



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: DA/02307/2013
DA/02308/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 9 July 2015**

**Decision & Reasons Promulgated
On 17 August 2015**

Before

**UPPER TRIBUNAL JUDGE ALLEN
DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

Between

**SCM
DD
(ANONYMITY DIRECTION MADE)**

Respondents

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Representation:

For the Appellant: Mr P Duffy, Home Office Senior Presenting Officer

For the Respondents: Mrs R Head, Counsel instructed by Lawrence Lupin Solicitors

DECISION AND REASONS

1. We will refer hereafter to the respondents as the appellants, as they were the appellants before the First-tier Tribunal, and we shall refer to the Secretary of State as the respondent.
2. The appellants are a mother and daughter. They are citizens of Jamaica. There is a significant history to the appellants' case. The

most relevant for present purposes being that on 12th March 2013 the respondent made a deportation order against the main appellant. This was on the basis of section 32(1) of the UK Borders Act 2007 whereby it was contended that the main appellant was a foreign criminal and it was conducive to the public good that she be removed from the United Kingdom. The main appellant's daughter, the second appellant, a child, also had a deportation order made against her (date of birth not referred to for anonymity reasons). A further Home Office letter dated 25th October 2013 then replaced the earlier decision.

3. The appellants appealed against the decisions in respect of the deportation orders and on 21 May 2014 the appeals had come for hearing before a Panel at the First Tier Tribunal comprising First Tier Tribunal Judge Aujla and Mr F.T. Jamieson. The Panel allowed the appellants' appeals. The appeals were therefore allowed in that the deportation orders against the appellants were set aside and the appeal was allowed on human rights grounds.
4. The respondent appealed against the First-tier Panel's decision. Permission to appeal was refused by First tier Tribunal Judge Cox but permission was later granted by the Upper Tribunal.
5. A hearing dealing with the error of law issues then took place at the Upper Tribunal before a Panel comprising Davis J and Upper Tribunal Judge Eshun. By way of a decision dated 28 November 2014, the Panel concluded that there was an error of law. The Panel's decision stated that the most sensible course was to remit the matter to the First-tier Tribunal for "*a redetermination of the balancing exercise.*"
6. On 16 December 2014 the appellants' solicitors applied for permission to appeal to the Court of Appeal against the Upper Tribunal Panel's decision of 28 November 2014.
7. A letter dated 21 January 2015 was sent to the parties by Vice President Ockelton. In it he had set out his provisional view that the Upper Tribunal Panel's decision on the error of law dated 28th November 2014 be set aside and the decision be re-made. He had sought a response from the parties within 14 days otherwise the decision would be made. The Vice President had said in his letter that:

"Having reviewed these cases it is clear that:

- i) In its determination promulgated on 28 May 2014 the First-tier Tribunal allowed the claimants' appeals concluding both that Mrs M met the requirements of paragraph 399(a) of the Immigration Rules and that "the circumstances of the case are sufficiently compelling (and therefore exceptional)" that the public interest in deportation is outweighed;

- ii) The Secretary of State brought challenge before the Upper Tribunal to both of the aforesaid conclusions; and
 - iii) In its decision of 28 November 2014 the Upper Tribunal failed to give any consideration to the grounds brought in relation to the First-tier Tribunal's conclusions on paragraph 399(a) of the Rules."
8. Thereafter, by way of a decision dated 11 February 2015, the Vice President, as a follow up to his letter of 21 January 2015, ordered that the decision of the Panel at the Upper Tribunal dated 28th November 2014 be set aside and the matter was to be re-heard at the Upper Tribunal.
9. It appears that unknown to the Vice President, the matter had in fact been remitted for hearing following the Upper Tribunal Panel's decision of 28th November 2014. A direction was sent to that parties stating that,
- "It appears that notwithstanding the Vice President's decision of 11 February 2015, the appeal was remitted to the First-tier Tribunal (Judge Ruth) for hearing at Taylor House. At a hearing at the Upper Tribunal on 19 May 2015, the parties had agreed that they would write jointly to Judge Ruth to ask that he would refrain from promulgating his decision until the Upper Tribunal has made a fresh decision on error of law matters."
10. Judge Ruth had heard the appeal at Taylor House on 6th January 2015 and the decision had been reserved.
11. It was on that basis that the appeal came for hearing before us. The parties were agreed that we were to consider the error of law matter relating to the First-tier Panel's decision made after the hearing on 21 May 2014. After our decision, the appeal would then return to Judge Ruth at Taylor House, if we found an error of law.
12. The respondent's grounds of appeal dated 26 June 2014 in summary contended as follows:
- (a) There was a material misdirection in law because it would not be unreasonable for the child to go to live in Jamaica as she would go there with her mother. Further, the two British Children who would remain in the United Kingdom would have their father who would be here;
 - (b) There were no exceptional circumstances for the purposes of paragraph 399 of the Immigration Rules;
 - (c) The public interest had not been properly balanced against the Appellant's circumstances and the respondent relied on the decision of the Court of Appeal in SS (Nigeria) v Secretary of State for the Home Department [2013] EWCA Civ 550.

- (d) There was a material misdirection in law because the Appellants circumstances were not so exceptional that they outweighed the public interest in deporting the Appellants.
13. It is quite clear that the Panel was concerned about DD and noted with care that there was an independent social worker's report dealing with the effect deportation would have on her. At paragraph 36 the Panel noted that the expert report had stated that DD's removal from the United Kingdom would be a negative and retrospective measure and unnecessary and distressing for her. The Panel also noted at paragraph 37 of its decision that DD had spent all of her life in the United Kingdom.
 14. There is no doubt that these were relevant and important matters. As were the matters relating to the main Appellant's other two children. One was aged 4 years and the other 5 months at the time of the hearing before the Panel. These two children were noted to be British.
 15. The First-tier Tribunal's decision is a thoughtful one in respect of the best interests of the children. The Panel made it quite clear at paragraph 40 that was it not for the children, the appeal would have failed. Where we have found difficulties with the decision however is in respect of the public interest considerations. The references to the public interest in the decision are very limited.
 16. There is a sentence at the end of paragraph 40 of the Panel's decision stating that the circumstances were sufficiently compelling and therefore exceptional to outweigh the public interest in deportation.
 17. We conclude that the respondent is correct to contend that the public interest matters ought to have featured much more significantly in the Panel's assessment of the case. There was a correct reference by the Panel to the Court of Appeal's decision in MF (Nigeria) v Secretary of State for the Home Department [2013] EWCA Civ 1192 at paragraph 29 of its decision but it did not correctly apply that decision. As was noted at paragraph 43 of the Court of Appeal's judgment "*very compelling reasons will be required to outweigh the public interest in deportation. These compelling reasons are the 'exceptional circumstances'*".
 18. In addition, as the judgment of Laws LJ in SS (Nigeria) v Secretary of State for the Home Department [2013] EWCA Civ 550 makes clear,
"The pressing nature of the public interest here is vividly informed by the fact that by Parliament's express declaration the public interest is injured if the criminal's deportation is not effected. Such a result could in my judgment only be justified by a very strong claim indeed."
 19. The history of the Appellant's entry to the United Kingdom, her offending, which was serious offending as it attracted a sentence of

imprisonment of some 19 months following an earlier suspended sentence of imprisonment, the overstaying and the use of false identities were highly relevant matters that ought to have been weighed correctly in the assessment of the appeal based on both the Immigration Rules and Article 8. Therefore the public interest does not feature as the important factor as it should have done. This relates to both the Immigration Rules aspect and the Article 8 aspect of the appeal.

20. We conclude that the First-tier Panel's decision does contain a material error of law and we set it aside in respect of its conclusions. Because of the unusual procedural history to this matter which we have set out above, this matter will now return to Judge Ruth at Taylor House.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. We continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed

Date

Deputy Upper Tribunal Judge Mahmood