



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/21002/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 22 May 2018

Decision & Reasons Promulgated  
On 29 May 2018

Before

THE HONOURABLE MR JUSTICE GARNHAM  
SITTING AS A JUDGE OF THE UPPER TRIBUNAL  
UPPER TRIBUNAL JUDGE RINTOUL

Between

MR JASON [B]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Miss S Akinbolu, instructed by Peer & Co  
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Bart-Stewart, promulgated on 12 October 2017 in which she dismissed his appeal against a decision of the respondent made on 1 September 2016 to refuse his human rights claim consequent upon a decision to deport him pursuant to Section

5(1) of the Immigration Act 1971, the appellant having been convicted on 25 June 2004 for the supply of class A drugs for which he was sentenced to three years and six months' imprisonment.

2. The appellant's case is that he entered the United Kingdom in 2000 as a visitor and has remained here since. He has five children. At the time of the hearing JB was aged 22, AB was 20, SA (a step-daughter) was aged 18, DB was 10 and BG was 9. The mother of the first four children is MG, with whom the appellant previously had a relationship. The appellant also had a relationship with DG, the mother of BG. The case put to the judge was that the appellant is no longer in a relationship with either MG or DG but is in a relationship with Miss Hills.
3. The Secretary of State did not accept that SA had a genuine and subsisting relationship with the appellant, nor did she accept that the appellant was the biological father of BG. She did, however, accept that he is the father of DB. The respondent did not accept that the appellant was in a genuine and subsisting parental relationship with his children and thus that paragraph 399(a) of the Immigration Rules did not apply.
4. The respondent did not accept either that paragraph 339(b) of the Immigration Rules was engaged as he was not satisfied that the appellant was in a genuine and subsisting relationship either with MG or DG; or, that paragraph 399A of the Immigration Rules was met given that he had been unlawfully present for the greater part of his time in the United Kingdom. The respondent concluded also that there were not, on the facts of this case, very compelling circumstances such that the public interest in his deportation was outweighed.
5. The judge heard evidence from the appellant, JB and AB (his older children), MG and Miss Hills. The judge also had before her letters of support from DG (the mother of BG) and a report from an independent social worker, Jasmine Smith.
6. The judge found that:-
  - (i) the appellant had entered the United Kingdom as a visitor in 2000 and had remained without leave since leave to remain as a visitor had expired [63];
  - (ii) on 25 June 2004 the appellant was sentenced for possession with intent to supply class A drugs, whilst using his cousin's identity in which he was convicted [64]; and, that he had maintained that identity until April 2013;
  - (iii) it was more likely that he was living at Miss Hills' address rather than with the mother of the older children [64];
  - (iv) the appellant did not meet the requirements of paragraph 399(b) or 399A of the Immigration Rules [65], [66];
  - (v) with respect to paragraph 399 (a), the appellant had a genuine and subsisting parental relationship with SA, DB and BG, all of whom are British citizens or are settled and have lived in the United Kingdom for at least seven years [67]

having had regard to Section 117B and Section 117C of the 2002 Act and that there would not be unduly harsh consequences for the appellant or Miss Hills if the appellant were to be deported [69] to [71] and that it would be unduly harsh to expect any of the children to leave the United Kingdom with the appellant, having lived here all their lives with their mother and older siblings [68];

(vi) in light of AJ (Zimbabwe) [2016] EWCA Civ 1012 and Hesham Ali [2016] UKSC 60, and bearing in mind the nature of the family life that exists between the appellant and his children [84], that his immigration history and the use of a false identity counted against the lack of further convictions.

7. The appellant sought permission to appeal on the grounds that the judge had erred:
  - (i) in failing to make findings as to the children's best interests; and, failing to weigh their best interests in assessing whether it would be unduly harsh for them to be separated from the appellant; and, failing to make a proper assessment in respect of SA or DB as to whether the appellant's deportation would have an unduly harsh impact on them;
  - (ii) in taking into account the observation of the judge that the appellant was not the primary carer, that not being relevant to the issue before the judge;
  - (iii) in failing to take into account, when assessing the public interest that there was no evidence that the appellant posed a current risk to the public;
  - (iv) in failing properly to address the report of the social worker and failing to give clear reasons for rejecting it;
  - (v) in concluding that there was no evidence of the appellant's active involvement in BG's life; and, the judge had erred in failing to have regard to a letter dated 2017 from the appellant's school.
8. We observe first that the judge directed herself [69] to [70] in respect of the relevant parts of Section 117 of the 2002 Act. We note also that the legislative provisions in respect of the deportation of foreign criminals and in particular the assessment of where the public interest lies as set out in Section 117 envisages that deportation will split up families. Indeed, as the Court of Appeal noted in AJ (Zimbabwe) at [16] to [17], the conditions whereby under Rule 399(a) the public interest in deportation is outweighed is a rare occasion. The mere fact that there is a detrimental impact on the best interests of the children where a parent is deported where the children cannot follow him does not amount to undue harshness.
9. We address the grounds in turn.
  - (i) *failing to make proper findings on material issues*
10. Whilst we accept that the judge does not directly refer to an assessment of the best interests of the children, we consider that it is nonetheless sufficiently clear from her assessment of the lives of the children, and in particular the finding that it would be

unduly harsh to expect them to leave the United Kingdom, that their best interests were considered; that is a necessary step prior to that finding and indicates that a proper balancing exercise had been conducted. Further, and in any event, we consider that, on no view of the facts as found was there anything of substance capable of showing that the impact on the children through separation from their father, either singly or cumulatively, unduly harsh.

11. We note that Miss Akinbolu accepted that it was implicit in the judge's finding that removal would not be disproportionate, this being a balancing exercise, that she had concluded that it would not be unduly harsh for the children to be separated from the appellant. We do not accept the submission that the reason for that is not sufficiently clear. On the contrary, we consider that reading the decision as a whole, although it could have been better structured, it is apparent that it was the judge's analysis of the connections between the appellant and his children, bearing in mind the lack of involvement in schooling, the visits only once a week and the fact that he did not live with them, were factors leading to the conclusion that the interference arising from deportation would not be unduly harsh.
12. We consider that there is no real challenge to the judge's findings of fact about the precise nature of the contact the appellant has with his children. It was open to the judge to find, [73] to [75], that there was limited information regarding the involvement with BG given the inconsistencies in evidence. Contrary to what is averred in the grounds, we consider that the fact that the appellant is not the primary carer is a relevant matter, as is the fact that the children do not live with him. It is also of note [73] that the appellant appears to have little involvement in the schooling of DB. Further, there is no real challenge to the conclusion that he does not spend most of his time with them [74] and we note also the observation [76] that DB had told the social worker that his father visits him weekly. Also of note is the evidence from the children's mother [78] that the appellant has been spending most of his time away from them, in Stevenage. There is no challenge to the observation that "he also said that his intention is to live in Stevenage, this does not suggest that he prioritises his family above his own desires".
13. We accept that the social work report says that the appellant takes his role seriously in respect of his children. There is no indication that the judge disagreed with the observation that willing fathers should be given the opportunity to oversee their sons' education alongside the mother. Nor do we find any indication that the judge did not accept the observation at page 19 that it would be in the children's best interests for them to be raised by both parents. But there is nothing of substance in the report indicative that the effect of separation on the children would cause serious harm or that there is anything specific to the children's position which sets them apart from other children who also face the deportation of a parent. The point is not whether, as the grounds at [16] aver, that there would be a negative effect; the question is whether the negative effect is such that, taking into account all the other factors, the effect of deportation would be unduly harsh.

14. Accordingly, we are not satisfied either that the judge did not in fact take into account the children's best interests, or that a failure expressly to mention them was, on the facts as found, capable of affecting the outcome. We consider that the conclusion at the end of the decision – that deportation would be proportionate – is in this context sufficient to constitute a finding that separation of the children from the appellant would not be unduly harsh.

*(ii) taking into account an irrelevant matter*

15. Contrary to what is averred, the judge's conclusion of the appellant not being a primary carer is relevant to the assessment of undue harshness. The strength and circumstances of the parental bond are plainly relevant in assessing that issue and the judge was clearly entitled to take it into account, given the facts as found.

*(iii) failing properly to assess the public interest*

16. We do not consider that there is any error disclosed in the judge's approach to the public interest. The absence of further convictions is but one factor of the public interest. It is not determinative, given the other factors such as deterrence, and it was open to the judge to consider that any mitigation which might arise from this and the age of the conviction is countered by the fact that the appellant had used a false identity for a significant period of time.

*(iv) failing properly to address the report of the social worker*

17. In the context of the sustainable findings of fact made by the judge, and in the light of what we say at [8] above, the social work report is of limited value. We do not accept the submission that it was not properly taken into account by the judge who refers to it expressly at several parts of her decision, summarising it at [56] to [62]. The report does, at section 8, include a finding that DB has a positive attachment to his father and that separation was a frightening concept for him. Similarly, in relation to SA she said that it would be painful for her to be separated, that her father had always been part of her life, and that that would simply not be normal. The evidence in respect of BG is limited as his mother did not permit the social worker to speak to him. The point remains, despite Miss Akinbolu's submissions, that the social work report simply refers to there being a negative effect; it does nothing more than show there will be a detrimental impact on the children which, even taken with any other factors, bearing in mind the nature of the family life between the appellant and his children, is not capable of reaching the high threshold to demonstrate undue harshness in the light of the other factors to be considered.

18. There is thus nothing of substance in the observations as to the best interests of the children, which is clearly to remain in the home lives that they have established with their mothers and to have their father playing some part in their lives, which advances the case any further.

19. It cannot thus be argued that the judge erred in his approach to the report. Aas is evident from reading the decision as a whole, the judge accepted that removal would have a detrimental effect.

*(v) failing to have due regard to the evidence concerning BG*

20. We find no substance in this ground. Contrary to what is averred in the grounds, the judge did not find there was no active involvement in BG's life. As we observed during submissions, the social worker relied solely on what was said to her by BG's mother. It is thus difficult to characterise this as corroborative, and in any event, the judge's findings at [75] are sustainable on the evidence that was before her. It was open to her to conclude that the appellant had no daily presence in BG's life.
21. Finally, what is averred at [19] of the grounds appears to be an error; in any event, no letter from the school was drawn to our attention, nor submissions made as to its relevance.

### Conclusions

22. Accordingly, for these reasons, we consider that the grounds are not made out. We are not satisfied that the decision of the First-tier Tribunal involved the making of an error of law and we uphold it.

### NOTICE OF DECISION

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

Signed

Date 25 May 2018



Upper Tribunal Judge Rintoul