



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

Appeal Number: DA/00380/2014

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 2 September 2014**

**Determination**

**Promulgated**

**On 12 January 2015**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**DAMION ANTHONY ROSE GREEN**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Williams, Andrew Williams Solicitors

For the Respondent: Mrs Pettersen, a Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, Damion Anthony Rose Green, was born on 6 October 1980 and is a citizen of Jamaica. The appellant entered the United Kingdom on a six month visit visa but did not return to Jamaica on the expiry of that visa. In May 2003, he was convicted of being knowingly involved in the

supply/production of class A drugs. He was sentenced to three years' imprisonment and recommended for deportation. He appealed against the subsequent decision to deport him and his appeal was dismissed in December 2004. Subsequently, the appellant absconded but, on 25 April 2013, he made an application to revoke the deportation order. A decision not to revoke the order was made by the respondent on 20 February 2014. The appellant appealed against that decision to the First-tier Tribunal (Judge Grimshaw), which, in a determination promulgated on 18 June 2014 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There were three grounds of appeal. First, the determination is challenged on the basis that the judge failed to consider the best interests of the child in accordance with Section 55 of the Borders, Citizenship and Immigration Act 2009. Secondly, the grounds assert that the judge carried out a flawed assessment of proportionality, having little or no regard to the fact the appellant had not reoffended since the index offence. Thirdly, the grounds assert that the judge failed properly to carry out an assessment of paragraph 399 of HC 395 (as amended) by failing to identify exceptional factors in the appellant's case.
3. Granting permission, Judge Campbell wrote:

This ground is arguable. As is clear from recent case law including *AJ (India)* [2011] EWCA Civ 1191 and *Zoumbas* [2013] UKSC 74 an assessment of best interests of a child will form part of the overall assessment of proportionality in the Article 8 context. The determination has been carefully prepared but contains no mention of the Section 55 duty and the judge's focus, in what was an appeal against a decision to refuse a deportation order ..., appears to have been on the appellant and his partner. At paragraph 26, the judge may well have been entitled to find as a fact there were no barriers to the appellant's partner carrying out her role as a primary carer of their son but the determination carries no particular consideration of the child's circumstances or where his best interests might lie.

Judge Grimshaw has prepared a well-structured determination which considers all the relevant issues. She recorded at [9] that the appellant could not meet the requirements of paragraphs 398 and 399 of the Immigration Rules because his son (who is a British citizen, as is his partner) "could be cared for by his mother in this country." The judge went on to consider [29] whether there were exceptional circumstances in the appellant's case which would enable him to succeed under the Rules notwithstanding his failure to meet the requirements of paragraphs 399, 398 and 399. She acknowledged [36] that the appellant was a good father and a loyal partner to the child's mother. She had no doubt that the appellant's expulsion would cause disruption and suffering to the partner and their child [33]. She recorded the evidence in cross-examination of the witnesses (the appellant and his partner) as to the "devastation" that would be caused by the loss of the appellant from the lives of Miss Wilson and their child. Her use of that expression at [31] was no more than a recording of the language used by the witnesses; it does not represent a

finding by the judge herself as to the extent of disruption to the family which the judge herself found likely to occur as result of the appellant's deportation. At [26], the judge wrote:

In other words it is plain that in the event of the appellant's removal to Jamaica Miss Wilson is in a position to ensure the child's basic needs for nutrition, adequate clothing and hygiene are met and to supervise all other aspects of his welfare. I find as a fact that there are no barriers to her carrying out that role as primary carer.

4. In the context of the particular facts of this appeal, I considered that is an adequate assessment of the best interests of the child. It is true that the judge has not mentioned Section 55 specifically but that is not of consequence lack of care on her part; indeed, she has properly analysed the evidence and made appropriate findings [26].
5. As regards any exceptional circumstances or an assessment outside the Immigration Rules of Article 8 ECHR, I find that the judge has not erred in law. To be exceptional, the circumstances of the appellant would have to fall outside the ambit of the Rules. They did not. The judge found that there was nothing exceptional regarding the relationship of the appellant, Miss Wilson and their child and the Rules made specific provision for the deportation of an individual such as the appellant where another family member remains in the United Kingdom and is able to care for any child. Judge Grimshaw made the very clear finding that Miss Wilson would be able and willing to care for the child should the appellant be deported. It is not for the Tribunal to seek to rewrite the Immigration Rules where their meaning and import is entirely clear and where the circumstances of any particular appellant are not so unusual as to fall outside the circumstances contemplated by the Rules. In other words, exceptional circumstances have to consist of something more than a failure to comply with the provisions of the Rules.
6. The judge was right to carry out a proportionality assessment in order to determine whether there were exceptional circumstances. Her analysis in that regard is thorough and supported by clear and cogent reasoning. In particular, there is no evidence before the Tribunal that, in order to provide for the welfare (or best interests) of the child, it was necessary for the appellant to remain in the United Kingdom in addition to Miss Wilson. It was upon that issue that the appeal turned and I can identify no error of law in the judge's approach or analysis.
7. I am also satisfied that the judge considered all the relevant evidence in reaching her decision. She was not bound, for example, to allow the appeal simply because the child's teacher expressed the view that it would be "extremely detrimental both emotionally and socially" to the child if the appellant were deported. The judge considered that evidence in the context of all the evidence and her findings were clearly available to her. Likewise, the judge was aware that the appellant had not reoffended, but she properly attached significant weight to the public interest

concerned with the removal of an individual who had committed serious drugs offences and had subsequently absconded.

8. Finally, I find that the judge did not err in law by failing to seek the opinions of the child himself who is only 7 years old. There was adequate evidence before the judge regarding the child's views and his circumstances to enable her to reach a decision.
9. In the circumstances, I find that the appeal should be dismissed.

**DECISION**

10. This appeal is dismissed.

Signed

Date 19 November 2014

Upper Tribunal Judge Clive Lane