



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/02014/2013

THE IMMIGRATION ACTS

Heard at Field House
On 15 February 2016

Decision and Reasons Promulgated
On 26 February 2016

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

HUSINE AHMED ALIE
[NO ANONYMITY ORDER]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: In person

For the respondent: Miss E Savage, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal to deport him to his country of origin as a foreign criminal pursuant to sections 32 and 33 of the UK Borders Act 2007, and to refuse him leave to remain in the United Kingdom under paragraphs 399 and 399A on Article 8 ECHR private and family life grounds of the Immigration Rules HC395 (as amended) or pursuant to section 55 of the Borders, Citizenship and Immigration Act 2009.

2. The appellant is a citizen of Sierra Leone, born there in November 1984 and now 31 years old. The appellant's evidence in his asylum interview was that his father was of Lebanese origin and his mother half-Lebanese, and that he went to a Lebanese school in Freetown, where he learned Arabic as well as English. He could no longer remember his written or spoken Arabic: it had been too long. His father and grandfather were Sierra Leonean born and all the family had Sierra Leonean citizenship.
3. The appellant's family left Sierra Leone because of the civil war there, travelling to America for a better life in 1993 or 1995. He would have been between 9 and 11 years old then. In his asylum interview, the appellant said that all the rest of their family scattered too, some in Belgium, and others elsewhere in Europe. There was nobody left in Sierra Leone.
4. In 1997, age 13, the appellant arrived in the United Kingdom from New York to join his father here. His mother was to have joined the family, but did not do so: she stayed in America. In 1998 he was granted refugee status as his father's dependant and given indefinite leave to remain. He lost his refugee status by cessation on 26 July 2013 pursuant to Article 1C(5) of the Refugee Convention and his asylum status was revoked under paragraph 339A(v) of the Immigration Rules. The appellant has been in the United Kingdom lawfully throughout.
5. The appellant had a 10-year history of escalating criminality between April 2002 and April 2012, when he was imprisoned for 2 years. He was released in May 2013 on licence. I have not seen any record of further criminal activity or sentence after his release and Ms Savage was not aware of any further offences.
6. He has a British citizen partner, who has 2 sons, one of whom is his. Both boys are also British citizens.

Criminal history

7. The appellant's Police National Computer (PNC) record summarises him as having been convicted under his own name and 6 aliases, beginning in 2002, when he was almost 18 years old, with an three convictions in April 2002 at Enfield Juvenile Court of taking a motor vehicle without consent, driving otherwise than in accordance with a licence, and using a vehicle whilst uninsured, for which he received a 4 months' referral order and 6 penalty points endorsed on his driving licence, together with £50 costs.
8. The next offence was in November 2007, when the appellant was 23 years old: he was convicted at Norwich Magistrates' Court of driving otherwise than in accordance with a licence, using a vehicle while uninsured, making off without paying and failing to surrender to custody. He still only had a provisional licence and had filled up his car with petrol without paying for it and driven off. He was sentenced to 1 day's detention in the courthouse, and a further 6 penalty points on his driving licence, and fined £70 plus £20.01 compensation.

9. On 16 March 2009, age 24, the appellant was convicted at South-East Essex Magistrates' Court of the more serious offence of battery. He had pleaded not guilty. Police records show that he was travelling with a dog on a train with two other men; they got into an altercation with a passenger who criticised their handling of the dog and all 3 men attacked him, kicking and punching him about the head and body, causing injuries. He was sentenced to a 12 months' community order, with a requirement for 6 months' drug rehabilitation treatment, and supervision. He was ordered to pay costs of £150.
10. On 24 July 2009, the appellant was convicted at Mid-South Essex Magistrates' Court of using threatening, abusive, insulting words or behaviour with the intention to cause fear or provocation of violence, while on bail. He had pleaded not guilty. He was one of 18 men who were detained following a serious outbreak of public disorder in Greys, Essex. His supervision requirement was suspended, and the appellant was sentenced to 10 weeks' imprisonment, wholly suspended for 12 months, and costs of £300.
11. On 6 July 2011, age 26, the appellant was convicted at South-East Essex Magistrates' Court of driving a motor vehicle with excess alcohol, driving while uninsured, and driving otherwise than in accordance with a licence. He was found in possession of 3 bank cards which did not belong to him, but was not charged with any offence in relation to the cards. He pleaded guilty to the charges and was disqualified from driving for 12 months, fined a total of £750, his driving licence endorsed, and ordered to pay costs and victim surcharge. If he completed an appropriate course of training, his disqualification would be reduced.
12. On 14 March 2012, now age 27, the appellant was convicted at South Essex Magistrates' Court of making false representations for gain or to cause loss. He had intercepted and used a credit card sent out in the postal system, using it to buy goods on the internet valued at \$455. He pleaded guilty and was sentenced to a community order of 80 hours' unpaid work within the next 12 months, under the supervision of a probation order, together with costs of £85.
13. It was not long before the appellant was again in difficulty. On 5 April 2012, he was convicted at the Central Criminal Court of the index offence, the most serious of his convictions, conspiracy to make false representations for gain for himself or another, or cause loss to others or expose them to the risk of loss. It was committed while the appellant was on bail from the previous offence. The appellant and another man had corrupted a postal worker and committed identity theft: they had intercepted delivery of two orders for gold Krugerrands, to the value of over £50,000. The sentencing judge indicated that the normal sentence for each of them would have been 3 years. The appellant and his co-conspirator had pleaded guilty at the first reasonable opportunity. They were each sentenced to 2 years' imprisonment with electronic tagging.
14. The First-tier Tribunal also had before it a witness statement from Geoffrey Gordon Worsdell, a Detective Constable with the Metropolitan Police, setting out information

from the Metropolitan Police Crime Reporting Information System (CRIS) and criminal intelligence reports (CRIMINT). Those two systems contained further incidents which did not proceed to prosecution:

- (i) June 2006 - theft of a motor vehicle (arrested but not charged);
- (ii) November 2006 - attempted robbery (arrested, later eliminated from the enquiry);
- (iii) February 2007 - robbery and taking a vehicle without consent (arrested, victim withdrew allegations);
- (iv) May 2007 - assaulting his partner (he had kicked her in the face and around her body, case not proceeded with and closed);
- (v) June 2007 - two offences: aggravated burglary (demanding money with menaces, stealing a Nintendo DS valued at £300, arrested but not charged); and affray (arrested, insufficient evidence, not charged and released);
- (vi) July 2007 - possession of an offensive weapon in a public place (a friction lock baton, in a car with three men including the appellant, not possible to establish who had been in possession, so no charges and all 3 released); public order (swearing at police officers who were arresting someone else, issued with a penalty notice);
- (vii) December 2007 - stop and search in December 2007 (not arrested and released);
- (viii) August 2008 - drunk and disorderly (fixed penalty notice);
- (ix) March 2009 - another offence of making off without payment (arrested, not prosecuted);
- (x) April 2009 - criminal damage (forcing open a manual ticket barrier, case withdrawn the next day);
- (xi) 2010 - Essex Police records stated that 'intelligence suggests [the appellant] to be a member of a criminal gang involved in serious crime';
- (xii) May 2011 - two assaults on his partner, in one of which he hit her in the face with a shoe causing possible nasal fracture and bruising (investigation later closed);
- (xiii) July 2011 - stopped and searched on suspicion of being under the influence of drugs, and smelling strongly of cannabis (no arrest or charges).

First-tier Tribunal decision

15. First-tier Tribunal Judges Petherbridge and Lobo heard the appeal in October 2014. The Tribunal recorded that the appellant had been in a relationship with his partner for approximately 6 years: the appellant's evidence was that they were not engaged, but the partner said they were. The appellant's sister also lives in the United Kingdom.
16. The appellant was released from prison in May 2013 and went to live with his sister, because his partner had no room in her home. He had also been living with his sister

before going to prison, because his partner found his impending imprisonment stressful.

17. The appellant's evidence was that he resumed living with his partner in the autumn of 2013, in September or October. There was no documentation to confirm that the appellant had lived with his partner at the addresses where she lived during that time: no tenancy agreements, or utility bills, bearing his name or their joint names. All those documents were in his partner's sole name.
18. The Tribunal considered evidence of the appellant's financial position: he claimed to have commenced working with a solar panel company in January 2014 and was able to produce the copy employment contract which he had signed, but not the copy signed by his employer.
19. The appellant's partner gave oral evidence and said that she would not go to Sierra Leone and that if he were removed there, it would ruin her life and that of her children. Her evidence, in contrast to his, was that they were in fact engaged. She denied that he had attacked her twice in May 2007, but accepted that in January 2012 there had been a domestic incident and she had to call the police.
20. The appellant's sister confirmed his account that he lived with her before and after going to prison, later amending that to 'stayed' with her.
21. The First-tier Tribunal doubted that the relationship between the appellant and his partner was genuine and subsisting. In the alternative, if it was, they accepted that there were insurmountable obstacles to the partner and children following the appellant to Sierra Leone but considered that contact could be maintained by visits and modern methods of communication.
22. They accepted the appellant's claimed date of arrival in the United Kingdom but discounted the time spent in prison. He could not therefore show 15 years' continuous lawful residence in the United Kingdom ('most of his life').
23. The Tribunal considered private life under paragraph 399A of the Rules. They accepted that the appellant was socially and culturally integrated into the United Kingdom but not that he had been lawfully resident here for 'most of his life'.
24. In analysing private and family life under this head, they accepted that there *was* a genuine and subsisting relationship between him, his partner, and the children. They considered whether the appellant's deportation from the United Kingdom would be unduly harsh, having regard to its having been formed while he was in the United Kingdom lawfully. They concluded that it would not be and that the appellant could lawfully be removed to Sierra Leone.
25. The Tribunal gave weight to the public interest and considered that the interference with such private and family life as existed would be proportionate. The appeal was dismissed on all grounds.

Appeal to Upper Tribunal

26. The appellant challenged that decision, arguing that the First-tier Tribunal had misapplied section 117C of the Nationality, Immigration and Asylum Act 2002 (as amended); that he had been lawfully resident in the United Kingdom for most of his life; that the Tribunal erred in deducting his period of imprisonment, since he was 'still in the United Kingdom under Her Majesty's order' during that time; that he is socially and culturally integrated into the United Kingdom; and that there are significant obstacles to his reintegration in Sierra Leone, given the length of time he has spent in the United States and the United Kingdom since leaving his country of origin.
27. He contended that the First-tier Tribunal had failed to give detailed analysis to the best interests of his children; that his financial independence was irrelevant to the proportionality of removal; and that he had a genuine and subsisting relationship with his partner and a qualifying child, on whom his deportation would be unduly harsh.
28. The appellant contended that the decision to deprive him of his British citizenship is unduly harsh and not in accordance with the law. This argument was not renewed before me and I do not understand it since he is not and never has been a British citizen. I place no weight on that argument at all.
29. The appellant relied upon *YM (Uganda) v SSHD* [2014] EWCA Civ 1292 at [54] and argued that the First-tier Tribunal had not conducted a rounded assessment of all relevant circumstances when assessing the proportionality of removal.

Permission to appeal

30. Permission to appeal to the Upper Tribunal was refused by Deputy Upper Tribunal Judge Davey. The appellant sought judicial review of that refusal, successfully. On 2 September 2015, Master Gidden quashed the Upper Tribunal's refusal to grant permission to appeal. It is not clear from the papers before me what was the error of law contemplated by Master Gidden.
31. On 30 September 2015, Vice-President Ockelton granted permission to appeal, noting simply that 'the Upper Tribunal's task is that set out in s.12 of the 2007 Act', which so far as relevant is as follows:

"12 Proceedings on appeal to Upper Tribunal

- (1) Subsection (2) applies if the Upper Tribunal, in deciding an appeal under section 11, finds that the making of the decision concerned involved the making of an error on a point of law.
- (2) The Upper Tribunal –
 - (a) may (but need not) set aside the decision of the First-tier Tribunal, and
 - (b) if it does, must either –

- (i) remit the case to the First-tier Tribunal with directions for its reconsideration, or
- (ii) re-make the decision."

Rule 24 Reply

32. On 15 October 2015, the respondent served a Rule 24 Reply, opposing the appeal. The material part of her response is as follows:

"3. Taking the Crown Court's comments at their highest, that say no more than that *during his period of licence* there is no reason to believe he will re-offend. In any event, the panel properly considered this comment in reaching their conclusion. At paragraph 104, the panel properly applied the more recent test with respect to ties, of 'very significant obstacles'."

33. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

34. The appellant appeared in person at the Upper Tribunal hearing. He stated that his representatives had told him, on Friday 12 February 2016, just a few days before the hearing on February 15, that they were unable to represent him at the hearing for what he described as financial reasons. The appellant had decided to represent himself. He said he had 'come to the hearing to get on with [the appeal]'. He did not wish to seek an adjournment.

35. I took the appellant through his history, and in particular his offending history, as I have summarised it above. He confirmed its accuracy. I then told the appellant that I would ask Ms Savage, who appeared for the respondent, to make her case, and then invite him to respond, so that he would be able to deal with the respondent's arguments more fully. He agreed to that approach.

36. Ms Savage in her submissions referred the Tribunal to the First-tier Tribunal decision at [106]. She argued that there was no material error of law in the panel's consideration of the evidence and the law; that all evidence had been considered and the weight to be given thereto was a matter for the fact-finding Tribunal.

37. She accepted that the appellant had spent 'most of his life' in the United Kingdom, but argued that the First-tier Tribunal had applied the correct test at [90] and that adequate reasons for its conclusions were given at [91]-[95]. Section 117C had not been omitted and all relevant circumstances had been taken into account. The panel had been entitled to find, for the reasons it gave, that neither section 117C, nor paragraph 399A of the Rules, availed the appellant on the facts. The length of time spent in prison was immaterial to the outcome, on the basis of the clear findings of fact.

38. The appellant in his oral submissions reminded me that he had been in the United Kingdom since 1997, that he had school friends, family, and a beautiful son and

stepson here. He deeply regretted his past criminality and now wanted just to move forward and lead a normal life. The threat of deportation hung over his future: all his family were here, his sister, his nephews and nieces, and his child and partner. His mother was in America but he had not spoken to her for 10 years.

39. The appellant said he was now working full time as an estate agent in Shoreditch and providing for his family without any financial assistance from the State. He spoke only English and had not lived in Sierra Leone since he was 7 years old; he could not see himself living anywhere else, as his culture was British. He had a great bond with his son and his partner and it would be against his human rights to split them up.
40. As regards the domestic violence perpetrated on his partner, the appellant said that the 2007 incident was domestic violence by someone other than him. He agreed that he had attacked his partner in 2011 and 2012, and said that he had been unhappy and confused. His father, whom he had come to the United Kingdom to join in 1997, died in 2011 and there had been a lot of issues for him. The violence occurred just before he went to prison. The appellant had been released in 2012 and there had been no further problems, as confirmed both by the CRIS and CRIMINT record and by Ms Savage at the hearing.
41. The appellant asked me to set aside the First-tier Tribunal and allow his appeal.
42. I reserved my decision, which I now give.

Discussion

43. There is not much dispute about the facts of this appeal: the appellant's family left Sierra Leone when he was very young, less than 10 years old, then spent some time in America. His father came on to the United Kingdom and the appellant joined him here. His criminality was longstanding and of increasing seriousness, culminating in a 2-year sentence. He has always said that he had no family left in Sierra Leone and the respondent has not challenged that assertion.
44. The appellant's relationship with the mother of his child has left no documentary trace at the addresses where she has lived, and the First-tier Tribunal had some doubt whether it subsisted. There was no evidence, beyond an assertion in oral evidence, of undue harshness in the separation of the appellant from his partner and child. It is not in dispute that the partner's children, both of whom are British citizens, have the right to grow up here and that it is unreasonable to expect them to live with him in Sierra Leone.
45. The Immigration Rules represent a complete code, so far as Article 8 ECHR is concerned: *MF (Nigeria) v SSHD* [2013] EWCA Civ 1192. The appellant must be able to bring himself within the Rules if he is to succeed. In this case, the relevant rules are set out in paragraphs 398-399A:

“398. Where a person claims that their deportation would be contrary to the UK’s obligations under Article 8 of the Human Rights Convention, and ...

(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; ... the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

399. This paragraph applies where paragraph 398 (b) or (c) applies if -

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i) the child is a British Citizen; ...and...

(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and

(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or

(b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and

(i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and

(ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and

(iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.

399A. This paragraph applies where paragraph 398(b) or (c) applies if -

(a) the person has been lawfully resident in the UK for most of his life; and

(b) he is socially and culturally integrated in the UK; and

(c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.”

46. There are thus three ways within the Rules in which a deportation may be resisted: by reference to a parental relationship, a relationship with a partner, or on the basis of social and cultural integration into the United Kingdom coupled with significant obstacles to integration into the country to which the person is to be removed.

Parental relationship

47. It is not in dispute that the appellant has a genuine and subsisting parental relationship with his son, nor that the boy cannot be removed from the United Kingdom. The evidence was less strong in relation to his stepson, but the First-tier Tribunal dealt with both when considering whether the test in sub-paragraph 399(a) was met. The question is whether it is unduly harsh for the appellant's son and/or his stepson to remain in the United Kingdom without him. The First-tier Tribunal considered that question at [82], having summarised the relevant evidence at [77]-[81]. The factual assessment there made is adequately reasoned and sustainable, having regard to the sparse evidence in relation to the children which had been produced to the First-tier Tribunal.

Partner relationship

48. Regarding the relationship with his partner, the Tribunal expressed some doubts at [66]-[68] and [84] in relation to the strength of the relationship between the appellant and his partner. It found, in particular, that on a number of occasions she had called the police because he had assaulted her. The evidence as to when they had lived together was unclear: the appellant had lived with his sister both before and after going to prison, and the evidence of resumption of cohabitation was not very satisfactory. There was divergent evidence as to whether they were engaged or intended to marry each other.

49. Even taking the account at its highest, and accepting that as the mother of two British citizens, insurmountable obstacles existed to her returning to Sierra Leone, the First-tier Tribunal did not consider that the family life between the appellant and his partner was such as to outweigh the public interest in deportation. Again, the First-tier Tribunal gave adequate, intelligible and sustainable reasons for those findings.

Integration in the United Kingdom and Sierra Leone

50. The Tribunal noted at [91] that English, which the appellant speaks, is the official language of Sierra Leone, and that he still had family members there. They found that he would have retained knowledge of the culture of Sierra Leone and had not satisfied them that he could not re-adapt to Sierra Leone with the support of members of his family and friends there. It is not clear to me from the evidence why the First-tier Tribunal considered that the appellant had family in Sierra Leone: his undisputed evidence is to the contrary effect. That error of fact, if so it be, is not challenged in the grounds of appeal. The appellant maintained today at the hearing that his family all live outside Sierra Leone and he has no family members there. His evidence has been consistent on that point since the original asylum interview. The appellant is an adult, and a resourceful one: if the Tribunal has made an error of fact in this respect, I do not consider it to be material to the outcome of the appeal.

51. No exceptional circumstances were advanced, save that the appellant had a bad back: there was no evidence before the First-tier Tribunal that bad backs could not be treated in Sierra Leone.

52. The First-tier Tribunal did not consider that the evidence before them established the enhanced ties between sibling and sibling which might constitute family life between him and his sister (see [99]).

Part 5A of the Nationality, Immigration and Asylum Act 2002 (as amended)

53. In considering section 117B of the 2002 Act at [109] the First-tier Tribunal fell into error in that it considered that the appellant's fluency in English and financial circumstances might be relevant to the decision whether he could be removed. The Tribunal did not have the benefit of the guidance given in *AM* (S.117B) [2015] UKUT 260 (IAC) at (2) in the judicial headnote:

"(2) An appellant can obtain no positive right to a grant of leave to remain from either s117B (2) or (3), whatever the degree of his fluency in English, or the strength of his financial resources."

I therefore take no account of the appellant's employment and financial circumstances or the fact that he speaks English.

54. The 'little weight' provisions of section 117B(4) and (5) are inapplicable as the appellant has been lawfully in the United Kingdom throughout. Section 117B(6) concerns only those not subject to deportation.
55. The Tribunal then considered section 117C, the test in which, as noted by Upper Tribunal Judge Storey in *KMO* (section 117 - unduly harsh) Nigeria [2015] UKUT 543 (IAC), overlaps with the test in paragraphs 399 and 399A. In *Forman* (ss 117A-C considerations) [2015] UKUT 412 (IAC) at [20], Mr Justice McCloskey, giving the judgment of the Upper Tribunal, said this:

"20. The rigid, prescriptive nature of sections 117A - 117C of the 2002 Act invites reflection on the topic of judgment design and structure. Where the decisions of tribunals list, explicitly and sequentially, each of the obligatory statutory considerations, accompanied by the Tribunal's evaluation and application thereof, there should be no scope for debate. Adherence to this discipline will have the supreme merit of reducing the possibility of error of law. This is illustrated in MK (section 55 - Tribunal options) [2015] UKUT 223 (IAC), at [41] - [43]. Furthermore, tribunals are well used to having to craft their decisions in accordance with the dictates of discipline and structure, in the light of decisions such as Razgar v SSHD [2004] UKHL 27, at [17]. The same exhortation is made in relation to the Tribunal's exercise of evaluating and applying the related provisions of the Immigration Rules: see MK, at [45] - [49]. Fundamentally, the decision must be crafted in such a way as to demonstrate that the statutory requirements have been given full effect."

56. This is such a case. The First-tier Tribunal considered all of the statutory considerations sequentially and analysed them carefully. Despite the errors as to the relevance of his financial circumstances and perhaps also the existence of family in Sierra Leone, all relevant facts and matters have been properly considered and I am satisfied that there is 'no room for debate' in the outcome of that consideration.

57. I find, therefore, that there is no material error of law in the decision of the First-tier Tribunal and I uphold it.

DECISION

58. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law.

I do not set aside the decision but order that it shall stand.

Date: 23 February 2016

Signed: Judith AJC Gleeson
Upper Tribunal Judge Gleeson