



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

Appeal Number: UI-2021-000716
HU/19841/2018

THE IMMIGRATION ACTS

**Heard At Bradford
On 14 September 2022**

**Decision & Reasons Promulgated
On 20 October 2022**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**PAUL HINES
(ANONYMITY DIRECTION NOT GIVEN)**

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Mr Moksud, Counsel

DECISION AND REASONS

Introduction

1. The SSHD has appealed against a decision of the First-tier Tribunal ('FTT') promulgated on 30 June 2021, allowing Mr Hine's appeal on Article 8 grounds, against the SSHD's decision dated 13 September 2018 making a deportation order against him and refusing his human rights claim.

Anonymity

2. There is no need for this decision to be anonymised. The mere fact that the FTT decision refers to minor children is not sufficient to displace the principle of open justice. This decision has been written so as to avoid mentioning details which might lead to children being identified – see Walile (deprivation: self-incrimination: anonymity) [2022] UKUT 00017 (IAC).

Background

3. The relevant factual background is fully set out in the comprehensive and detailed decision of the FTT running to 26 pages.
4. The FTT found the appellant and all his witnesses to be credible and accepted the following: since leaving prison in August 2019 Mr Hines had turned his life around and he was maintaining flourishing relationships with his current partner, their child and his two stepchildren and it would be unduly harsh for them to remain in the UK on his deportation to Jamaica.

Appeal to the Upper Tribunal ('UT')

5. Mr Diwnycz simply relied upon the written grounds of appeal and clarified that the single ground relied upon by the SSHD was that the FTT inadequately reasoned its conclusion that Mr Hines' deportation would be unduly harsh on his current partner and her three children.
6. Mr Moksud submitted that the FTT applied the correct test and provided adequate reasons for its overall conclusion. He invited me to find that the SSHD merely disagreed with the FTT's conclusions and the appeal should be dismissed.
7. Having heard from both parties I reserved my decision and now provide my reasons.

Error of law discussion

8. I have no hesitation in finding that the SSHD has not identified an error of law in the decision of the FTT. The SSHD clearly disagrees with the FTT's assessment and evaluation of the facts but these do not contain an error of law – see the summary of the well-established judicial caution and restraint that must be applied when considering whether to set aside such an evaluation at [72] of HA (Iraq) v SSHD [2022] UKSC 22 (20 July 2022).
9. Mr Diwnycz entirely accepted that the FTT accurately directed itself to the correct legal principles, including the elevated 'unduly harsh' test – see [62], [70] and [71] of the FTT decision. That test has been recently clarified in HA (supra) as not involving a notional comparator baseline test but rather requiring an elevated threshold that applies the well-known 'MK self-direction' as follows:

"...'unduly harsh' does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. 'Harsh' in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb 'unduly' raises an already elevated standard still higher."

10. The SSHD has therefore restricted her submission to the FTT's conclusion that the effect of Mr Hines' deportation upon his partner would be unduly harsh as being inadequately reasoned. The reasoning is succinct but in my view tolerably clear. Having wholly accepted the witnesses' evidence, the FTT was entitled to find at [69 and 71] that Mr Hines' imprisonment had an "*extremely adverse effect*" on his partner's physical and mental health in 2018, and she would have a similar reaction to his deportation, such that the effect upon the partner met the elevated threshold required by the 'unduly harsh' test. It is noteworthy that the FTT correctly directed itself to the elevated test at both [70] and [71], during the course of its evaluation of the evidence.
11. The grounds of appeal suggest that this finding was not open to the FTT in the absence of clear medical evidence. I disagree. Whilst this could be characterised as a generous finding absent medical evidence, it is not a perverse one and such an evaluation of the accepted oral evidence, was open to the FTT.
12. The grounds of appeal also suggest that the FTT did not consider the option of the partner seeking outside support to assist her generally and with childcare. Although this point was not expressly mentioned by the FTT, there is no reason to consider that this FTT did not have the possibility of such support firmly in mind when making the findings it did. Where a point is not expressly mentioned, the court should be slow to infer that it has not been taken into account.
13. The FTT was therefore entitled to make the findings it did regarding Mr Hines' partner and that is sufficient to dispose of the appeal. I deal with the children for the sake of completeness. The FTT's reasons at [78] for concluding the unduly harsh effect of deportation upon his partner's children are also succinct. However, the FTT was clearly aware of the elevated nature of the test and distinguished the impact upon these children and his other biological children by reference to the standard at [79].

Conclusion

14. While many judges may not have made the decision this judge did, that matters not. The key question is whether having undertaken the necessary assessment of the evidence, this FTT's decision is within the range of findings reasonably open to it. For the reasons I have provided, it was.

15. The SSHD clearly disagrees with the outcome, but she has failed to establish the FTT's conclusion is outside the range of those reasonably open to it or that its reasons are not tolerably clear. On that basis this application must fail.
16. It follows that the SSHD has not identified a material error of law in the FTT's decision.

Decision

The decision of the FTT does not contain a material error of law and is not set aside.

Signed:

Date:

Ms Melanie Plimmer
Upper Tribunal Judge Plimmer

14 September 2022