



**Upper Tribunal
(Immigration and Asylum Chamber)
DA/00897/2013**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 10 October 2017

**Decision & Reasons
Promulgated**

On 30 October 2017

Before

**THE HONOURABLE LORD BURNS
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**EDWARD KABUGA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr David Clarke, Home Office Presenting Officer
For the Respondent: Ms Helen Foot of Counsel, instructed by Tower Hamlets
Law Centre

DECISION AND REASONS

1. This is an appeal by the Secretary of State (who we will refer to as the appellant) against the decision of the First-tier Tribunal promulgated on 19 May 2015 which allowed the respondent's appeal against a decision of the appellant of 2 May 2013 to make a deportation against the respondent by virtue of Section 5(1) of the Immigration Act 1971. The respondent was born in the UK on 27 October 1994. His mother had come to the UK from

Uganda in November 1990. Since the age of 10 years he has involved himself in criminal activity and had associated himself with criminal gangs in London. He has been sentenced to periods of custody both as a juvenile and as an adult. Most recently, he was sentenced to 18 months imprisonment for a crime of violence. He has been the subject of detailed reports by the police summarised in the MG11 report referred to below. In the light of that criminal history the appellant took the view that the public interest required the respondent's deportation to Uganda.

2. The respondent appealed that decision to the Upper Tribunal and was granted permission to appeal on 16 June 2015. The appeal was heard on 7 March 2016 and in a decision promulgated on 19 May 2016 the appeal was allowed on the basis that the First-tier Tribunal had materially erred in law in its approach to the question of whether the respondent would face "very significant obstacles" on being deported to Uganda, thus qualifying under the exception in Rule 399A(c) of the Immigration Rules and Section 117C(4) of the 2002 Act. The Upper Tribunal Judge found that the First-tier Tribunal Judge had failed to apply the correct test in relation to whether there were very significant obstacles to the respondent's integration into Uganda and had merely identified difficulties or problems as opposed to very significant obstacles.
3. That decision was itself appealed to the Court of Appeal. It was accepted by the appellant that the Upper Tribunal Judge had fallen into error because he had applied the very significant obstacles test incorrectly. In effect, the court accepted that the Upper Tribunal Judge had equated the very significant obstacles test with insurmountable obstacles and thereby erred.
4. The matter was remitted to the Upper Tribunal for a rehearing.
5. Before us Mr Clarke for the Secretary of State and appellant argued some of the original grounds of appeal advanced to the Upper Tribunal in March of 2016 together with the further grounds of appeal dated 18 January 2016. He argued firstly that, while the First-tier Tribunal Judge had found that the respondent was and continued to be a persistent offender, he had also found that the appellant had turned away from criminality. That was on the face of it a contradictory finding and was not adequately resolved in the determination. The First-tier Tribunal Judge had found also that the respondent had no discernible skills with which to survive or earn a living in Uganda but had listed his employment skills at an earlier part of the judgment at paragraphs 99 and 100, together with his qualifications, such as they were, at paragraph 137. Again, that apparent conflict was not resolved in any adequate way. The fact that he had certain skills indicated that there would be no very significant obstacles to integration into Uganda.
6. Mr Clarke also argued that the First-tier Tribunal Judge found that the respondent would be effectively destitute if returned at paragraph 204 but failed to take account of the Facilitated Return Scheme to which the respondent's attention was drawn on each page of the Reasons for Refusal

Letter. Mr Clarke submitted that while that scheme was available to persons who volunteered to return to their country of origin the respondent in this case had a choice upon a deportation being made against him as to whether to return to Uganda and if he did so on a voluntary basis there was no reason why he should not be eligible under that scheme. Under ground 2 Mr Clarke argued that there was a failure to give adequate reasons for the finding at paragraph 200 that in order to survive in Uganda it is necessary to speak one of the local dialects, namely Luganda, in order to have any reasonable prospect of integration into that society. While there is a reference to the numerous reports and evidence before the First-tier Tribunal there is no adequate explanation of the basis for that conclusion.

7. Mr Clarke did not advance argument under subheading B of ground 2 or ground 3. In relation to the further grounds of appeal, Mr Clarke did not advance any argument in relation to the fairness of the First-tier Tribunal's refusal to adjourn the proceedings. While at the time of the First-tier Tribunal's hearing additional criminal charges in relation to affray were pending against the respondent, it was accepted that no evidence had been advanced in respect of that charge and no conviction had accordingly been recorded against him. As to the additional factor referred to in the determination that the respondent had breached a civil injunction banning him from entering certain parts of Newham and from taking part in gang videos and associating with named individuals, for which he had been subsequently sentenced to four months' imprisonment, Mr Clarke accepted that the judge had proper regard to that factor at paragraph 171.
8. However, Mr Clarke argued that the judge materially erred in law in his assessment of the respondent's background circumstances which informed his conclusion that there would be very significant obstacles in integration if deported to Uganda. The respondent was a Ugandan national, his mother was Ugandan and he was brought up in a Ugandan household in the United Kingdom. He had visited Uganda on a number of occasions with his mother. Accordingly, the conclusion that the respondent had no ties with Uganda was unwarranted.
9. Furthermore, the First-tier Tribunal Judge had erred in focusing too closely on the question as to whether any ties existed with Uganda as opposed to whether there would be very significant obstacles to his integration there if deported. There was no reasoned analysis behind the conclusion at paragraph 200 that it was necessary in order to survive in Uganda that the respondent was able to speak the Luganda dialect.
10. Ms Foot for the respondent submitted that there was no material error of law in the judgment of the First-tier Tribunal. The Facilitated Return Scheme (FRS) as a whole indicated that the respondent would not be eligible for assistance thereunder.
11. Page 6, for example, states that the main aim of the scheme is to promote and assist early removals by encouraging full compliance and cooperation

from eligible FNOs (foreign national offenders) willing to return to their country of origin voluntarily. It is aimed at those FNOs who want to cooperate with early removal. At page 34 there is reference to a requirement to reject an application for participation in the scheme if an appellant is pursuing extant immigration appeals or making representations to stay in the United Kingdom. Accordingly, it was far from clear that the respondent in this case would be eligible.

12. The First-tier Tribunal had given a detailed and nuanced determination noting the context in which his criminal convictions had occurred and, in particular, the fact that only two of those convictions were incurred when an adult. The Tribunal had made a clear finding that the respondent was a persistent offender and accordingly his deportation is conducive to the public good. Notwithstanding that, detailed reasons had been given why the exception contained in Immigration Rule 399A(c) was met in this particular case. Under reference to the case of **Kamara [2016] EWCA Civ 813**, paragraph 14, the First-tier Tribunal had applied a broad evaluative judgment in deciding whether there would be very significant obstacles to his integration. The respondent had been born in the United Kingdom. The household in which he had been brought up had not been one in which he had been exposed to Ugandan culture, he had only visited the country on a small number of occasions, had no family in Uganda and could not speak Lugandan. His mother's evidence had not been challenged to the effect that, because atrocities in Uganda which she had experienced and domestic violence she had suffered, she had disassociated herself from the Ugandan culture. Accordingly, the respondent was a product, not of Uganda, but of the United Kingdom. The finding at paragraph 214 that somebody should have a reasonable prospect of a normal lifestyle of opportunities to engage in work, education and social interaction was a legitimate one which could not be said to apply to the respondent in this case.

Discussion

13. We start by recognising that the respondent, albeit a young man of 22 years of age, has an appalling criminal record and the conclusion that he was a persistent offender who had shown a particular disregard for the law was one which was inevitable. The First-tier Tribunal Judge set out at length the stark history of his offending between paragraphs 16 and 40. He took into account not only the convictions which were recorded against the respondent, both as a juvenile and as an adult, but also information contained in the MG11 report submitted by the police which went into substantial detail into his criminal history. That information showed a pattern of criminal conduct and a lifestyle which supported that conclusion. At paragraph 152 the judge narrates that he had a total of eight convictions for ten different offences, 54 recorded stop and search incidents and approximately 21 matters listed on the CRIS computer reports running to some 400 pages. Much of this narrated conduct which had not resulted in any criminal conviction but supported the view that the respondent was involved in a criminal lifestyle. Having reached that conclusion, the judge sets out the legislative framework in which his

decision required to be made. The public interest in the deportation of the respondent is repeatedly acknowledged and it is evident that he was aware that, only if the respondent established that there would be very significant obstacles to his integration into Uganda, would the public interest be outweighed.

14. From the analysis conducted by the First-tier Tribunal, we are satisfied that proper consideration was given to the weight to be placed on the public interest in the deportation of the respondent. Nevertheless, having found that he was a persistent offender, the judge went on to find that he had the potential to make a significant contribution to the social fabric of the United Kingdom (see paragraph 210). In doing so, the judge acknowledged the evidence of the expert, Mr Sheldon Thomas, led on behalf of the respondent who had made a study of gang activity in London and who had mentored the respondent and other members of the "Blood City Gang" between 2011 and 2013. A letter dated 21 October 2013 was lodged by the respondent and is at pages 19-20 of his bundle. It thus post-dated the criminal activity for which he was most recently convicted. He described the respondent as the member who had shown the most promise of wanting to change. The respondent had completed training courses which Mr Thomas listed. He said that these "show how much Edward had improved his life and how much of a positive asset he will become to the community". The evidence contained in the report and the fact that the respondent had not been convicted of any criminal offence since 2 October 2014 when he was given a suspended sentence, provided a basis for the belief that the respondent had undergone significant change in his behaviour. He finds at paragraph 170 upon the expert and oral evidence that the respondent had made "significant progress in changing his lifestyle, his criminal behaviour and his associates".
15. As Mr Clarke pointed out, there may be some tension between the conclusion about the respondent's potential and his ability to integrate into Ugandan society. However, we consider that the First-tier Tribunal Judge properly had regard to a wide range of considerations when examining the question of very significant obstacles to integration. He took account of the fact that the respondent had been born in the United Kingdom and had lived here all his life. He had no family or friends in Uganda and no employment or accommodation there. The household in which he had been brought up was not one which in any way prepared him for life in Uganda. On the contrary, because of his mother's experiences, there had been no sense in which his Ugandan heritage was developed. The finding at paragraph 193 that he had no connection with Uganda, save a very tenuous connection through his mother's parentage as her country of origin is, we consider, a legitimate one.
16. The reference to him having some potential to make a significant contribution in the United Kingdom must be read in its context. At paragraph 210 the judge acknowledges that he has not yet done so because of his circumstances and his offending. At paragraph 206 it is pointed out that his skills in the United Kingdom are limited and that made his ability to progress here far more difficult. He was in the process of

acquiring such skills (we assume the word requiring is a mistake for acquiring). Accordingly, the finding in that paragraph that he has no discernible skills with which to survive or earn a living lawfully in Uganda was one open to the judge assessing this matter in May 2015. At that time the respondent was 20 years of age. His last criminal activity had been perpetrated in February 2013, for which he had been sentenced in October 2014. He had not been convicted of any criminal offence since then. Accordingly, while there was a basis for the conclusion that this young man had some potential to make his way in the United Kingdom and therefore to be able to integrate himself into Ugandan society, that remained, at least in 2015, only a potential circumstance.

17 In **Kamara**, Sales L.J. stated at paragraph 14 that:

“the idea of integration calls for a broad evaluative judgment as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual’s private or family life”

The judge had proper regard to that description of what is involved in integration. His conclusion that that stage had not yet been reached in 2015 was one open to him on the evidence. As he said at paragraph 214, integration means that one should have a reasonable prospect of a normal lifestyle of opportunities to engage in work, education and social interaction. The facts found by the judge merited the conclusion that there were very significant obstacles in integration in that sense.

18. We do not accept that the judge materially erred in omitting to mention the FRS. It is by no means clear that the respondent would be eligible for assistance under that Scheme for the reasons advanced by Ms Foot. Mr Clarke was unable to point to any part of the scheme which demonstrated the respondent’s eligibility nor to any evidence, guidance or policy which assisted to show his interpretation was correct. It does not appear to have been a factor which arose in the hearing before the First-tier Tribunal. As to the finding about the need to speak Luganda, while it is stated at paragraph 200 that “it is necessary to survive to converse unless one has an independent income”, the judge also states there that it is necessary for survival purposes to speak one of the primary local languages “in order to have any reasonable prospect of integration into that society”. It is plain that he is considering economic survival. When that paragraph is read in the context of the decision as a whole and, in particular, the comments in paragraph 214, we consider that the judge was saying no more than speaking Luganda is one of the factors which would assist in giving the respondent a reasonable prospect of integration in the sense set out in **Kamara** quoted above. Mr Clarke’s submission that the judge placed too much emphasis on the lack of ties is also misconceived. The question of the respondent’s degree of connection to Uganda was a

relevant consideration of which the judge took account. But it is plain, again from a reading of the decision as a whole, that the judge took account of a whole range of factors beyond the respondent's ties to Uganda. For example, it is obvious that consideration was given to the respondent's age and his level of development and maturity.

19. We emphasise that we have examined the decision of the First-tier Tribunal which reflects the respondent's circumstances as at May 2015. No doubt an individual's abilities to integrate into an alien culture can improve and develop through time and it may be that the respondent's own situation has now developed as he has matured. If so, an analysis of the respondent's current ability to integrate into Ugandan society might lead to a different conclusion. But we must look at the picture reflected in the findings of the Tribunal as at May of 2015. Having done so, we cannot conclude that the First-tier Tribunal has, at the date of their decision, materially erred in law in finding that the appellant had established very significant obstacles in integration to Uganda.

18. The appeal is therefore dismissed.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed

Date 26 October 2017

Lord Burns
Sitting as a Judge of the Upper Tribunal