



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002931
First-tier Tribunal No:
HU/50746/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 05 June 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MMH
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr R Ahmed of Counsel, instructed by Maya Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard by remote video at Field House on 1 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Background

1. For the purpose of this appeal, the appellant and respondent are referred to as they were before the First-tier Tribunal.
2. The hearing proceeded by remote video via the Teams platform. In addition to the two legal representatives, the appellant was also present at the remote hearing.
3. The respondent has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Austin) promulgated 19.5.22 allowing the appellant's appeal against the respondent's decision of 8.3.21 to make a deportation order and to refuse his human rights claim.
4. The relevant background is that following conviction for an offence of causing serious injury by dangerous driving the appellant was sentenced on 17.2.20 to a term of 22 months' imprisonment. This led to the issue of a deportation notice and refusal of his application for further leave to remain (FLR).
5. In summary, the grounds argue that the First-tier Tribunal made material misdirections in law and failed to resolve conflicts of fact on material matters going to the heart of the case.
6. After receiving helpful submissions from both legal representatives, I indicated that the decision and reasons would be reserved to be given in writing, which I now give.

Findings on Error of Law

7. The grounds first argue that the judge failed to resolve the point at issue that the respondent did not accept that the appellant had a genuine and subsisting relationship with his children and appears at [43] to have accepted this as an unchallenged fact, without providing cogent reasoning for the finding. However, at [37] the judge stated that on the evidence it was found that there was a genuine and subsisting relationship. The reasoning at that point of the decision is brief but adequate when account is taken of the summary of the facts set out earlier in the decision. The judge also had the advantage of seeing and hearing from the appellant and his partner. I am not satisfied there is any error of law in respect of this ground.
8. However, it is also submitted that the judge ignored or misunderstood s117C(5) of the 2002 Act, Exception 2 of which required the judge to consider whether the effect of deportation would be unduly harsh on the partner and children, not on the appellant. That the judge misunderstood the test is supported by [44] of the decision where the judge found that the respondent's decision would be unduly harsh on the appellant, which is not a relevant test.
9. More significantly, at [41], where the judge began considering of the 'unduly harsh' test, the findings are premised on a misunderstanding or misreading of the respondent's refusal decision. There, the judge stated, "I am guided by the concession of the respondent that it would be unduly harsh for both the wife and for the children of the appellant if the appellant was removed." There was no such concession. The respondent had accepted that it would be unduly harsh for them to relocate to Bangladesh, but not that the effect on them of remaining in the UK whilst the appellant was deported would be unduly harsh. Whilst the judge has stated that he agreed with the concession, the finding is devoid of reasoning.
10. It follows that the First-tier Tribunal Judge failed to properly consider whether the effect of the appellant's deportation on the appellant's partner and children

remaining in the UK would be unduly harsh and to make a finding in that regard. Evidently, the judge has misunderstood section 117C of the 2002 Act. This, added to the fundamental misunderstanding of the respondent's case, which formed the judge's 'starting point' undermines the entire basis of the findings and conclusions of the First-tier Tribunal so that it is flawed for error of law. I have looked carefully to see whether the decision can stand independently of these errors, but I am not satisfied that it can as the findings and reasoning provided do not adequately demonstrate why, by cogent reasoning, the judge considered that the high threshold of 'unduly harsh' was met.

11. For the reasons summarised above, I am satisfied that the decision of the First-tier Tribunal was flawed by material error of law and cannot stand.
12. Both representatives submitted that if an error of law is found the correct course is to remit to the First-tier Tribunal for the decision to be remade de novo. Having had regard to the Practice Statement of the Senior President of Tribunals I am satisfied that this is a case where the entire findings of fact will need to be remade and that because of the errors there has not been a proper determination of the appeal, so that the appropriate venue for the remaking is the First-tier Tribunal. There is no purpose in attempting to preserve any of the findings as it would make the task of the First-tier Tribunal very difficult.

Notice of Decision

The respondent's appeal to the Upper Tribunal is allowed.

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

The remaking of the decision in the appeal is remitted to the First-tier Tribunal to be remade de novo, with no findings preserved.

I make no order for costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

1 June 2023