Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00103/2016

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 15th November 2017	**On 18th December 2017**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

And

GC
(anonymity order made)

Respondent

For the Appellant: **Mr G. Harrison, Senior Home Office Presenting Officer**
For the Respondent: **Mr C. Holmes, instructed by GMIAU**

DETERMINATION AND REASONS

1. The Respondent, CG, is a national of Zimbabwe born on the [ ] 1983. On the 13th April 2017 the First-tier Tribunal (Judge OR Williams) allowed, on human rights grounds, her appeal against a decision to deport her. The Secretary of State now has permission[1] to appeal against that decision.

[1] Permission was granted by Designated Judge of the First-tier Tribunal Woodcraft on the 13th June 2017

Anonymity Order

2. There would be no reason to anonymise the Appellant's identity. This case does however turn on the presence in the United Kingdom of four children; I am concerned that identification of the Appellant could lead to identification of those children. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Background and Decision of the First-tier Tribunal

3. The background facts are these. GC arrived in the United Kingdom on the 3rd February 2003 and claimed asylum. She was granted asylum, and indefinite leave to remain, on the 26th March 2003, it being accepted that she had a well- founded fear in Zimbabwe for reasons of her political opinion. Her husband and daughter were both subsequently granted indefinite leave in line with her.

4. On the 13th February 2015 GC was convicted at Bolton Crown Court of fraud charges: "making false representations to make gain for herself or another or to cause loss to another or expose another to risk". She was sentenced to 12 months imprisonment on the 6th March 2015. This was the index offence which led the Secretary of State for the Home Department to take action to deport her. GC was served with a notice of intention to deport; the UNHCR was informed that her refugee status was to be revoked; the deportation order was signed on the 2nd August 2016.

5. The legal framework for the Secretary of State's decision was section 32(5) of the UK Borders Act 2007, which requires her to 'automatically' deport foreign criminals:

> *32 Automatic deportation*
>
> (1) **In this section "foreign criminal" means a person—**

(a) who is not a British citizen,

(b) who is convicted in the United Kingdom of an offence, and

(c) to whom Condition 1 or 2 applies.

(2) Condition 1 is that the person is sentenced to a period of imprisonment of at least 12 months.

(3) Condition 2 is that—

(a) the offence is specified by order of the Secretary of State under section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (serious criminal), and

(b) the person is sentenced to a period of imprisonment.

(4) **For the purpose of section 3(5)(a) of the Immigration Act 1971 (c. 77), the deportation of a foreign criminal is conducive to the public good.**

(5) **The Secretary of State must make a deportation order in respect of a foreign criminal (subject to section 33).**

6. GC could successfully resist deportation, however, if she could demonstrate that she fell within one of the 'exceptions' set out in section 33 of the same Act:

33 Exceptions

(1) **Section 32(4) and (5)—**

(a) do not apply where an exception in this section applies (subject to subsection (7) below), and

(b) are subject to sections 7 and 8 of the Immigration Act 1971 (Commonwealth citizens, Irish citizens, crew and other exemptions).

(2) **Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach—**

(a) a person's Convention rights, or

(b) the United Kingdom's obligations under the Refugee Convention.

….

7. It was with s33(2)(b) in mind that the Secretary of State took action to revoke GC's refugee status before the deportation order was signed. The refusal letter dated 2nd August 2016 explains that the circumstances pertaining to the grant of asylum no longer subsist: GC had been granted asylum on the basis of her association with the MDC, and since that party was now legally recognised as the official opposition to Mugabe there was no current risk of harm. GC did not contest these findings before the First-tier Tribunal.

8. On appeal GC instead relied on the second exception in s33(2), at subsection (a). She contended that her removal to Zimbabwe would be an unlawful interference with her human rights, in particular Article 8 ECHR. In this regard she relied on the presence in the UK of her children.

9. The First-tier Tribunal found that GC is a foreign criminal and that her deportation would be conducive to the public good. It directed itself to the principle that the more serious the offending, the greater the public interest in deportation. It had regard to the remarks of the sentencing judge, which revealed that this had not been GC's first conviction for fraud, a history which the judge treated as an aggravating feature of the case. The Tribunal then considered the evidence regarding the likelihood of reoffending, and having done so concluded that she posed a low risk. The Tribunal gave five reasons for that conclusion. First, that GC had split from her partner whom the Tribunal described as a 'destabilising influence'. Second, the lengthy sentence imposed had given her a chance to reflect and understand the triggers to her own offending. Third, GC expressed full responsibility for her offending, and had sought to address her own behaviour by undertaking courses in prison. Fourth, since she got out of prison she had secured employment and was leading an "honest productive lifestyle". Fifth, upon her release on licence she had fully complied with all probation requirements and demonstrated a willingness to work with the authorities. The Tribunal went on to give express consideration to the role that deportation of foreign criminals plays in deterring future crime by others.

10. Against that background the Tribunal proceeds to assess the position of the Appellant's children. Three of her four children were minors at the date of the appeal, and they are all British children. Her adult daughter is aged 18 and has indefinite leave to remain. The children see their father approximately once every three weeks. As to whether it would be unduly harsh on the children to remain in the UK without their mother, the Tribunal reminded itself of the "onerous" burden on the Appellant to demonstrate that this test is met. It gave four reasons for finding that she had discharged that burden.

11. First, the child K had significant health problems stemming from a history of encephalitis and kidney complaints from which she had not made a full recovery. Medical evidence before the Tribunal stated that the child experienced considerable stress when separated from her mother and that this had resulted *inter alia* in epileptic seizure. Since her mother had been released from prison there had been no seizures and this was to be attributed to her stabilising presence.

12. Second, the children could not depend, in the absence of their mother, on their father to act responsibly. The Tribunal had regard to evidence produced by Child Welfare Services relating to the father's "erratic" behaviour, including alcohol abuse and violence.

13. Third, it is likely that the Appellant's removal would result in the children becoming dependent on S, the 18 year old girl. The Tribunal so found because that is what happened previously when their father abandoned his responsibilities. S had already shown signs of suffering from stress and inability to cope although her situation had improved upon her mother's release from prison.

14. Fourth, there are no other family members in the UK to whom the children (or their father) could turn for support.

15. In respect of their possible return to Zimbabwe the Tribunal said this:

> "I have carefully considered whether it would be unduly harsh [for the children] to leave the UK with the appellant and go to Zimbabwe. The appellant will be returning to Zimbabwe after a considerable number of years away and with no support network (I had no reason to doubt her evidence that her surviving family, her 2 siblings, now live in South Africa). Taking into account the age of the children, cultural background in the UK only, the fact that they are settled in school, health needs (K has regular neurological/kidney function assessments and has been referred for assessment by a Speech Therapist due to her Learning Disability – this care, expected for a British citizen, would not be available to her in Zimbabwe, moreover she is unable to fly due to her history of neurological ill-health), S is 18 years old and whilst not a child has the need for emotional support from her mother following her traumatic assaults both from her father and others. The fact that the appellant would be without work and accommodation would make the whole family vulnerable and such a move would be unduly harsh for the children".

The Secretary of State's Appeal

16. The Secretary of State submits that the First-tier Tribunal erred in its approach in the following manner:

    i) Failure to give reasons for the finding that there is a low risk of reoffending, *in particular* for the finding that the children's father was a 'destabilising factor';

    ii) Failure to take material matters into account in findings that there is a low risk of reoffending, in particular for failing to note that she has been on licence since her release;

    iii) In giving little/no weight to the important principles that deportation serves as a deterrent and an expression of public revulsion;

    iv) Failing to take into account material evidence that Bolton Children's Services had no involvement with this family until after the Appellant's release from prison;

    v) The adult child should have been dealt with separately

    vi) The Tribunal should have taken into account the statements made in the refusal letter about the availability of health care and education in Zimbabwe.

17. Permission was granted on all grounds by Designated Judge of the First-tier Tribunal Woodcraft, who added for good measure that the Tribunal should have considered whether the children could be left in the care of social services. For the sake of completeness I note that the Secretary of State has formally distanced herself from that idea, it being wholly contrary to her published policy on deportation and the best interests of British children. That additional ground was not therefore pursued before me.

Discussion and Findings

18. There is no merit in the ground that the First-tier Tribunal failed to give reasons for its finding that there was a low risk of the Appellant reoffending. As I have summarised above, in fact it identifies five reasons, all of which are set out in the determination with admirable clarity. The Secretary of State may not agree with those reasons, but that of course is a matter not capable of demonstrating an error of law. The Tribunal was entitled to find that

the father was a destabilising influence, given the independent evidence before it (from Social Services) of his drinking, physical abuse and "erratic" behaviour.

19. In its assessment of likelihood of reoffending the Tribunal looked holistically at the Appellant's overall circumstances. It accepted, as it was entitled to do, her credible evidence that her lengthy prison sentence had changed her behaviour. It was uncontested fact that she was now responsible for her children on her own, and the Tribunal was entitled to place weight on that matter when considering how likely it was that GC was re-offend. The fact that she was on licence was, in these circumstances, of minimal importance in the overall assessment. The Tribunal plainly had regard, in addition, to the sentencing remarks of the Trial Judge.

20. In respect of the public interest in deportation the Tribunal recognises the significant weight that that must attract at paragraph 8, directing itself to the principle that "it would be rare for the best interests of the child to outweigh the strong public interest in deporting foreign criminals". Contrary to the assertion in the grounds, the Tribunal expressly recognises the importance of deterrence and in the expression of public revulsion at paragraph 26.

21. The grounds allege that the Tribunal erred in failing to take into account material evidence, namely that Bolton Children's Services had no involvement with this family until after the Appellant's release from prison: as Mr Harrison conceded before me, that ground is based on a misapprehension of the facts. The material from Bolton indicates that Children's Services became involved in these children's lives when they were living with their father and their mother was in prison.

22. As to the final ground Mr Harrison was unable to take me to any objective material – either before the First-tier Tribunal or myself – to demonstrate that K would have been able to access the specialist care that he requires in Zimbabwe, a country whose healthcare system is said to be "in total collapse".

23. Properly analysed, these grounds amount to no more than a disagreement with the findings, carefully made and clearly reasoned, by the First-tier Tribunal. They disclose no arguable error of law.

Decision and Directions

24. For the reasons set out above I am satisfied that the decision of the First-tier Tribunal does not contain a material error of law and it is upheld.

25. There is an order for anonymity.

Upper Tribunal Judge Bruce
14th December 2017