Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/22128/2018

THE IMMIGRATION ACTS

Heard at Bradford	**Decisions and Reasons promulgated**
on 20 November 2019	**on 25 November 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

RS
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Ahmed of A1 Immigration Services
For the Respondent: Mrs R Pettersen Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant is a Jamaican national born on 19 August 1980. On 15 December 2017 at Sheffield Crown Court the appellant was convicted of 4 counts of non-penetrative sexual activity with a male child under the age of 16 and sentenced to 4 years imprisonment. The appellant is also the subject of a Serious Harm Prevention Order for a period of 10 years

and will remain subject to notification requirements of the remainder of his life.

2. The appellant is also the subject of an order for his deportation from the United Kingdom as a result of his offending. The appellant brought a claim relying on an exception to deportation based upon his private and family life which was refused by the respondent on 18 January 2018 against which the appellant appealed.

3. The matter came before a panel of the First-tier Tribunal composed of First-tier Tribunal Judge Rose and First-tier Tribunal Judge Kelly ('the Panel') who in a decision promulgated on 20 June 2019 dismissed the appellant's appeal on all grounds. The Judge's findings are set out from [28] in the following terms:

> "28. In respect of his relationship with [VB], we find that there was a genuine and subsisting relationship, which has self-evidently continued to this day, notwithstanding either his convictions or his subsequent incarceration. We attach little weight to the fact that they were not cohabiting, which may well have been attributable to a desire by the appellant not to lose his local authority accommodation. Regardless of the reason, they lived in close proximity and had just had a child together. It is also clear that the appellant's mother and [VB] are closely involved in each other's lives.
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> 29. However, we are not persuaded that the effect of the appellant's deportation upon [B] would be unduly harsh. She has managed to maintain her relationship with him throughout his incarceration. While we acknowledged she has suffered financial hardship, she being unable to work during his imprisonment, we are not persuaded that it is over and above that encountered by many in her situation.
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> 30. We have considered with some care the nature of the relationship between the appellant and [C]. Whilst there may have been periods during which the appellant was absent from [C's] life - for example, because of concerns held by the mother of [b] - we have attached considerable weight to the evidence of the appellant's mother and to the letter written by [C] himself.
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> 31. We accept that, currently, [C] is experiencing a turbulent and unsettled period in his life. There will be a number of factors underpinning this and, doubtless, they will include the defendants convictions, their nature and the defendants imprisonment. Self-evidently, were the defendant to be deported, that too will cause [C] further distress. However, taking into account his age and the other problems he has encountered, we are not satisfied that the appellant's deportation will have an unduly harsh impact upon him.
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> 32. Given the evidence we summarised at paragraphs 11 to 19 (above), we are not satisfied that the appellant has a genuine and subsisting relationship with [b]. Conversely, we are satisfied that he has such a relationship with [L] and [R].
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> 33. However, we are not satisfied that the deportation would be unduly harsh upon either child. [L] was only 4 years old when the appellant was imprisoned and [R] a mere 8 months old.

> 34. In considering the position of the appellant's children, we have given due regard to the SSHD's duties under section 55 Borders, Citizenship and Immigration Act 2009. We consider that the children's best interests are clearly served by remaining with their respective mothers in the UK. We do not expect them to relocate to Jamaica but neither do we consider it will be unduly harsh for them to continue family life in Jamaica if this is what the family choose. If they choose not to continue family life in Jamaica, we do not consider that it would be unduly harsh for them to be separated. While we recognise it is not the ideal, family life can continue remotely, i.e. via telephone calls with the potential of visits, in the form of trips to Jamaica or third countries.
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> 35. In any event, taking the appellant's case at its highest, there has been no evidence adduced by the appellant to demonstrate that there are very compelling circumstances so as to override the public interest in favour of deportation. Accordingly, his appeal must fail."

4. The appellant applied for permission to appeal which was considered by a Designated Judge of the First-tier Tribunal. Although the Designated Judge's order 15 July 2019 specifically states that permission to appeal is granted the reasons for the decision set out at [3] of that document are the following terms:

> "3. The Judge is examined the evidence meticulously and reached clear and well-reasoned conclusions on all relevant issues, including the best interests of the Appellant's children. No error of law has been shown."

5. In her Rule 24 response dated 19 September 2019 the respondent writes:

> "2. The respondent opposes the appellant's appeal. It is clear from Judge Manuell's reasons for decision that he intended to refuse permission to appeal, and that the heading 'For permission to Appeal is Granted' is a slip of the pen. This is the only logical conclusion, given that there is no indication in Judge Manuell's reasons that either the grounds or the First-Tier Tribunal's decision raise any arguable error of law. Indeed, they state the opposite - that the grounds have no merit, the judge is examined the evidence meticulously and reached clear and well-reasoned conclusions on all relevant issues, and that no error of law has been shown."

Error of law

6. The appeal was case managed by a judge of the Upper Tribunal who noted that permission to appeal had been granted albeit that it appeared to be in error. The grant was not referred back to the Designated Judge for clarification or amendment, but the matter allowed to proceed as an appeal in which permission had been granted.
7. The appellant in his grounds asserted the Panel erred in law in failing to lawfully consider the appellant's article 8 appeal. The appellant asserts

the Panel was required to consider the impact upon the children of their father being removed from them and that failure to do so amounts to an error of law. The grounds assert the Panel's failure to consider the subsisting relationship between the children and their father is an error of law and refers in the grounds to a number of High Court decisions claimed to support the appellant's challenge. The grounds also assert the Panel failed to consider the fact the appellant's behaviour had significantly improved with no reference being made to his low risk of reoffending, failed to consider the appellant's immigration history, and failed to consider the best interests of the children. In respect of this latter complaint it is asserted the Panel failed to consider the impact upon the children of their father being removed from them, failing to take into account the length of time and connection with the UK that each of the children have, that there is no consideration of the impact of deportation upon the children and as to whether such action will be in their best interests. The grounds assert there has been inadequate consideration of the position as identified in the letter from [C] which the grounds assert was dismissed without any proper reasoning. The grounds assert there has been inadequate consideration of the children's article 8 rights.

8. The grounds are without arguable merit and fail to establish any principled basis for interfering with the Panel's findings of fact. This is a detailed decision in which the Panel engaged with the evidence and factual matrix. The fact the appellant had not offended further is hardly surprising as he is in prison, but Parliament has legislated that whether a person is liable to deportation depends upon the criminal sentence they have received. In this case the appellant was sentenced to a period of 4 years imprisonment.

9. The Panel clearly considered the evidence with the required degree of anxious scrutiny paying particular regard to the letter from [C]. The assertion the Panel failed to consider the position in relation to the children is not made out. The Panel conclude the appellant has a genuine and subsisting relationship with [C], [L] and [R] which is a finding in the appellant's favour and one that he invited the Panel to make. In relation to [b] the Panel give adequate reasons in support of their finding that it had not been established the appellant has a genuine and subsisting relationship with this child. At [13] the Panel write:

> 13. In respect of [b], the appellant stated that he saw her every day. However, he then stated that he had not seen her for two years prior to his conviction. He explained that this was because the mother of [C] and the mother of [b] were very good friends and that [b's] mother had stated that, as the appellant was not having contact, he could not have contact with [b]. The email from Claire Bullivant indicated that, as of 2007, the appellant was allowed weekly supervised contact with [b], due to domestic violence issues.

10. The evidence before the Panel did not establish the appellant had the type of relationship with [b] sufficient to enable it to be found that he had a genuine and subsisting parental relationship with her.
11. The Panel assessed the question of undue harshness in light of the decision of the Supreme Court in *KO (Nigeria) [2018] UKSC 53* and the appellant's representative failed to establish on what basis it can be said the quoted decisions of the High Court, which are not binding, made any material difference. It was not made out the Panel did not consider the evidence in a proper manner or failed to assess relevant issues in accordance with the binding decisions of the Senior Courts.
12. The thread that evolved throughout the appellant's representative's submissions as clarification was sought from the Bench of the basis of challenge was that the appellant disagrees with the decision of the Panel based on a differing view of the weight to be attached to the various pieces of evidence. The Panel make sufficient findings which are supported by adequate reasoning. As such the weight to be given to the evidence was a matter for the Panel. It has not been established that the weight given was in any way arguably irrational or unreasonable.
13. The Panel clearly took into account section 55 and the best interests of the children which are to remain with their mothers in the United Kingdom.
14. Mr Ahmed was asked to specifically refer to the evidence made available to the Panel which it is said they had not considered, and which established the appellants claim that his deportation will be unduly harsh, such as to establish legal error in the Panel's decision. The reference to the letter from [C] and claims made in relation thereto have no merit as the Panel clearly considered this evidence and in fact attached considerable weight to that letter as reflecting [C's] view. Mr Ahmed was unable to refer the Upper Tribunal to evidence that supported the claim the impact of removing the appellant from the children's life would be unduly harsh upon them. The appellant committed a very serious offence for which he received a substantial custodial sentence. The Panel clearly undertook the required detailed examination of the facts of the case based upon the evidence made available. It is not made out the Panel misunderstood or failed to apply relevant legal principles. The difficulty for the appellant in this challenge is the finding at [35] of the decision under challenge in which the Panel state that even taken the appellant's case at its highest the appeal must fail.
15. The Designated Judge was correct in the body of the grant of permission to record that the Panel examined the evidence meticulously and reached clear and well-reasoned conclusions on all relevant issues in relation to which no error of law has been shown.
16. Whilst the appellant disagrees with the Panel's decision the grounds fail to establish arguable legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this appeal.

Decision

17. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

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

    I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 to protect the identity of the children.

Signed…….
Upper Tribunal Judge Hanson

Dated the 21 November 2019