section 5(1) of the Immigration Act 1971 in respect of the respondent and the respondent appealed to the First-tier Tribunal against that decision.

6. His appeal was heard here in Manchester on 13th August, 2014, by First-tier Tribunal Judge De Haney. The sentencing remarks of the Crown Court Judge at the hearing on 18th June, 2002, were not made available to the First-tier Tribunal, but it was clear to Judge De Haney that the claimant took no action to deport the respondent following his conviction. The judge noted the respondent's various relationships and children and noted that all four of them are British subjects as is S S. The judge found, at paragraph 45 of his determination, that the appellant had a genuine and subsisting parental relationship with a qualifying child and was satisfied on the evidence before him that the effect of the respondent's deportation on that child would be unduly harsh. He found this in respect of L-W W, who was 9 and Y W, who is 6 as well. He believed that there were also arguments for reaching the same conclusion in respect of the respondent's other two children. He made findings in respect of Section 117B of

the 2002 Act, finding that the appellant is a fluent English speaker, economically financially independent, that the relationship was formed when he was in the United Kingdom lawfully, that the relationship was formed when his immigration status was not precarious and indeed he had leave to remain and he found that it would not be reasonable to expect the child to leave the United Kingdom. He allowed the respondent's appeal.

6. The claimant challenged the decision, claiming first in some sour paragraphs that the judge had failed to take properly into account the public interest in deporting foreign criminals. The grounds drew the Tribunal's attention to the decision of Lord Justice Laws in *SS (Nigeria) v Secretary of State for the Home Department* [2013] EWCA Civ. 550, that the public interest in deporting foreign criminals is pressing and that the interest would be hindered where a foreign criminal was not deported for a serious offence. The second challenge suggested that the judge had erred in allowing the appeal under Section 399A of the Immigration Rules HC 395, as amended.

7. Mr Harrison was not able to assist me by throwing any light on the reasons why there was a twelve year delay before making the deportation order but, like me, he suspected that it was the respondent's application for indefinite leave that triggered the deportation proceedings.

8. Mr Harrison accepted that at paragraph 45 of his determination, the judge found that Section 117C(5) was applicable in that the respondent had a genuine and subsisting relationship with a qualifying child and the effect of his deportation on the child would be unduly harsh. There are two such children that the judge made that finding in respect of although he suspected that in fact he would have been entitled to make that finding in respect of the other two children as well.

9. At paragraph 46 he dealt with Section 117B and at paragraph 47 he said, "*I find then that these public interest considerations in assessing Article 8 are outweighed in the particular circumstances of this appeal*" so that it was at that stage that he actually allowed the appeal.

10. He then went on and referred erroneously to paragraph **2**99(a) of the Immigration Rules. His reference of course was intended to be to **3**99(a) and I accept that he may have been wrong in what he said, but I do not accept that it was material, because by the time he had reached paragraph 48 of his determination he had already allowed the respondent's appeal.

11. Given that the claimant is not in a position to offer any explanation to me as to why it took her twelve years to make the deportation order following the respondent's conviction, I believe that the judge was entitled to believe in the circumstances that the public interest in deporting this respondent was not particularly pressing. It cannot properly be said that it is in the public interest that there should be a delay of twelve years before any decision is made to deport a foreign criminal and the longer there is between the date of conviction and date of the decision of the Secretary of State to make a deportation order, the less pressing the public interest in deporting the foreign criminal becomes.

12. Inevitably there will be delays in making deportation orders following conviction because of course the Secretary of State will wish to collect and consider relevant

evidence and often one sees delays of one, sometimes two and occasionally even three years. Those cases however are in a completely different category to this. To suggest that the First-tier Judge has failed properly to weigh the public interest in removing the foreign criminal with young children with whom he is in a genuine and subsisting parental relationship, following a delay of twelve years, without offering any explanation at all for the delay does not reveal an error of law on his part.

13. In the circumstances I find that the claimant's challenge to this determination must fail. I am satisfied that the decision of First-tier Tribunal Judge De Haney involved the making of no error on a point of law and I uphold his decision.

Upper Tribunal Judge Chalkley