



IAC-FH-NL-V1

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

Appeal Number: DA/01295/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14th September, 2015**

**Decision & Reasons Promulgated
On 9th October, 2015**

Before

Upper Tribunal Judge Chalkley

Between

**AB
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert of Counsel instructed by Wilson Solicitors LLP

For the Respondent: Mr K Norton, a Senior Home Office Presenting Officer

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. The appellant is a citizen of St. Lucia where he was born on 28th October, 1994. He arrived in the United Kingdom on 25th June, 2005 at the age of 10 years and 7 months and following successive grants of leave has had discretionary leave to remain as the dependant of his mother until 13th August, 2013.
2. The appellant was convicted of aggravated burglary following a guilty plea on 5th December, 2012 at Isleworth Crown Court. On 5th February, 2013 His Honour, Judge Dugdale, sentenced the appellant to four years' detention in a Young Offender's Institute.
3. The appellant made application for indefinite leave to remain on 12th August, 2013. However, on 2nd May, 2014 he was notified by the respondent of his liability to automatic deportation.
4. On 19th June, 2014 the respondent made a deportation order in respect of the appellant as a foreign criminal defined by Section 32(1) of the UK Borders Act 2007 having found his removal conducive to the public good for the purposes of Section 3(5)(a) Immigration Act 1971.
5. The appellant's application for indefinite leave to remain in the United Kingdom was refused under paragraph 322(5) of Statement of Changes in Immigration Rules HC 395, as amended ("the Immigration Rules").
6. The appellant gave Notice of Appeal and his appeal was heard by First-tier Tribunal Judge Oscar Del Fabbro, sitting at Taylor House on 8th June, 2015. The judge's determination was promulgated on 8th July, 2015.
7. Dissatisfied with the decision of the First-tier Tribunal, the appellant sought permission to appeal which was granted by Designated Judge of the First-tier Tribunal Garrett on 3rd August, 2015. In granting permission he said:

"The grounds contend that the judge wrongly assessed the appellant as an adult of 18 years of age at the date of committing the offence which led to the deportation order when the appellant was a minor at that time. Issue is also taken with the judge's conclusion that the appellant would not have a family life with close relatives in the United Kingdom.

The grounds are arguable. Paragraph 31 of the decision suggests that the judge thought the appellant was an adult at the time of his offending. Further, although less persuasive, the conclusion that the appellant's close relatives did not have a family life with him, particularly when the judge accepted that the appellant had been part of a family unit when not an adult, is also arguable."

8. In addressing me, Mr Gilbert drew my attention to what the judge had said at paragraph 32 of his determination. For completeness I set it out in full:-

"There is no dispute and on the evidence before me I find that the Appellant committed a serious offence when he was 18 years old for which he was

sentenced to a term of four years detention in a Young Offenders Institution. The Sentencing Remarks make plain the role and involvement of this Appellant in a joint enterprise burglary where the protagonists were armed with weapons when entering an occupied private residence. The facts as found by the sentencing judge represented the top end of offending on a scale of offences of this type. **The sentence reflected the Appellant's plea, his age and previous limited offending but if he had been an adult at the time** he would have faced a significantly longer term of imprisonment. Before me the Appellant confirmed that although he was thoroughly remorseful now he had not assisted the police in identifying his accomplices and had lent himself to this criminal enterprise in order to make a gain for himself."

9. Mr Gilbert suggested that the judge's dealing with the appellant's Article 8 rights was also flawed. At paragraph 36 of the determination the judge had found that there was no family life between the appellant and his sister, but the judge found that there was no more than normal emotional ties expected between adults, their parents and younger siblings but the evidence before the judge set out at paragraphs 10 and 11 of the determination is that he is one of three children, the older brother is 7 years older than him and he has a younger sister, F, who has just turned 10. She is the subject of a contact order and the appellant assists his mother generally and also assists with F. The appellant's aunt, JI, lives some 45 minutes away from the appellant's mother and is not able to help with day to day functions that the appellant can complete on behalf of his mother. He drew my attention to an unsigned statement of JI in the appellant's bundle which explained that because of the appellant's mother's health difficulties JI and her husband had been able to assist her. However, having now moved, they are not able to assist in the way that they had previously. To that extent, the appellant's mother was now even more dependent on the appellant than she had been previously. It was wrong of the judge to find that there was no family life between the appellant and his mother.
10. Mr Gilbert reminded me that at paragraph 22 of the determination the judge appeared to accept the evidence she had given that JI had been a considerable moral and emotional support for the appellant and his family. She had previously been involved in taking F to school on a regular basis, but could no longer do that and that is something which the appellant now helps his mother with.
11. The judge also erred in suggesting that the appellant had family links in St. Lucia. He has social ties with St. Lucia, having in the recent past travelled to St. Lucia with his family, but he has no relatives there. Counsel also drew my attention to the fact that the appellant had now been offered an electrical engineering apprenticeship which he was anxious to take up. There are no similar apprenticeships in St. Lucia.
12. Mr Norton suggested that Section 117B of the Nationality, Immigration and Asylum Act 2002 was clear. It is for the appellant to show very compelling circumstances over and above the exceptions 1 and 2 at Section 117C(iv)

and (v). The exceptions clearly do not apply. At paragraphs 31 to 41 the judge made findings supported by the evidence. He came to a fair and rational conclusion and the decision should be upheld.

13. Responding briefly, Mr Gilbert suggested that in the appellant's case the compelling circumstances were the dependency by his mother and F and the dependency by PJ on the appellant to facilitate F seeing him.
14. I reserved my determination.
15. The first challenge suggests that the judge had made a mistake of fact in finding the appellant to be an adult at the age of 18 years at the time of the offence. They suggest also that the judge further erred when he held that the appellant's age was irrelevant to his criminal culpability.
16. I have set out above paragraph 32 of the judge's determination. There is a contradiction in paragraph 32, in that the judge refers to the appellant having committed a serious offence when he was 18 years of age but, when making reference to the sentencing remarks, noted that the sentence reflected the appellant's plea, his age and previous limited offending. I am satisfied that the judge was very well aware of the appellant's age at the time he committed the offence. The judge pointed out that at the date of the hearing the appellant was 20 years 7 months old, having been born on 28th October, 1994. However, at paragraph 24, the judge had referred to *Maslov v Austria* [2008] which stressed the importance of considering the circumstances of the appellant's **young age at the time of his offence**. At paragraph 29 the judge reminds himself again that the appellant was a minor at the time of the offence, lawfully settled in the United Kingdom and had spent the majority of his time in the United Kingdom. At paragraph 35 of the determination the judge recorded that it had been urged on behalf of the appellant that he was only 18 when he committed the offences, but the judge makes it perfectly clear that he has read the sentencing remarks of His Honour, Judge Dugdale, who also makes it clear that one month before the appellant's 18th birthday, on 19th September, the appellant and another unknown individual committed a burglary at a home where a man was living with his wife, his mother and 13 year old son. The appellant was armed with a cosh and his co-defendant was in possession of a knife. The householder was stabbed in the back and in the wrist.
17. Having read the determination as a whole, I am left in no doubt that the judge was well aware of the fact that at the time of the offence the appellant was a minor.
18. The second challenge is that the judge erred when he held that the appellant's age was irrelevant to his criminal culpability. Mr Gilbert did not address me on this challenge. What the judge actually said at paragraph 36 was this:-

“When committing the index offence I find he was not of an age which might excuse his conduct or behaviour. He was fully aware of the nature of the criminal enterprise, entered into it willingly and for personal gain.”

19. With respect, this again emphasises the fact that the judge was well aware of the fact that he was dealing with somebody who was a minor at the time of the offence, but the judge makes it clear that the appellant was above the age of criminal responsibility.
20. The next challenge suggests that the judge failed to provide any adequate reasons for finding that family life did not exist between the appellant and his mother Mrs J and his sister F. However, with very great respect, the evidence simply did not show any more than normal emotional ties expected between an adult, his parent and his younger sibling.
21. The appellant assists his mother from time to time as would expect anybody in his position to do. He also helps his mother look after his younger sister and takes her to school, but any responsible caring adult would do the same. The fact that the appellant is able to help his sister when his mother is ill and assists with securing his sister’s contact with her father, does not demonstrate anything more than normal emotional bonds. The judge did not err.
22. It is also asserted that the judge erred by making findings which were unsupported by the evidence: first there was a strong support structure to ensure that F’s wellbeing did not depend on A and secondly that the assistance provided was not indispensable. To deal first with the second point, the evidence provided to the judge did not demonstrate that the assistance was indispensable. Insofar as there being a strong support structure to ensure F’s wellbeing, the evidence was that the family members had coped during the appellant’s detention, during which time the appellant’s uncle and aunt assisted. While they may not be so geographically close, but there was no evidence to suggest that the uncle and aunt will not assist whenever possible. There was no evidence before the judge that the appellant’s brother is unable to offer assistance to his mother. F and her mother both have connections in the community, according to F’s headmistress who described the appellant’s mother as having, “*a number of friends who can support her*”.
23. The head teacher’s letter continues:-

“Because of her health issues she often has to rely on this support in order to ensure that Ci-Ann can attend school and be picked up. When Ms Jude is unable to bring or collect Ci-Ann **her friends are able to step in and do this for her.**”
24. That evidence certainly gives the impression that there is a support structure in place which does not depend on the appellant.
25. At paragraph 39 the judge said this:-

“In coming to my conclusion I have given careful consideration to all the evidence before me and had particular regard to the impact removal will have on the Appellant’s younger sister’s welfare. I find that there is a strong support structure and system in place to ensure her well-being which does not depend on the Appellant. The education system and referral system to therapy and course is in evidence before me. Whereas the Appellant was part of a family unit in his teens he is now an adult and as such his relationship to his mother and sister will not amount to a family life without evidence of further elements of dependency beyond normal emotional ties. There was no such evidence of a level of dependency between the Appellant and his mother and sister. The Appellant provides a degree of logistic support to his mother and sister but on the evidence it is by no means indispensable. I find that the claim of dependency on him by his family is not exceptional in all the circumstances. He is not in full-time employment and cannot provide for them financially. Although he can fulfil some support role for his sister it is not that of a full-time carer. Indeed his sister was able to be supported by other family members and friends at a much younger age while the Appellant was in custody.”

26. In his determination the judge noted the recent conduct of the appellant and aspects of his rehabilitation.
27. In her statement, the appellant’s mother refers to having relatives in St. Lucia. She refers to having, “some distant family” but they do not appear to be that distant that she does not occasionally talk to them on the telephone (see paragraph 19 of her determination). I accept that the appellant’s mother may have little to do with her sister, but there is no evidence to suggest that the appellant himself has nothing to do with his aunt. The appellant’s uncle is referred to as being elderly and not working and relying on the support of other family members for help but that does not mean that he would not be available to emotionally support the appellant and offer him advice. Similarly, the appellant’s mother’s cousin and family friend may not be in a position to provide accommodation and financial support for the appellant, but there is no reason why they should not be able to provide him with emotional support and advice should he require it. As the judge pointed out, the skills acquired by the appellant in the United Kingdom will assist him and, given the very serious nature of the offence to which the appellant pleaded guilty, the judge was entitled to find that the public interest in deportation was not outweighed such as to render the order unjustified and disproportionate.

Notice of Decision

25. The determination of First-tier Tribunal Judge Del Fabbro does not contain any material error on a point of law. I uphold it.
26. Anonymity direction is upheld.

Richard Chalkley
Upper Tribunal Judge Chalkley

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Richard Chalkley
Upper Tribunal Judge Chalkley