



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/00809/2019**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 1 July 2019

Promulgated

On 4 July 2019

Before

**UPPER TRIBUNAL JUDGE BLUM
UPPER TRIBUNAL JUDGE MANDALIA**

Between

**LEON KWESI ESIMI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Nadeem, Counsel, of City Law Immigration Ltd

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Birk (the judge), promulgated on 2 May 2019, dismissing the appellant's appeal against the respondent's decision dated 7 December 2018 refusing his human rights claim.

Background

2. The appellant, a national of Ghana, was born in 1994. It is not altogether clear when the appellant entered the UK. He maintains that he entered in 2004, and the respondent accepts that he was issued

with a visa endorsed “settlement to join parents” on 23 February 2005. According to the skeleton argument relied on by the appellant’s representative in the First-tier Tribunal hearing the appellant was around 10 years old when he entered the UK to join his mother. He has been settled in the UK since 2005. His parents and younger siblings reside in the UK, as do a number of other aunts and uncles. The appellant has not returned to Ghana since first entering this country.

3. The appellant has several criminal convictions, which the judge set out in her decision. Of particular relevance is an offence relating to the supply of cannabis for which the appellant received an 18 months sentence of imprisonment on 13 April 2018.
4. The respondent decided to make a deportation order against the appellant on 1 May 2018 in accordance with s.32(5) of the UK Borders Act 2007. The appellant made a human rights claim on 28 May 2018 but this was refused on 7 December 2018. The appellant appealed the respondent’s decision to the First-tier Tribunal pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act).

The decision of the First-tier Tribunal

5. At the hearing the appellant relied on a bundle of documents running to 69 pages that included, inter alia, a manuscript statement written by the appellant, undated and unsigned statements from his parents and his aunt (Linda Darkwah), a witness statement from Whitney Eubanks dated 28 May 2018 (together with a copy of her Jamaican passport and a grant of ILR dated 9 March 2004), birth certificates relating to Ms Eubank’s three children from another relationship (born in 2009, 2012 and 2014) and some educational certificates. The judge also considered a skeleton argument. A respondent’s bundle of documents had not previously been served on the appellant and no additional copy was served on the day of the hearing, although a copy of a presentence report was provided.
6. The judge heard oral evidence from the appellant, his father and his aunt. Ms Eubanks did not attend the hearing as it was claimed she was unable to arrange for a babysitter.
7. In her decision the judge summarised the decision refusing the appellant’s human rights claim, the oral evidence and the submissions made on behalf of both parties. The judge then set out the correct legal framework for assessing refusals of human rights claims in the context of deportation decisions (paragraphs 398, 299 and 399A of the immigration rules, and s.117B & s.117C of the Nationality, Immigration and Asylum Act 2002). The judge correctly directed herself as to the burden and standard of proof “very compelling circumstances” under paragraph 398 of the immigration rules.

8. Under the heading “My Findings” the judge first considered the submissions relating to the private life established by the appellant in the UK, with reference to paragraph 399A and s.117C(4) (which provide for an exception to the public interest in a person’s deportation, in the context of a person sentenced to between 12 months and 4 years imprisonment, if they have been lawfully resident in the UK for most of their life, are socially and culturally integrated in the UK, and there would be “very significant obstacles” to their integration into their country of proposed deportation). The respondent accepted that the appellant met the first 2 requirements, but was not satisfied there would be “very significant obstacles” to the appellant’s integration in Ghana. From [25] to [28] the judge noted that the appellant was 9 or 10 years age when he arrived in the UK, that he attended school and college here, and that he would not have any family members or friends to assist him in Ghana. The judge found that the appellant’s ability to speak English would be an advantage in Ghana and that it was not imperative that he must speak other local languages. Although the judge accepted that the appellant was likely to have little memory of life in Ghana it was not an entirely alien culture to him as he had grown up within his Ghanaian family in the UK. The judge observed the absence of any restrictions on the appellant’s family visiting him in Ghana or providing him with support. The appellant had not produced evidence from a reliable independent source that he was suffering from any form of mental or physical difficulties. The appellant had also demonstrated the ability to complete educational courses (in 2013 he received some BTEC qualifications in the performing arts). The judge found that the appellant would have an opportunity and ability to seek work and accommodation and that he would be able to look after and care for himself. At [29] the judge accepted that the appellant would find Ghana, at least initially, a new and different environment but was not satisfied that the appellant would have real difficulties in establishing himself and integrating himself into life in Ghana.

9. The judge then considered the evidence supporting the appellant’s claimed relationship with Ms Eubanks and her children. Although the appellant claimed to have been in a relationship with Ms Eubanks for 2 years she did not attend the hearing and her statement was a year old. The judge acknowledged the assertions made in Ms Eubanks’ statement (that she, the appellant and her children form a close family unit and that her children regarded the appellant as their stepfather), but placed little weight on the statement given its vintage and Ms Eubanks absence from the hearing. The judge rejected the explanation for Ms Eubanks absence. The judge was not satisfied there was any relationship in existence between the appellant and the Eubank family and supported her conclusion by reference to the absence of detailed evidence of the appellant’s involvement with Ms Eubanks and the children, the fact that they did not reside together as a family unit prior to his incarceration, and the absence of details of his relationship contained in the presentence report. Given these findings the judge did not need to consider whether the appellant’s

deportation would have an unduly harsh impact on any qualifying family members.

10. From [37] to [43] the judge finally considered whether there were ‘very compelling circumstances’ over and above the exceptions in paragraph 399 and 399A and the immigration rules and s.117C(4) and (5) of the 2002 Act rendering the decision to refuse the appellant’s human rights claim disproportionate under Article 8. The judge noted that the appellant failed to establish Exceptions 1 and 2 by a large margin, but that he was considered at low risk of serious reoffending within a two-year period and was at low risk of serious harm to others (by reference to a Offender Assessment report completed in January 2018). The judge however observed the absence of any independent reliable evidence that the appellant had completed work addressing his drug misuse to a satisfactory and sustainable level and that he had not established that he was rehabilitated. The issue of drug misuse was still a current factor. The judge acknowledged the arguments advanced by the appellant’s family that he fell in with the wrong crowd as a child, but there was little evidence that the appellant had successfully overcome those influences that led him into crime. The judge also took into account that the appellant’s most recent offences were committed when he was in his 20’s. There was also little independent reliable evidence supporting the appellant’s claimed mental health issues. The judge took into account that the appellant’s family resided in the UK and that he had been residing with his aunt. The judge was not however satisfied that the appellant’s relationship with his aunt or his parents went beyond the normal emotional ties that exist between such adults. Having holistically considered the evidence upon which the appellant relied the judge found there were insufficient compelling circumstances to outweigh the high public interest in deportation. The appeal was dismissed

The challenge to the First-tier Tribunal’s decision

11. The grounds of appeal, as amplified by Mr Nadeem at the ‘error of law’ hearing, contend that the judge failed to have regard to or make findings in respect of the factors listed in s.117B(2) and (3) of the 2002 Act, that the hearing was procedurally unfair because the appellant was not served with the respondent’s bundle of documents, that the judge failed to direct herself in accordance with the “very significant obstacles” test in **SSHD v Kamara** [2016] EWCA Civ 813, and that the judge failed to apply her mind to the guidance given in **Maslov v Austria** [2008] ECHR 1638/03, particularly in respect of the deportation of a youth who had spent the majority of his childhood in a host country.
12. Having heard Mr Nadeem’s submissions it was not necessary to call upon Mr Avery. We indicated that we would dismiss the appeal and would give our decisions in writing.

Discussion

13. The grounds do not challenge the judge's approach to the claimed relationship between the appellant and the Eubanks family, and Mr Nadeem did not suggest that the judge fell into legal error in concluding that the appellant did not have a relationship with either a qualifying partner or a qualifying child, as understood by s.117D(1) of the 2002 Act.
14. Mr Nadeem did not advance the "procedural unfairness" point in his oral submissions. We consider this ground to be without merit. When granting permission to appeal Designated Judge Shaerf observed that there was no reference in the judge's decision or her record of proceedings to any adjournment application made by the appellant or his representatives because they had not been served with the respondent's bundle. Designated Judge Shaerf observed that the appellant may well need to obtain the record of proceedings prepared by his representative at the First-tier Tribunal hearing with a view to establishing what was said about the late service or failure to serve the respondent's bundle. The Tribunal has not received any such record of proceedings from the appellant's representative. The grounds do not identify how the appellant has been prejudiced by the failure to serve the respondent's bundle. The bundle mostly replicates the documents contained in the appellant's own bundle and includes the decision to make a deportation order, the deportation order itself and the refusal of the appellant's human rights claim. The only other documents of any relevance consist of the Sentencing Remarks and the Police National Computer record of the appellant's convictions. The appellant has not taken issue with the content of these other documents, and, as pointed out by the judge at [4], the appellant's criminal record was not in dispute. Whilst the respondent's bundle should have been served on the appellant a reasonable time prior to the hearing, we are not satisfied that the respondent's failure to do so rendered the hearing unfair.
15. Designated Judge Shaerf properly observed that the factors in s.117B(2) and (3), relating respectively to the appellant's proficiency in English and his ability to be financially independent, were neutral factors and that although the failure to meet those requirements could be held against the appellant, they were not points upon which he could positively rely (see **Rhuppiah** [2018] UKSC 58). It is apparent from reading the decision 'in the round' that the judge was acutely aware of the appellant's proficiency in English (see, for example, [26]). Although the judge did not specifically refer to s.117B(2) or (3) he did not hold against the appellant his proficiency in English or any difficulties the appellant faced in being financially self-sufficient because his passport had been retained by the Home Office. The absence of any reference to the appellant's ability to be financially independent indicates that the judge regarded these factors as neutral. There is therefore no error.

16. In granting permission to appeal Designated Judge Shaerf was most concerned with the adequacy of the judge's findings, at [26] to [29], that there were no "very significant obstacles" to the appellant's deportation to Ghana. The grounds rely on the Court of Decision in **Kamara**. Both **Kamara** and **AS v SSHD** [2017] EWCA Civ 1284 considered the concept of "integration" in s.117C(4)(c) of the 2002 Act and paragraph 399A of the immigration rules. In **Kamara** Sales LJ, with whom Moore-Bick LJ agreed, stated, at [14],

In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made 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.

17. In **AS** Lord Justice Moylan rejected a submission that so-called "generic" factors, such as intelligence, health, employability and general robustness of character, were irrelevant when assessing a person's ability to integrate, and held that such factors can be relevant to whether there are very significant obstacles to integration as they form part of the "broad evaluative judgment" (at [58] and [59]). The Court of Appeal rejected a submission that whether someone is "enough of an insider" is to be determined by reference to their ties to the country of proposed removal.
18. Although the judge does not refer to either **Kamara** or **AS** we are satisfied that she did apply a broad evaluative judgment when determining the existence of "very significant obstacles". We have summarised the matters considered by the judge at paragraph 8 above. She accepted that the appellant did not have any family members or friends within Ghana, and that he was likely to have little memory of life in that country, but found that Ghanaian culture was not entirely alien to him as he grew up with his Ghanaian family in the UK. This was clearly a finding open to the judge. She also noted the ability of the appellant's family to support him from the UK and through visits, and that he had been able to complete educational courses, indicating that he would have the opportunity and ability to seek work. There was no independent reliable evidence of any physical or mental health difficulties, and English was spoken in Ghana. The judge was not satisfied that the appellant would have real difficulties in establishing himself and integrating into life in Ghana, and gave cogent reasons in support. In our judgement it is irresistibly

clear from the factors that she took into account that the judge found the appellant would be able to operate on a day-to-day basis and would, within a reasonable period of time, be able to establish a variety of relationships giving substance to his Article 8 rights. We find there is no error of law respect to the “very significant obstacles” test.

19. In reliance on **Uner v Netherlands** [2006] 3 FCR 229 and **Maslov**, Mr Nadeem submitted that the judge failed to adequately consider the appellant’s length of lawful residence in the UK as a child since the age of 10, and that she failed to consider that the appellant had never returned to Ghana. It is however apparent from [3] and [25] that the judge was aware that the appellant had lived in the UK since the age of 9 or 10. In **Akpinar, R (on the application of) v The Upper Tribunal (Immigration and Asylum Chamber)** [2014] EWCA Civ 937 the Court of Appeal concluded that **Maslov** did not establish a new rule of law to the effect that, unless the state can show that there are “very serious reasons” for deporting a settled migrant who has lawfully spent all or the major part of his childhood and youth in the UK, that his Article 8 rights will prevail. In so concluding the Court of Appeal considered a wide range of decisions from the European Court of Human Rights which highlighted the danger of treating “very serious reasons” as if they were a legislative requirement, as well as a number of domestic authorities. Although the judge did not make reference to the case of **Maslov** of by name she did take into account the criteria identified in that case, including the appellant’s length of residence in the UK, his age when he committed his criminal offences, and the solidity of ties he has with the UK. In determining that there were no “very compelling circumstances” under paragraph 398 and s.117C(6) (as understood in **NA (Pakistan) v Secretary of State for the Home Department** [2016] EWCA Civ 662, which confirmed that Parliament intended medium offenders to have the same fall back protection as serious offenders), the judge adopted a wide-ranging and holistic approach and took into account all relevant circumstances, including the appellant’s relationship with his family in the UK, the pre-sentence report, the appellant’s state of health and the evidence suggesting that the appellant was very much an independent person. The decision discloses no error in the assessment of “very compelling circumstances”.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The appellant’s appeal is dismissed.



Signed

1 July 2019

Signed
Upper Tribunal Judge Blum

Date