IAC-AH-SC-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01224/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 January 2016	**On 3 March 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

OSHAIN ANTHONY COLLINS
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: Ms N Manyarara, instructed by Greenland Lawyers LLP

DECISION AND REASONS

1. I refer to the appellant as the respondent and to the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, Oshain Anthony Collins, was born on 25 December 1987 and is a male citizen of Jamaica. The appellant appealed to the First-tier Tribunal (Judges N Bird and Petherbridge) against the decision of the respondent to deport him to Jamaica dated 17 June 2014. The decision to report the appellant was taken subject to Section 3(5) of the

Immigration Act 1971. The First-tier Tribunal allowed the appeal and the respondent now appeals to the Upper Tribunal, with permission.

2. In a careful determination, the evidence of a number of witnesses has been recorded together with the relevant Sections of the Immigration Rules, in particular paragraphs 398 and 399 and also the provisions of Section 117A of the 2002 Act. The immigration history of the appellant is set out in detail at [93 – 104]. At [135 – 136], the Tribunal stated:

> "135. We accept that the appellant has a genuine and subsisting relationship with his children who are British citizens. The effect of the deportation order is such that his children will also become victims. The respondent has accepted the appellant has a genuine and subsisting parental relationship with all of the affected children in this case.
>
> 136. We accept that it would be unduly harsh to expect them to relocate to Jamaica having spent all of their lives in the United Kingdom. As the appellant's children are British citizens both the Rules and Community Law render any suggestion to the contrary unlawful as conceded by the respondent in *Sanade (British citizen – Zambrano – Direche)* [2012] UKUT 0048 (IAC). Furthermore it would be unduly harsh to expect them to remain in the United Kingdom without the appellant. The appellant has parental responsibility. It is clear that the appellant has a genuine and subsisting relationship with the children who are affected by the decision."

3. The grounds of appeal challenge, *inter alia*, the reasoning of the Tribunal in these paragraphs. The Secretary of State submits that the Tribunal "failed to identify what sets this case apart from normal consequences of separation caused by deportation." It is asserted that the Tribunal failed to adequately show why the appellant's case falls within the definition of "unduly harsh". There was no evidence before the Tribunal that the children would be neglected or suffer harm. There is no reason to expect why the mother of the children cannot provide adequate care for their essential needs in the United Kingdom.

4. The grounds contained a factual inaccuracy; it is submitted that "the evidence is that the children live with their mothers" [1a]; in fact, one of the children lives with both the appellant and his mother. There are three children in all varying in age from 18 months to 3½ years. The Tribunal found [124] that the appellant has a genuine and subsisting parental relationship with all three children. The appellant does not appear to have been convicted for any offence since 2012. His offending history includes convictions for drugs offences.

5. The Tribunal made it clear at [130] that it considered Article 8 in the context of the Immigration Rules and also as a freestanding provision outside those Rules. At times, the reasoning of the Tribunal as regards Article 8 within the context of the Rules and outside it is difficult to follow but it is apparent that the paragraphs which I have set out above contain the *ratio* on which the appeal was allowed, namely the Tribunal's conclusion that it would be unduly harsh to expect the children of the appellant to relocate to Jamaica and, crucially, that it would also be unduly harsh to

expect those children to remain in the United Kingdom without the appellant. It is in this latter conclusion that I find that the Tribunal has seriously erred in law. I agree with the submissions made by Mr Walker who appeared for the Secretary of State and with the arguments set out in the grounds of appeal that what purports to be a reasoning to support the finding that it would be unduly harsh to expect the children to remain in the United Kingdom without the appellant is not in fact a reason at all but simply a statement of a number of the basic facts in this case, namely that the appellant has parental responsibility for the children, that he has a genuine and subsisting relationship with those children and that they would be "affected by the decision." No attempt has been made by the Tribunal to engage with the concept of "undue harshness" or to examine in any detail what effect the removal of the appellant would actually have upon their lives and welfare. It appears to have been enough for the Tribunal to find that "the effect of the deportation order" (that is, the removal of the appellant from the United Kingdom) would render the children "victims" [135]. With respect, that is not enough. It cannot be the case, as the Tribunal appears to suggest, that if an individual subject to a deportation order has a genuine and subsisting relationship with children for whom he has parental responsibility and from whom he will be separated that Article 8 be infringed. The Tribunal should have supported its conclusions with proper focussed reasoning; generalisations are insufficient. I therefore set aside the First-tier Tribunal's decision and remit the matter to the First-tier Tribunal for that Tribunal to remake the decision. I set aside the findings of the First-tier Tribunal although observe that many of those findings appear to be uncontroversial; it would be helpful if the parties could seek to agree as much of the evidence as possible with a view to avoiding the need for witnesses whose evidence is not disputed attending the next hearing..

Notice of Decision

6. The decision of the First-tier Tribunal, which was promulgated on 19 August 2015 is set aside. None of the findings of fact shall stand. The appeal is remitted to the First-tier Tribunal (not Judges N Bird or Petherbridge) for that Tribunal to remake the decision.

7. No anonymity direction is made.

Signed Date 20 February 2016

Upper Tribunal Judge Clive Lane