



IAC-AH--V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08330/2017**

THE IMMIGRATION ACTS

**Heard at Field House (remotely)
On the 11th June 2021**

**Decision & Reasons Promulgated
On the 12th July 2021**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DB

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer,

For the Respondent: Ms H Short, counsel instructed by Duncan Lewis Solicitors

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Swaney, promulgated on 2 February 2021. Permission to appeal was granted by First-tier Tribunal Judge Parkes on 9 February 2021.

Anonymity

2. No direction has been made previously, however an obvious reason for directing anonymity is that the respondent's case involves evidence that he was sexually abused as a minor.

Background

3. The respondent entered the United Kingdom from Jamaica aged 5 during 2001 with 6 months leave to enter as a visitor. He was a dependent on unsuccessful applications for leave to remain and asylum made by his mother. The respondent was convicted of violent disorder on 19 January 2012 and was sentenced to a 4-month detention and training order. Subsequently, he was detained as an overstayer in September 2012 following which he made a human rights claim. His appeal against the refusal of that application was allowed on 29 August 2014 and he was, ultimately, granted Discretionary Leave to Remain until 6 October 2018.
4. On 25 November 2016, the appellant was convicted of affray and sentenced to 12 months' imprisonment. Subsequently, on 30 May 2017, the Secretary of State made a decision to deport the respondent and refused his human rights claim based on a relationship with a partner and qualifying child. This appeal is against a further decision made on 28 July 2017 to the same effect. Briefly, the Secretary of State refused the respondent's human rights claim owing to his failure to provide any evidence, it was not accepted that he met the private life requirements of the Rules nor that there were any very compelling circumstances. Subsequent to that decision, the respondent was, on 15 August 2018, convicted of further offences involving assault, an offensive weapon and intent to supply and on 20 December 2019 he was convicted of wounding, grievous bodily harm and assault by beating and sentenced to three years in prison. He was still serving his sentence at the time of his appeal hearing.

The decision of the First-tier Tribunal

5. The First-tier Tribunal heard evidence from the respondent, his partner (Ms Wright) and a friend (Ms Goodman). In addition, there was expert evidence relating to the respondent's mental health upon which the judge placed "significant weight." The following findings were made. It was accepted that the respondent enjoyed family life with his partner; the respondent did not satisfy the private life exception to deportation; there would be very significant obstacles to the respondent's integration in Jamaica; the respondent was not relying on family life with his child from a previous relationship; it would be unduly harsh to expect the partner to accompany the respondent to Jamaica but not so for her to remain in the United Kingdom without him; the respondent could not satisfy either of the exceptions to deportation but could demonstrate that there were very compelling circumstances including the respondent being a victim of sexual abuse and the mental health concerns emanating from that, including PTSD.

The grounds of appeal

6. It was argued that the judge failed to give adequate reasons for finding that it would be unduly harsh to expect the partner to live in Jamaica; failed to have regard to the respondent being a persistent offender and failed to give adequate reasons for finding that there were very significant obstacles to his integration in Jamaica. Issue was also taken with the judge's acceptance that the respondent had been subjected to sexual abuse. The foregoing arguable errors were said to infect the subsequent finding that there were very compelling circumstances which outweighed the public interest in the respondent's deportation and that this finding was inadequately reasoned.
7. Permission to appeal was granted on the basis sought.
8. The respondent did not file a Rule 24 response.

The hearing

9. Mr Tufan's submissions concentrated on an issue which formed no part of the grounds. He argued that the judge did not refer the further two offences committed by the respondent. He said that the judge had simply concentrated on the offence which resulted in a 12-month prison sentence and which had triggered the decision to deport. Otherwise, Mr Tufan made the following points. It was perplexing that the judge found that the respondent did not meet the exceptions to deportation while at the same time finding there to be very significant obstacles to his integration. The judge's findings as to the respondent's mental health issues were perfunctory and without analysis. There ought to have been a mention of the facilitated returns scheme in the assessment of whether there were very compelling circumstances.
10. In reply, Ms Short emphasised that the first submission was not part of the Secretary of State's grounds and no formal application to amend grounds had been made nor permission granted. Addressing the point, Ms Short argued that the respondent's convictions were not in dispute, the judge explained that the 12 months' sentence triggered deportation at [69] and she did not ignore additional offences. Addressing the comments of Judge Parkes, Ms Short contended that the judge's findings were open to her on the evidence. There was medical evidence from Lisa Davies, a consultant forensic psychologist who prepared a psychological risk assessment exploring abuse and she made findings regarding the respondent's account of abuse, trauma from witnessing his mother's drug abuse and being subject to domestic violence. The respondent was cross-examined and confirmed that the abuse happened in the UK, and it was not put to him that he was making it up. The respondent was identified as a vulnerable witness and the Secretary of State did not challenge the point on the abuse. At [26] during cross-examination, the presenting officer

explored the most recent and most serious offence in prison following which the respondent became very upset and a break was taken. The Secretary of State's complaint in grounds was flawed as it was not part of her case in the First-tier Tribunal and there was medical evidence which was not subject to any attack.

11. Responding to paragraph 4 of the grounds, Ms Short submitted that the drafter of the grounds was wrong to find that the appeal was allowed on the basis of the respondent's integration and finding of very significant obstacles. The judge found that these matters did not prevent the respondent's deportation. Furthermore, *Chege* did not provide authority for persistent offending breaking integrative ties. The judge's analysis was adequate and in accordance with the judgment in *Kamara*. Paragraph 3 of the grounds was similarly flawed as while the judge found it was unduly harsh for the respondent's partner to go to Jamaica, the judge did not allow the appeal on this ground.
12. Responding to paragraph 6 of the grounds, Ms Short argued that a judge should take into account parts of the Rules which were met. In this case the judge found that the respondent's traumatic childhood, when considered with the parts of the Rules which were met amounted to very compelling circumstances.
13. At the end of the hearing, I informed the parties that there were no material errors of law in the decision of the First-tier Tribunal and that the decision was upheld. I give my reasons below.

Decision on error of law

14. There was one ground of appeal, that being that the First-tier Tribunal failed to give adequate reasons for findings on a material matter. None of the claims in the grounds were developed before me. On the contrary, the Secretary of State's submissions raised a separate issue which was not part of the grounds. That issue being that the judge completely ignored the respondent's most recent convictions. No application was made to amend the grounds either before or during the hearing and indeed no permission was given. While I need not consider this point further, it suffices to say that this ground is as unfounded as the original grounds of appeal. The judge engages with the convictions subsequent to the 2017 decision on a number of occasions, including at [85], [93], [107-108].
15. Furthermore, contrary to what is argued in the grounds, the judge made no errors in reaching her findings regarding the respondent's ability to meet the requirements of the Rules and she gave more than adequate reasons. Paragraphs 3 and 4 of the grounds allege that the judge allowed the appeal because she found that it was unduly harsh for the respondent's wife to accompany him to Jamaica, because he was integrated into life in the UK and because there were very significant obstacles to his integration in Jamaica. This was not the case as can be seen from a cursory reading of the decision which plainly shows that the

respondent did not meet the exceptions to deportation. The appeal was allowed because the judge found there to be very compelling circumstances and she provides sustainable reasons for this conclusion between [105] and [124] of the decision.

16. While the judge did consider the exceptions, she was required to undertake a holistic evaluation of all relevant factors including those which were assessed in the context of the exceptions, with reference to *NA (Pakistan)* [2016] EWCA Civ 662; *PF (Nigeria)* [2019] EWCA Civ 1139, *HA (Iraq)* [2020] EWCA Civ 1176 at [33]. That the judge undertook that assessment cannot amount to an error which “infected” her subsequent findings as argued in paragraph 6 of the grounds.
17. That leaves paragraph 5 of the grounds, where it was asserted that the judge found that the respondent was subjected to sexual abuse in the absence of evidence. That erroneous claim overlooks the fact that the respondent relied on a report of a clinical psychologist, referred to at [56], [57] and [68] of the decision and reasons and that the judge was satisfied that the author of the report was appropriately qualified to provide a report in relation to the respondent’s mental health. The grounds as a whole are most misleading and amount to no more than a poorly drafted series of disagreements with the decision of the First-tier Tribunal. While it may be the case that many judges might not have been inclined to allow the appeal given the respondent’s persistent offending, the judge approached her task diligently and provided a careful, detailed decision which was replete with reasons.

Decision

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

The decision of the First-tier Tribunal is upheld.

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 their 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:
Upper Tribunal Judge Kamara

Date 09 July 2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email