



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/00892/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at : Field House

On 29 January 2018

**Decision & Reasons
Promulgated
On 14 February 2018**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

DUKE COLLIN DAWSON

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Brown, instructed by Southwark Law Centre
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Jamaica born on 17 July 1972. He has been given permission to appeal against the decision of First-tier Tribunal Judge Cockrill dismissing his appeal, from outside the UK, against the respondent's decision to refuse to revoke a deportation order previously made against him and to refuse and certify his human rights claim under section 94(2) of the Nationality, Immigration and Asylum Act 2002.

2. The appellant entered the UK in April 2001 with leave to enter until 6 May 2001 and then overstayed. He came to the attention of the authorities in May

2003 when arrested and charged with drugs related offences. He was issued with papers as an overstayer on 14 January 2004. On 30 January 2004 he was convicted of being knowingly involved in the supply of Class A controlled drugs (heroin) and was sentenced to six years' imprisonment. He was served with a notice of intention to make a deportation order on 5 February 2007 and appealed against that decision, on the basis that his life would be in danger in Jamaica and that he had an established family life in the UK with his partner Jennifer Nugent and their son. On 2 May 2007 he completed his custodial sentence and went into immigration detention. 25 May 2007 he was convicted of an offence under section 35 of the Asylum and Immigration (Treatment of Claimants) Act 2004. His deportation appeal was dismissed on 4 June 2007. The Tribunal rejected his claim to be at risk on return to Jamaica and rejected his claim to have a subsisting family life in the UK. He became appeal rights exhausted on 12 June 2007.

3. On 9 July 2007 the appellant claimed asylum. His claim was refused on 4 October 2007. On 17 December 2007 he made submissions in regard to a fresh asylum and human rights claim. He was granted bail on 16 January 2008. From 20 February 2008 he failed to report and was listed as an absconder. He came to light again on 22 February 2013 when he was encountered by the police and referred back to the Home Office and put into immigration detention. On 8 March 2013 the appellant submitted further asylum representations which were refused on 7 May 2013 and he was served with that decision together with a notice of intention to deport. He appealed against that decision, again on grounds that he was at risk on return to Jamaica and that he had established a family life in the UK with his now wife Jennifer Dawson (formerly Nugent) and their son Akeem. His appeal was dismissed on 20 September 2013. Again his claim to be at risk on return to Jamaica was rejected as lacking in credibility and it was considered that his deportation would be proportionate. He became appeal rights exhausted on 4 November 2013.

4. The appellant then made various further representations and claims for judicial review which were unsuccessful. On 16 January 2014 a Deportation Order was signed against him. Prior to that, on 14 January 2014 he had made further submissions. Those were treated as an application to revoke the deportation order and were refused on 6 June 2014. His human rights claim was refused and certified as clearly unfounded under section 94(2) of the 2002 Act, with an out of country right of appeal.

5. The appellant did not leave the UK but made a request for reconsideration on 11 August 2014 and a further application for leave to remain on 22 December 2014. All submissions were considered and refused under paragraph 353 of the immigration rules in a decision of 26 August 2015. Removal directions were set for the appellant's removal to Jamaica on 9 October 2015 but were deferred when he made another judicial review claim on the basis of his wife's medical condition and his relationship with his son. The respondent considered all further submissions and documents produced for the judicial review and made a further decision on 3 November 2015. The appellant then lodged another judicial review claim. Removal directions were re-set for 13 December 2015. The appellant then made further submissions on 7 and 9 December 2015 in relation to his son's mental health. Those submissions were

rejected by the respondent on 10 December 2015 under paragraph 353 as not amounting to a fresh claim. The appellant then made further submissions on 12 December 2015 which were refused on 13 December 2015.

6. The appellant was deported on 13 December 2015. On 8 January 2016 he lodged an appeal to the First-tier Tribunal against the decision of 6 June 2014.

7. In the decision of 6 June 2014, the respondent considered that paragraph 398(a) of the immigration rules applied in light of the appellant's previous conviction and six year prison sentence. The respondent considered the appellant's reference in his representations of 14 January 2014 to the murder of his father in Jamaica in February 2001 but considered that that would not have created a realistic prospect of success before another Tribunal. The appellant's representations otherwise focussed on the deterioration in his partner's health and how that impacted upon their son. The respondent considered that the appellant's partner's medical condition, severe diabetes, and his relationship with his son were addressed in the Tribunal's decision of 20 September 2013, and had regard to the evidence produced post-dating that appeal. It was noted that his son was 16 years of age and was in his last year at high school. The respondent considered there to be no reason to depart from the decision previously made and that the appellant's circumstances were not exceptional and that his deportation would not breach Article 8.

8. The appellant's appeal came before First-tier Tribunal Judge Lawrence on 12 January 2016. He considered that the appeal had been brought against the respondent's decision of 10 December 2015 and found that there was no right of appeal and that the appeal was therefore invalid. Judge Lawrence's decision was then set aside by Upper Tribunal Judge Martin in her decision of 21 April 2017 following clarification that the appeal was in fact against the decision of 6 June 2014 and was thus a valid appeal. The appeal was then remitted to the First-tier Tribunal and came before Judge Page on 20 April 2017. Judge Page was unfortunately unaware of Upper Tribunal Judge Martin's decision and considered that he had no jurisdiction to hear the appeal as Judge Lawrence's decision had not, he believed, been set aside. Judge Page's decision was, in turn, set aside by the Upper Tribunal on 31 July 2017 and the appeal was remitted once again to the First-tier Tribunal and was listed for hearing.

9. On 29 August 2017 the appellant made a request for a direction to be given to enable him to return to the UK to give oral evidence at his appeal hearing, further to the decision in Kiarie and Byndloss, R (on the applications of) v Secretary of State for the Home Department [2017] UKSC 42. The Tribunal issued directions in response, on 15 September 2017, requiring the respondent to advise of steps that she proposed to take. The respondent responded by way of a letter of 2 October 2017, asserting that the appellant's case was not the same as the cases in Kiarie and Byndloss as his claim had been certified as clearly unfounded under section 94(2) of the 2002 Act and not under section 94B and that it was not necessary for there to be oral evidence from the appellant.

10. On 6 October 2017 a written request was made on behalf of the appellant for an adjournment of the pending hearing on 10 October 2017 to enable his

legal representatives to prepare evidence for the appeal following the grant of legal aid funding on 3 October 2017 and their being instructed on 4 October 2017. It does not appear that the Tribunal considered the request before the appeal hearing.

11. The appeal then came before First-tier Tribunal Judge Cockrill on 10 October 2017. A renewed adjournment request was made by counsel for the appellant on the grounds that legal aid had only just been granted and, as a result, his representatives had not had a proper opportunity to prepare the case and there were no witness statements and no up-to-date medical evidence for the appellant's partner. The judge refused to adjourn the proceedings. The appeal proceeded and the appellant's partner, now referred to as Jennifer or Jenepher Williams, gave evidence before the judge. The judge noted that the appellant had previously claimed to be gay, a claim rejected by the Tribunal in his previous appeal, but that the appeal before him did not raise that issue and focussed on the health needs of the appellant's partner and the impact on the appellant's son of his absence. The judge concluded that the appellant did not come anywhere near showing particularly compelling or compassionate circumstances. He was not at risk on return to Jamaica and the situation of his partner in regard to her health concerns was not exceptional. The judge concluded that the respondent's decision was not disproportionate, that the refusal to revoke the deportation order did not breach his human rights and that the appellant's partner's state of health was not sufficient to justify the revocation of the deportation order. He accordingly dismissed the appeal on all grounds.

12. Permission to appeal to the Upper Tribunal was sought by the appellant on the grounds that the judge had unlawfully refused the adjournment request and that there had been a breach of natural justice as the appellant had had no previous sight of the respondent's letter in response to the appellant's request to be able to attend his hearing; that the judge had failed to take relevant evidence into account in regard to the appellant's partner's difficulties with travelling to Jamaica; and that the judge's reasoning on the interests of the community was irrational.

13. Permission was granted on 17 November 2017 on all grounds but with specific reference to the judge's refusal to grant the adjournment request.

Appeal Hearing

14. At the hearing before me, the parties made submissions. Ms Brown expanded upon the grounds of appeal. She referred to the fact that the Tribunal had not responded to the written adjournment request of 6 October 2017. She submitted that there were numerous reasons why the appeal should not have proceeded, including the fact that instructions had only just been received from the appellant a day or two before the hearing and there had been no time to prepare a written statement from him. The judge was wrong to say that there had been adequate time to prepare a statement from the appellant, when he was illiterate, he was wrong to say that the case was an old one when the lodging of the appeal had been recent, and he was wrong to say that the funding application had been made late when it had been made in

September 2016. Ms Brown referred to the fact that the respondent's letter of 2 October 2017 had not been seen previously by the appellant and submitted that there had therefore been no opportunity to respond to it. She submitted that the judge had failed to take account of all relevant evidence and had failed to consider the reasons given by the appellant's wife for not being able to travel to Jamaica. I then sought clarification about the legal aid application and funding and Ms Brown agreed that the funding application made in September 2016 had been a previous application which lapsed when the appeal was dismissed and she was unable to say when the recent application had been made.

15. Mr Tarlow submitted that the judge had given full and proper reasons for refusing to adjourn the appeal and his conclusions were properly open to him. In response Ms Brown submitted that the hearing was unfair as the appellant had not given evidence himself.

Consideration and findings

16. The appellant's grounds of appeal are, in my view, without any merit. There is no basis for concluding that the appellant did not have the benefit of a fair hearing in terms of the principles set out in Nwaigwe (adjournment: fairness) [2014] UKUT 418. Nothing relevant or material arises from the fact that a written adjournment request had not previously been considered by the Tribunal and in any event all matters were fully considered by Judge Cockrill. Judge Cockrill clearly had the written adjournment request before him as he referred to it at [48], but in any event it takes matters no further forward for the appellant.

17. The grounds assert that there was a lack of adequate opportunity for the appellant's representatives to prepare for the appeal hearing given the recent grant of legal aid. However that was a matter fully considered by the judge who properly observed, and provided full reasons for concluding, that that did not prevent the appeal from being considered in full. As the judge noted, the focus of the appellant's case was on his family life ties to the UK and his wife's medical condition and he properly observed that he had all the necessary evidence in that respect. He had before him a bundle of documents containing a statement from the appellant's wife Ms Williams and also had the benefit of Ms Williams' presence and oral evidence at the hearing. He also had a statement from the appellant's son Akeem who was not in any event intending to attend the hearing as he was at university. He had the benefit of recent medical evidence for the appellant's wife.

18. The main point made by Ms Brown was that there was no evidence from the appellant himself before the Tribunal and that that in itself gave rise to an unfair hearing. However the appellant had given oral evidence before the Tribunal in his two previous appeals and had made various representations since then and there was, and is, no suggestion of anything material that he could have added to the evidence previously given and to the evidence which was already available before the judge from his wife. The respondent had provided a proper response to the Tribunal's directions as to why the appellant's presence at the hearing was not required under the terms of the

judgment in Kairie and Byndloss. Furthermore, the judge properly found that there had been ample opportunity for a statement to be produced by the appellant. There was no satisfactory reason given in the grounds or by Ms Brown as to why a statement could not have been taken from the appellant in the six days after the solicitors were instructed, even if he was illiterate and outside the UK. Neither was there any evidence to suggest that the last minute grant of legal aid was due to any delay by the legal aid agency as opposed to a late application by the appellant or his wife and Ms Brown was unable to say when the most recent application for funding had been made. The appellant's wife was clearly knowledgeable about making such an application, having previously made one in September 2016 which then lapsed when the earlier appeal was dismissed. There was also no proper reason given as to why the appellant in fact needed solicitors to prepare a statement for him and why he could not have prepared one himself with some assistance in Jamaica. In short, there was no satisfactory reason for the absence of evidence from the appellant himself and no satisfactory reason why the absence of such evidence rendered the proceedings unfair or prejudiced the appellant in any way. Accordingly it seems to me that the judge was perfectly entitled to refuse the adjournment request and to proceed with the appeal and I fail to see how there was any unfairness in his decision to do so.

19. The remaining grounds were addressed in less detail by Ms Brown and clearly the focus of the appellant's case before me was on the refusal to adjourn the proceedings. As for ground 2, I have addressed above the submissions made in relation to the respondent's letter of 2 October 2017 and I find no merit in the assertion that any unfairness arose from the appellant not having had sight of the letter prior to the hearing, as is alleged, nor indeed from his absence from the hearing.

20. As for the assertion in ground 3 that the judge failed to have regard to relevant evidence, it is plain that that was not the case and that the judge had full and careful regard to all the evidence. The grounds suggest that the judge's finding at [55], as to the reasons given for the appellant's wife not being able to travel to Jamaica, ignored her significant health problems and the impact of her health difficulties on her ability to travel. However that was clearly not the case as the judge went on at [56] to consider the evidence as to her ability to travel and in any event gave detailed and careful consideration to her health problems at [54] and [57]. There is no merit in the assertion in the grounds that the judge's conclusions in that regard were unreasonable or perverse. On the contrary the judge was perfectly entitled to reach the conclusions that he did for the reasons fully and properly given.

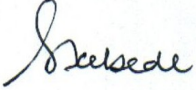
21. Neither is there any merit in the assertion in ground 4 that the judge's reasoning in regard to the interests of the community was irrational. The judge considered all relevant matters when having regard to the provisions of paragraph 390 and 391 of the immigration rules and was perfectly entitled to consider the matters that he did at [52] when assessing the interests of the community. The judge went on, in that paragraph and at [53], and in accordance with the provisions of paragraph 390, to consider the appellant's personal circumstances and interests and to consider whether there were any compassionate circumstances. The judge was perfectly aware of the fact that

the appellant's offence had been committed several years previously and that he had not offended since and specifically referred to that at [47], noting also that the passage of time since the offence was largely due to the appellant having absconded after being granted bail. The judge plainly had regard to all relevant matters, taking account of factors in the appellant's favour and those against him and was fully entitled to conclude that he had not demonstrated that his circumstances were sufficiently compelling or compassionate to outweigh the public interest in his deportation.

22. For all of these reasons I find no merit in the grounds of appeal. The appellant had the benefit of a full and fair hearing with all matters properly considered by the judge. The judge's findings and conclusions took account of all the evidence, were supported by cogent reasoning and were entirely open to him on the evidence before him. Accordingly I find no errors of law in the judge's decision. I uphold the decision.

DECISION

23. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed 
Upper Tribunal Judge Kebede
2018

Dated: 12 February