Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/14709/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 March 2019	**On 12th March 2019**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

CARL [W]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge J Robertson, promulgated on 22 August 2018. Permission to appeal was granted by Deputy Upper Tribunal Judge Zucker on 22 November 2018.

Anonymity

2. No direction has been made previously, and there is no reason for one now

Background

3. On 16 December 1993, the appellant entered the United Kingdom with leave to enter as a visitor. He married a British Citizen (DC) on 18 February 1994. He extended his leave as a working holidaymaker until around June 1996. An application made for further leave to remain on the basis of marriage was refused during 1997 and his appeal against that decision failed. Thereafter he remained in the United Kingdom without leave.

4. The appellant was convicted of assault occasioning actual bodily harm on 24 March 1998; damaging property on 4 May 2000 and 8 counts of supplying cocaine to undercover police officers on 7 April 2004. For the last offences, which took place in 2003, the appellant was sentenced to 42 months' imprisonment and was subsequently served with notice of intention to deport.

5. The appellant's challenge to the deportation decision failed and he became appeal rights exhausted on 13 July 2005. According to Home Office records the deportation order was signed on 19 August 2005 but was never served on the appellant.

6. On 27 October 2016, the appellant made representations, in response to which the Secretary of State reviewed the question of his deportation. Those representations principally relied on the appellant's family life with a partner, two children and his private life. Furthermore, his eldest child suffered from severe allergies.

7. On 16 October 2017, the respondent refused the appellant's human rights application. The respondent considered that the findings of the judge who dismissed the appellant's previous appeal remained relevant. Reliance was placed on paragraph 398a of the Immigration Rules owing to the length of the appellant's prison sentence. The respondent did not accept that the appellant's stepchildren qualified for consideration under the exception to deportation in paragraph 399a of the Rules. It was accepted that the appellant had genuine and subsisting relationships with his minor British children but not that it would be unduly harsh for them to remain in the United Kingdom without the appellant. The appellant's relationship with his partner was accepted to be genuine and subsisting however, as the relationship commenced when the appellant's status was precarious the requirements of paragraph 399b of the Rules were not met. The appellant could not meet the requirements of the exceptions in 399A(a) and (c) of the Rules and nor were there very compelling circumstances.

The hearing before the First-tier Tribunal

8. At the hearing before the First-tier Tribunal, the appellant was unrepresented. The judge reached similar conclusions to the Secretary of State, albeit the judge considered there to be a lack of evidence that the appellant was socially and culturally integrated in the United Kingdom.

9. The judge further commented that there was no objective evidence to suggest that medical care for the appellant's son was not available in Barbados.

The grounds of appeal

10. The application for permission to appeal lacked grounds but was accompanied by a letter from the office of the Barbados High Commissioner dated 4 September 2018 which referred to medical evidence regarding the level of care available in Barbados for the appellant's son and made additional points in support of his appeal.

11. Permission to appeal was initially refused by the First-tier Tribunal on 12 September 2018, however time for appealing was extended.

12. In renewing his application, the appellant argued that no deportation order had been served at any stage, that there was no consideration of the cost or burden for his family to visit him in Barbados and that there was a failure to consider medical evidence as to the absence of suitable medical treatment in Barbados for the appellant's son. Permission to appeal was granted on the basis that it was "arguable that the passage of time since the deportation decision was made in 2005…, with no evidence of the respondent seeking to remove the appellant until he sought to regularise his stay with no offending since 2004 have not been given sufficient weight."

13. The respondent's Rule 24 response, received on 10 December 2018, indicated that the appeal was opposed and that the judge had given adequate reasons for finding that the delay in serving the deportation order had not disadvantaged the appellant.

The hearing

14. The error of law hearing was initially adjourned because the appellant was unable to compose himself sufficiently to make submissions. I adjourned the hearing owing to his presentation and in order for him to attempt to obtain representation

15. When this matter came before me on 7 March 2019, the appellant was again unrepresented, however he was accompanied by his partner and daughter and confirmed that he felt able to proceed.

16. I heard submissions from Ms Cunha initially in order to enable the appellant to focus on the relevant issues. Thereafter the appellant and his partner made submissions and Ms Cunha replied. Little emerged from either submissions, however the appellant accepted that he had not raised

the issue of the cost of travelling to Barbados before the First-tier Tribunal. Ms Cunha robustly defended the decision under challenge, argued that it was not unduly harsh for the appellant to be removed, that there were no compelling circumstances and that the respondent's delay, rather than having a negative impact on the appellant, had enabled him to enjoy family life and see his family grow.

17. At the end of the hearing, I announced that I was satisfied that the First-tier Tribunal made material errors of law and that the decision was set aside. The brief reasons I gave at the hearing, which I expand upon below, were that there had been an inadequate consideration of the respondent's failure to take steps to serve the deportation order and to remove the appellant; that there had been an inadequate consideration of the medical evidence including the severity of the conditions of the appellant's son and that there had been no consideration of the evidence from a former CEO of the Queen Elizabeth Hospital in Barbados regarding the lack of qualified specialists in relation to treating life threatening allergies. The latter point is relevant as to whether family life could be maintained by visits by the appellant's children to see him in Barbados.

Decision on error of law

18. By the time of the hearing before the First-tier Tribunal, the appellant had been living in the United Kingdom for nearly twenty-five years; around fifteen years had elapsed since he last offended and he had been reporting regularly since his release from prison. Throughout the time since his conviction, he had been residing with his partner at the same address which was known to the Home Office. The judge dealt with this issue relatively brusquely at [23], stating that the delay had not disadvantaged him. That conclusion made no reference to the appellant's detailed written evidence as to the extraordinarily negative effects upon him and his partner of waiting for the deportation order to be signed over such a prolonged period. That the respondent did not consider progressing the appellant's deportation until after he made representations, ought to have been considered as to whether this reduced the public interest in his deportation. In addition, this issue was relevant as to whether it was unduly harsh for the appellant to be removed to Barbados while his partner and children remained in the United Kingdom. At [22], the judge sums up the appellant's case since his last hearing in 2005 thus, "*Other than the passage of time the Appellant's circumstances remain the same*." This view, which was far from accurate, appears to have coloured the judge's consideration of the appellant's case.

19. The judge refers to the appellant's son having a "*health condition*" and comments that the medical evidence amounts to incomplete letters. Having perused the file, there were three medical reports and all were complete. It is apparent from the most recent report that the appellant's son has had serious problems managing his severe allergies to many food products and asthma. There was a reference to a recent incident in school where there was a failure to follow the management plan when the child

was accidentally exposed to milk and experienced symptoms including breathing difficulties. The medical evidence also refers to the son having a significant anxiety component to his behaviours, which were suggestive of being on the autistic spectrum. If the judge considered that the medical letters were incomplete, this may well be why his consideration of the contents was inadequate.

20. At [26] the judge says there is no objective evidence that medical care is not available for the appellant's son in Barbados. Such evidence was available in the letter from Winston Collymore who in addition to being the former CEO of Queen Elizabeth Hospital, Barbados, was the national lead on the modernisation of polyclinics.

21. Mr Collymore has held many other senior roles in healthcare in the United Kingdom and his evidence was deserving of some consideration. He describes the difference in healthcare between the United Kingdom and Barbados as vast, there being no qualified specialists in the relevant field in the latter. The letter from Mr Collymore went entirely unaddressed by the judge.

22. Without the errors set out above, a different conclusion could have been reached. Therefore, the judge's decision is unsafe and must be set aside.

23. The appellant wishes to adduce up-to-date medical evidence regarding his son's conditions as well as to seek legal representation for the rehearing of his appeal. Furthermore, he was deprived of a fair hearing because the evidence he produced previously was not taken into consideration. In these circumstances, the appeal it is appropriate to remit the matter to the First-tier Tribunal for a fresh hearing.

24. The appellant explained that it was easier for he and his family to travel to London than Birmingham and for that reason I transferred the matter to be heard at Taylor House.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge J Robertson.

Signed Date 24 April 2019

Upper Tribunal Judge Kamara