



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

Appeal Number: HU/08639/2017

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 29 July 2019**

**Decision & Reasons Promulgated
On 12 August 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**M S R
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Markus, Counsel, instructed by TRP Solicitors
For the Respondent: Ms H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Jamaica, has permission to challenge the decision of Judge Obhi of the First-tier Tribunal (FtT) sent on 16 October 2018 dismissing his appeal against the decision made by the respondent on 11 July 2017 to make a deportation order pursuant to s. 32(4) of the UK Borders Act 2007. This decision was made in light of the fact that on 14 June 2016 he had been convicted of sexual assault of a female and sentenced to two years' imprisonment and certified as a sex offender for a period of ten years with a Restraining Order for eight years.

2. The appellant's grounds were five in number, it being contended that the judge erred in (1) her approach to the medical evidence of Dr Bell; (2) her approach to the witness evidence given by the appellant and his two sisters; (3) her approach to the country expert evidence of O'Hilaire Sobers and Luke de Noronha; (4) failing when assessing whether there were very compelling circumstances to engage with the evidence of Dr Bell or to take account of the impact upon the appellant's partner, EB, of the appellant's deportation or to take into account the pervasive stigma attached to deportees to Jamaica and those suffering from mental illness or the OASys Report assessment that the appellant posed a low risk of re-offending; and (5) failing to address the appellant's case under Article 3 ECHR.
3. I received pertinent submissions from both representatives for which I record my thanks.
4. I have decided that the judge's decision is vitiated by material legal error.
5. Dealing with ground (1) it is plain enough that the judge took the medical evidence into account and her decision accordingly sets out the evidence of Dr Bell. The judge accepted Dr Bell's diagnosis that the appellant suffers from mental illness (schizo-affective disorder) "on the basis of the medical report before me" (paragraph 53). However, the judge arrives at a conclusion that the appellant's mental health illness can be controlled through regular engagement with mental health services in Jamaica. The difficulty with that conclusion is that it is quite different from that reached by Dr Bell. In itself that gives rise to no error; particularly since the findings made in a medical report, even of good quality, may be outweighed by or contradicted by other evidence and the rule of a judicial fact-finding is to consider the evidence as a whole. However, where the judge's conclusions are clearly different from a medical report of good quality it is incumbent on a judge to explain why. The judge in this case failed to explain why she did not share Dr Bell's assessment that if there was a disruption in the relationship between the appellant and EB there would be a deterioration in his psychiatric state; that the sudden breaking of their relationship would be experienced as a "violent and traumatic event"; that the appellant's prognosis depended entirely upon his social circumstances and in particular his relationship with EB and his sisters; and that if he were returned to Jamaica it would be "virtually certain" that his mental health would deteriorate. Clearly it was not Dr Bell's view that the appellant's mental illness could be "controlled through medication and through regular engagement with the mental health services" (paragraph 67). What was necessary, therefore, was for the judge to give reasons why she took a different view.
6. There is a related difficulty with the judge's treatment of the medical evidence relating to EB - who was the subject of a medical report from the same Dr Bell. In Dr Bell's opinion EB suffered from a personality disorder and if the appellant were removed she was likely to revert to a "a pattern of behaviour that was volatile, highly sensitive to even quite minor

stresses, she may turn to alcohol and there would be a risk of taking an overdose". The judge properly noted this assessment by Dr Bell at paragraph 50.

7. Whilst this diagnosis might be said to reflect relatively moderate concerns in EB's case (as compared to those expressed about the appellant), this was a factor the judge was required to assess and weigh in the balance when deciding the issue under s. 117C(5) ("... the effect of C's deportation on the partner ... would be unduly harsh"). Yet all the judge's decision says about this is that:

"I accept that the appellant will find the move distressing, and that his partner may choose not to accompany him. However it is not unduly harsh to expect her to do so. The move can be planned by his family to enable the impact to be reduced."

8. That again is a statement of the judge's conclusion. It does not set out any reasons. It may be that the judge considered EB's psychological problems not to be severe enough to make the effect on her of the appellant's deportation unduly harsh; or she may have considered that whilst significant, there were other factors in play (e.g. support from her own family) that would mitigate the effect. We simply do not know.

9. I do not find that ground (2) is made out. It is argued that the judge gave inadequate reasons for concluding that the appellant would have familial support in Jamaica, bolstered by financial support from his sisters. It is true that the claims made to the contrary by the sisters in their evidence were not the subject of cross-examination, but read as a whole the judge's decision adequately explains why she reached the consideration she did; her reasons being encapsulated in paragraph 58:

"I am told that he does not want to go to Jamaica as he does not get on with any of his brothers. However his sisters continue to support not just his brothers, but also his nephew who has been deported to Jamaica. There is a thriving family in Jamaica even though his parents are not deceased and two of his sisters live in the UK. They continue to have contact with their brothers in Jamaica and one of his sisters owns a property in the country. Both of the appellant's sisters stated that they would assist their brother in any way they could."

10. However, as with ground (1), I find ground (3) made out. There were two country expert reports produced by the appellant, both of which identified that persons deported to Jamaica faced ostracism and stigma there and that persons with mental illness also experienced stigma and inadequate provision. The judge also had a detailed report from Georgetown University addressing the position of deportees to Jamaica who suffer from mental illness. It stated at one part that:

"[a]s a result of stigma, discrimination, and a lack of legal recourse to ameliorate their combined effects, it is particularly challenging for mentally disabled deported persons to obtain employment, find adequate shelter, and even maintain personal safety".

The judge did not address this report at all. The judge did address the report of Dr Sobers at paragraphs 69 to 70. At paragraph 70 she concludes:

“The report, in my view is flawed in that it completely ignores the presence of family in Jamaica, and the presence of family in the UK who are willing to assist the appellant. It also ignores the fact that another member of his family has been deported and is being supported. It is not a balanced and objective report. I acknowledge that the appellant and his sisters have told me that he has a poor relationship with all of his brothers in Jamaica; however he also told me that he was able to repair the relationship with the brother who died. I place little weight on what the appellant and his sisters tell me about the nature of his relationship with his siblings, I understand why they would wish to play that down, but in reality I find that he will be able to obtain some assistance from them.”

11. Three difficulties arise from this of the expert evidence. First there is the point already noted that it does not engage with the expert evidence of Luke de Noronha or the report from Georgetown University. Second, in picking out from Dr Sober’s report the reference to a government supported programme aimed at helping vulnerable people, the judge does not appear to have engaged with the point made by Dr Sobers that the appellant faced stigma as a deportee when it came to accessing any such programme. Third, the fact (as found by the judge) that the appellant could obtain assistance from family relatives in Jamaica and some degree of financial assistance from his sisters in the UK, did not in itself establish that the appellant would be protected from stigmatisation or that this type of assistance and support would ameliorate his mental health problems, which according to Dr Bell would be likely to be exacerbated by deportation.
12. In view of my conclusions that the judge’s decision is vitiated by legal error in respect of her treatment of the medical and country expert reports, it is unnecessary for me to address grounds (4) and (5) which as Mr Markus conceded, reprised the main points raised in grounds (1) and (2). I see no alternative to the case being remitted to the FtT.
13. Despite my decision to set aside the judge’s decision I see no valid reason not to preserve the judge’s findings in relation to assistance from family members in Jamaica and some level of financial support from the appellant’s two sisters in the UK.
14. Whilst I have found an error in the judge’s treatment of the expert evidence, this is not to be taken as endorsement of the opinions reached in them. It will be entirely a matter for the judge to decide what weight to attach to them. It will also be important for the judge to weigh them in the light of the entirety of the background evidence, including that produced by the respondent, which in general, reflects a quite different view.

Notice of Decision

15. To conclude:

The decision of the FtT Judge is set aside for material error of law.

The case is remitted to the FtT (not before Judge Obhi).

Directions

The appellant's representatives had already submitted a Rule 15(2) application to the effect that if I found a material error of law, they would seek to obtain an updated medical report from Dr Bell on the appellant by end of October 2019. I hereby direct that they produce (with copy to the respondent) this addendum report by end of October 2019.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 02 August 2019

Dr H H Storey
Judge of the Upper Tribunal