



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

Appeal Number: HU/08934/2017

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

**On 19th December 2017
Judgment given orally**

On 22nd March 2018

Before

**THE HON. MR JUSTICE GOSS
UPPER TRIBUNAL JUDGE SOUTHERN**

Between

R Y A

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Halim of Counsel

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant who is a citizen of Ghana arrived in the United Kingdom in 1982 then aged 22 and was admitted as a visitor. He subsequently secured indefinite leave to remain as the spouse of a person present and settled in the United Kingdom. That relationship did not continue and he now has six British citizen children with three separate partners. In February 2014, having changed his plead to one of guilty at the last moment, he was convicted before the Maidstone Crown Court of an

offence of causing death by dangerous driving and was sentenced to four years and four months' imprisonment. As a consequence, he is a foreign criminal in respect of whom Section 32 of the UK Borders Act 2007 requires the Secretary of State to make a deportation order unless one of the statutory exceptions applies. As he had been sentenced to more than four years' imprisonment then on the facts of this case he can avoid deportation only if he establishes that there are very compelling circumstances over and above those described in exceptions 1 and 2 of Section 117C of the Nationality, Immigration and Asylum Act 2002. To a significant extent although not exclusively the appellant relied upon his relationship with his children, three of whom are under the age of 18 and each of whom is living with their respective mothers.

2. By a lengthy judgment running to 120 paragraphs, a judgment which has been written with evident care, the judge dismissed the appeal because having directed himself correctly and comprehensively in law and having carried out what we regard to be a meticulous examination of the evidence he found absent the very compelling circumstances over and above those required to qualify for those exceptions. In reaching those conclusions the judge navigated a course through the Immigration Rules the statutory framework of Sections 32 and 33 of the UK Borders Act 2007 as well as Section 117A to D of the Nationality, Immigration and Asylum Act 2002 as well as going on to strike a balance outside the Rules between the competing interests in play of the public interest in the deportation of a foreign criminal and the appellant's right to respect for his private and family life informed of course by what was in the best interests of the children concerned, but the judge concluded that the public interest arguments prevailed in each of those assessments.
3. There are two grounds of appeal developed by Mr Halim in his oral submissions this morning. The first ground complains that the judge fell into legal error in that he determined the appeal by reference to the Immigration Rules despite having been referred to the decision of the Supreme Court in **Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60**. This is said in the grounds to be because the judge said at paragraph 115 of his judgment

"Taking into account all of the evidence I therefore dismiss the appeal under the Immigration Rules and Article 117C".

The reference to Article 117C obviously is a simple typographical error, it being clear from the context that the judge was referring to Section 117C of the 2002 Act and it is not suggested otherwise. The written grounds drafted by Mr Halim assert that the Supreme Court in **Hesham Ali** made clear that "the Rules are not law and therefore do not govern the determination of appeals" but it is said by Mr Halim that this is precisely what the judge has done. Put another way Mr Halim suggests or submits that the judge has effectively reached his conclusion by completing his assessment under the Rules and the statutory framework and therefore

has embarked upon his assessment outside the Rules with his hands tied to a decision that he has already made. Mr Halim complained also that what was lacking was a balance on the part of the judge outside the Rules in that although he gave weight against the appellant to the matters raised in the statutory framework, when he looked at the matters that spoke in favour of the appellant he simply took due regard of it.

4. Mr Jarvis in response points to the guidance of the Court of Appeal in **NE-A (Nigeria) v Secretary of State for the Home Department [2017] EWCA Civ 239** and points in particular at paragraph 14 of the judgment in the Court of Appeal where it was pointed out that Sections 117A to 117D taken together are intended to provide for a structured approach to the application of Article 8 which produces in all cases a final result which is compatible with Article 8. In particular if working through this structured approach, one gets to Section 117C(6), the proper application of that provision produces a final result compatible with Article 8 in all cases to which it applies. Mr Jarvis also points out in response to a matter which in fairness to Mr Halim he did not seek to develop in his oral submissions that of course the Supreme Court in **Hesham Ali** was not concerned at all with Section 117A to D, that being a statutory provision introduced by the Immigration Act 2014 by a Commencement Order given effect after the date of the decisions with which the Supreme Court were concerned.
5. In this judgment the judge has carefully identified all of the matters that were capable of speaking in favour of the appellant as well as those that spoke in favour of the public interest arguments. The determination of the judge must be read as a whole and when it is, it is in our judgment transparently clear that the judge did not make the errors that Mr Halim has alleged. The judge has worked his way through, progressively and in a structured manner, the Immigration Rules, the statutory framework applicable and has then considered Article 8 outside the Rules making plain at each stage precisely what he found to be the position or the outcome. That was a rational and correct approach because of course as Mr Halim accepts the assessment outside the Rules must also of course be informed by the conclusion of the judge as to the extent which, if at all, the applicant has met the requirements of the statutory framework which he has just navigated his way through. In our judgment the approach of the judge cannot be faulted and so the first ground is not made out.
6. The second ground of challenge complains that the approach taken by the judge in arriving at his conclusion that the appellant would not face very significant obstacles to integration on return to Ghana was legally flawed. This is because in **Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813** the Court of Appeal made clear that what is required is a broad evaluative judgment. It said that the judge failed to take that approach. The grounds point out that the applicant who is now 57 arrived in the United Kingdom in 1982 then aged 22 years of age and has now lived in the United Kingdom awfully with indefinite leave for 35 years and he last visited Ghana as long ago as 1999 and given the facts

considered as a whole it is submitted that the findings of the judge in this respect were irrational or inadequately reasoned. We disagree. When the judgment is read as a whole it is readily apparent that the findings made by the judge are not irrational but are simply unassailable. He heard the evidence, he has had careful regard to everything to which he has been referred, he has plainly carried out a structured balancing act and has reached a conclusion which was plainly open to him. It is plain that the judge has done precisely what it is complained he did not which is to carry out a broad evaluative judgment and that is precisely in fact what he said he was doing having directed himself specifically in terms of the guidance in **Kamara** at paragraph 27 of his judgment. For these reasons we are entirely satisfied that the judge made no error of law material or otherwise and indeed on the facts it is hard to see what other outcome was rationally open to the judge other than to dismiss the appeal and so for those reasons the appeal to the Upper Tribunal is dismissed and the determination of First-tier Tribunal Judge Maka is to stand.

Signed



Date 20 March 2018

Upper Tribunal Judge Southern