Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/17022/2019 (V)**

THE IMMIGRATION ACTS

Heard at Field House via Skype for Business	**Decision & Reasons Promulgated**
On Thursday 25 March 2021	**On 27 April 2021**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

-and-

DOUGLAS [K]

Respondent

Representation:
For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondent: Mr D Grutters, Counsel instructed by Turpin Miller Solicitors

DECISION AND REASONS

BACKGROUND

1. The Secretary of State is the appellant in this appeal. For ease of reference, however, I refer to the parties as they were in the First-tier Tribunal. The Respondent appeals against the decision of First-tier Tribunal Judge S Y Loke promulgated on 17 September 2020 ("the Decision"). By the Decision, the Judge allowed the Appellant's appeal against the Respondent's decision dated 8 October 2019, refusing his human rights claim based on his private

and family life in the UK. The claim was made in the context of a decision to deport the Appellant to Uganda.

2. The Appellant is a national of Uganda. He entered the UK in 1996 in a false identity, then aged seventeen years. His mother and siblings were granted indefinite leave to remain ("ILR") and later were naturalised as British citizens. After DNA evidence was provided to show that the Appellant was related to his mother as claimed, he too was granted ILR on 10 May 2005.

3. The Appellant has received a number of criminal convictions in the UK. Between 2001 and 2009, he amassed a number of convictions for driving related offences. He was warned that if he continued to offend he would be considered for deportation action but no action was taken at that time. In spite of the warning, the Appellant went on to commit an offence involving fraud for which he was convicted in 2014. On 22 August 2018, the Appellant was convicted of theft by an employee and was sentenced to 26 weeks in prison. Again, he was warned that his continued offending might lead to deportation action if he did not desist. On 22 January 2019, the Appellant was convicted of a further offence of fraud by abuse of position and false accounting. He was sentenced to twenty months in prison. On this occasion, deportation action was taken leading to the decision under appeal.

4. The Judge recorded at [7] of the Decision that it was accepted that the Appellant does not fall within either of the exceptions in the Immigration Rules or, therefore, Section 117C Nationality, Immigration and Asylum Act 2002 ("Section 117C"). Nonetheless it was submitted on the Appellant's behalf that there are factors in his case which amount to very compelling circumstances going beyond the exceptions and which enable him to succeed.

5. Those factors are summarised at [7] of the Decision as being the Appellant's long residence and integration in the UK since arriving here as a child, family life with parents and siblings going beyond normal emotional ties, the Appellant's rehabilitation from his gambling habit which was the cause of his offending and the high risk of homelessness and destitution on return to Uganda.

6. The Judge gave weight to the Appellant's offending. She recognised at [18] of the Decision that the claim would have to be "a very strong" one to outweigh the high public interest.

7. In relation to the Appellant's private life, the Judge gave some weight to the lawfulness of the Appellant's residence prior to the index offence. She observed at [24] of the Decision that, had he been granted ILR at the same time as his parents and siblings, he would have been here lawfully for just short of half his life ([24]). The Appellant was accepted to be socially and culturally integrated in the UK ([25]). In relation to the position on return to Uganda, the Judge found that there would be very significant obstacles to integration in Uganda ([29]).

8. In relation to the Appellant's family life, the Judge accepted that the Appellant's brother, [A] who is HIV positive and has Aspergers syndrome has a "very close relationship" with the Appellant and "depends on him emotionally and practically" ([26] of the Decision). Although the Judge accepted that the Appellant assists his sister with his nephews who are non-verbal and suffer from autism, she gave that factor less weight as the Appellant sees his nephews only weekly.

9. The Judge reached the conclusion, balancing the factors for and against the Appellant, that deportation would be a disproportionate interference with the Appellant's family and private life. She therefore allowed the appeal on Article 8 grounds.

10. The Respondent's grounds can be summed up in the following way:

(1) In relation to the Judge's findings on the Appellant's family life, "these circumstances do not amount to a situation whereby very compelling circumstances prevent the appellant's deportation" ([7] of the grounds).
(2) In relation to the findings about his private life, "[t]he starting point is to assume that the Appellant has a cultural nexus to Uganda and therefore reintegration would not cause such severe hardship such as to amount to very compelling circumstances" ([8] of the grounds)
(3) Overall, "[i]t is submitted that the circumstances described in the appellant's case do not meet the very high threshold required to establish that the public interest requires the appellant's deportation, nor that it is prevented by very compelling circumstances."

As Mr Melvin put it in his submissions, the Respondent's case is that the Decision is irrational or inadequate in its reasoning. I will come on to the detail of the submissions below.

11. Permission to appeal was refused by First-tier Tribunal Judge Nightingale on 25 September 2020 in the following terms so far as relevant:

> "..3. Contrary to the pleaded grounds, the Judge's finding regarding the appellant's likely destitution was based upon both an expert's report relating to the circumstances in Uganda and the bank statements of the appellant's family showing their financial difficulties. The Judge gave sustainable reasons for the finding made.
> 4. The Judge gave detailed consideration of all the appellant's circumstances including his close relationship with his disabled brother and the assistance provided to his family. Whilst the appellant might be considered fortunate to have been found to establish very compelling circumstances over and above the exceptions found at Section 117C, the Judge gave sustainable reasons for all findings made and the conclusion was not one which is arguably perverse or arguably outside a range of reasonable conclusions. The grounds pleaded amount to a disagreement with the Judge's conclusion and disclose no arguable error of law."

12. Following renewal of the application to this Tribunal, permission to appeal was granted by Upper Tribunal Judge Kekic in the following terms:

> "Although this application for permission to appeal is brought by the Secretary of State, I continue to refer to the parties as they were before the First-tier Tribunal.
> The respondent challenges the decision of First-tier Tribunal Judge Loke to allow this appeal against deportation following a criminal conviction in 2018 for which he received a 26 month prison sentence. He had previously twice been warned of the risk of deportation after a number of convictions between 2001 and 2009 and a further conviction in 2014.
> Arguably, the circumstances pertaining to the appellant's family life with a brother and nephews did not amount to very compelling circumstances. It is also arguable that the Judge erred in her conclusion that the appellant would be unable to support himself in Uganda and would become destitute when he had spent his formative years there, retained cultural ties with his country of origin and would be able to use his education and work experience to find employment."

13. Judge Kekic was provisionally of the view that the error of law issue could be determined without a hearing. However, the Appellant requested a hearing. It was therefore determined that the error of law issue should be considered at an oral hearing.

14. So it is that the matter comes before me to determine whether the Decision contains an error of law and, if I so conclude, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. The hearing was attended by representatives for both parties. Although Mr Grutters lost his video connection in the course of the hearing, that did not impact on his ability to make submissions without visual contact. The hearing proceeded with no other technical difficulties.

15. The documents before me are limited to those in the Respondent's bundle before the First-tier Tribunal to which I refer as necessary below as [RB/xx] and the Appellant's bundle before the First-tier Tribunal which consists of the Appellant's witness statement and a few supporting documents. I do not need to refer to that bundle in what follows.

DISCUSSION AND CONCLUSIONS

16. Mr Melvin confirmed that the Respondent's case is that the Decision is irrational and/or that the Judge has failed to provide sufficient reasons to justify her conclusions. He drew my attention to the Supreme Court's decision in Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60 ("Hesham Ali") in support of a submission that commonplace incidents of family life are generally insufficient to justify the allowing of an appeal. Whilst that case might not be the best illustration of the point, I accept that this is a broad summary of the case-law, at least insofar as concerns family life between adult relatives.

17. In this case, however, the Judge was faced with a situation where the Appellant has a particularly strong bond with [A] who suffers from Aspergers syndrome. The evidence given by the Appellant's mother as regards [A]

and his relationship with the Appellant appears at [14] of the Decision as follows:

> "[RN] gave evidence and adopted her witness statement. In response to questions put to her by the representatives she gave the following answers:
> a) Her son [A] had Aspergers and it was difficult to deal with him. He only bonded rarely and had problems relating to people and making friends. He talked freely to the Appellant, and they had a close bond. [A] saw the Appellant as a role model and she did know how he could cope if the Appellant was not there.
> b) ..
> c) Ms [N] had not received assistance from social services to help with [A] as he would refuse the help. The social services indicated that as he was an adult it was his choice..."

I do not find surprising that latter comment concerning external assistance in light of [A]'s condition.

18. Mr Melvin's submission however is that the Judge has failed to take into account the Appellant's absence during his terms of imprisonment. He said that the Appellant would have been in prison and away from his family for eighteen months. In total that may well be right. However, the longest period of custody was that following the 2019 conviction. That was a sentence of twenty months of which the Appellant would have served ten months in custody. Whilst that is a lengthy period, it was one with a finite end date. The Appellant's mother has support from other family members, namely her daughters but, as the Judge also recorded at [14] of the Decision, those daughters have their own families. One daughter has children who suffer from serious autism. As Mr Grutters also pointed out, the tenor of the Appellant's mother's evidence is that she struggled to cope during the Appellant's absence.

19. The Judge made the following findings about the Appellant's family life:

> "26. Secondly, with respect to the Appellant's family life, it was accepted that the Appellant lives with his mother and brother. I accept the family's evidence that the Appellant has a close relationship with [A] and is one of the few people [A] trusts. I accept that the Appellant assists in looking after [A]. While the Appellant's mother could access support from public services, I accept that [A] has a very close relationship with his brother and depends on his [sic] emotionally and practically.
> 27. It was not disputed that the Appellant assists his sister with his nephews, however I give this aspect of the Appellant's family life less weight given he only sees his nephews weekly. I do find that the Appellant and his family are a close family, and since the disclosure of his gambling addiction they have clustered around him to support him."

20. As those findings show, it was the Appellant's relationship with [A] which particularly impressed the Judge and fed into her conclusions as I come to below.

21. The other element which the Judge had to consider was the extent of the Appellant's private life. The important aspect of this part of the case was the situation which the Appellant would face on return to Uganda. As Mr Melvin pointed out, the Appellant is a healthy male, aged forty-one years who is well educated. He has worked in the UK albeit the nature of his criminal convictions will doubtless not assist him in finding employment either in the UK or in Uganda. The Appellant speaks a language generally spoken in Uganda. He has cultural association to that country via his mother. He also lived there during his formative years. In summary, Mr Melvin submitted that the Judge had merely "doffed her cap" to those factors without giving them proper consideration.

22. The Judge referred to the Appellant's expert evidence regarding the situation in Uganda at [29] of the Decision as follows:

> "I also take into account the expert report of Karen O'Reilly dated 5 May 2020, which was not disputed by the Respondent. She states that job opportunities in Uganda are limited, and are mainly in the agricultural sector. Finding work depends on professional and community contacts. The majority of the population in Uganda is unemployed. Her view is that it is unlikely he would be able to find work. Homelessness is also a serious problem in Uganda, and given the lack of family support it is likely he will face destitution."

23. As the Judge there points out, the Respondent did not dispute that evidence. She did not counter it with general background evidence or seek to cross-examine the expert or even cast doubt on the expert's expertise and/or the weight which should be placed on the report. It was open to the Judge to rely on that report about the general situation.

24. Ultimately, however, it was not the general situation in Uganda which impressed the Judge. Her findings in relation to the situation which the Appellant would face on return are at [30] of the Decision as follows:

> "The general situation in Uganda, in my assessment holds limited weight in itself, however the particular circumstances of this case; where the Appellant has no family or friends in Uganda, has never visited Uganda since he was a child and will be unable to access any financial support, amounts to a very significant obstacle to his integration and this is a feature to be taken into account in the balancing exercise."

25. Those findings have to be read in the context of the evidence which the Judge received. At [24] of the Decision, she records that the Appellant has been in the UK since the age of seventeen and has never returned to Uganda. She points out that, had the Appellant's relationship with his mother been accepted from the outset, he would have lived lawfully in the UK for nearly half his life. As it was, he had lived here lawfully for fifteen years. She accepted at [25] of the Decision that "the Appellant is culturally and socially integrated into the United Kingdom". She went on to record that "[i]t was not disputed that he no longer has family in Uganda, and that he has no contact with anyone in Uganda."

26. Following the findings made about the Appellant's relationships with his family in the UK to which I have already referred, the Judge went on to make the following findings about the Appellant's ability to integrate in Uganda:

> "28. Thirdly I turn to the ability of the Appellant to integrate back into Uganda. I make the following findings and observations:
> a) The Appellant left Uganda as a child. He had been in a boarding school in Uganda from the age of six until his departure. He will have some familiarity with the culture in Uganda, however it will be historic.
> b) The Appellant has no friends or family in Uganda to provide support. He has not visited Uganda since his departure.
> c) The Appellant's family in the United Kingdom have financial issues and will be unable to provide him with meaningful financial assistance. I am satisfied this is the case, not only due to the oral evidence but also the bank statements provided in the bundle.
> d) The Appellant has achieved A-levels in the United Kingdom and completed some courses which may assist him in Uganda."

27. It cannot sensibly be suggested that any of those factors are irrelevant to the question the Judge had to answer concerning the Appellant's ability to integrate on return to Uganda. She accepted that the Appellant had "some familiarity" with the culture of Uganda but, as she noted, that was from many years ago. As she also observed, the Appellant had lived, from the age of six until he left Uganda in a boarding school. That is a very different prospect from having to fend for himself on return. The Judge accepted that the Appellant's education might assist him in Uganda but, having taken note of the expert evidence about the importance of connections to finding employment (at [29] of the Decision), the Judge was entitled to reach the conclusion she did at [30] of the Decision. The Judge was entitled to find that there would be "very significant obstacles to his integration" in Uganda on all the evidence and for the reasons she gave.

28. Ultimately, the only factor to which Mr Melvin could point as being absent from the Judge's consideration is the availability of funding from the UK Government as part of the facilitated returns system. I have been unable to find any reference to the availability of such support in the Respondent's decision ([RB/T2-12]). It is far from apparent to me that such support would be available in a deportation case (as opposed to a removals case). If it is, however, then it was for the Respondent to make that point. There is no evidence that she did so.

29. Finally, Mr Melvin criticised the Judge's conclusions regarding the nature and importance of the Appellant's offending and previous failures to rehabilitate.

30. The starting point in this regard is the Judge's record of the extent of the offending at [9] and [10] of the Decision. That record includes reference to the sentencing Judge's remarks when the Appellant was sentenced for the latest offence (in early 2019). The Judge's record of the evidence about the offending (at [13] to [15] of the Decision) was that the Appellant had committed the offences in order to fund a gambling addiction and had been

attending gamblers anonymous meetings since 2018. It is worthy of note that the index offence which led to the 2019 conviction was committed over a period in 2016 and therefore prior to the Appellant's attendance at those meetings (see sentencing remarks at [RB/P1-5] and reference at [13(d)] of the Decision). The Judge also recorded at [15] of the Decision the evidence of the Appellant's sister that she and the family "knew nothing about the Appellant's gambling and much was unveiled as he went through the court process". The Appellant's sister went on to say that "[n]ow they knew about the situation things had changed tremendously".

31. I do not accept Mr Melvin's submission that the Judge has sought to downplay the Appellant's offending history. At [23] of the Decision, the Judge makes the following findings:

> "I note that the Appellant is a repeat offender. He has two convictions of a similar character, both of which involved theft in breach of trust. The index conviction involved 19 transactions amounting to a significant amount over some months to the Appellant's account. While I do not find this would have involved particular sophistication, the offending was clearly sustained over a relatively long period of time and only ceased upon the agency discovering the fraud."

32. Mr Melvin focussed on [31] of the Decision setting out the remainder of the Judge's findings about the offending and rehabilitation as follows:

> "Finally with respect to the Appellant's offending, I have already noted the aggravating and worrying feature when considering the public interest from the outset, namely that the index offence was a repeat offence. Furthermore I note the Appellant had received two warning letters prior to the commission of the index offence. I also make the following findings in the Appellant's favour:
> a) The Appellant pleaded guilty at the earliest opportunity and the OASYS report indicates he expressed remorse.
> b) The letter from the Appellant's Probation officer dated 10 August 2020 indicates that the Appellant has complied well with the terms of his licence and has been assessed as a low risk of serious harm in the community and custody.
> c) The sentencing judge accepted, as I do, that the Appellant's offending was motivated by a gambling addition, which he had taken steps to remedy. The support of his family and his wish to rehabilitate should be taken into account in his favour. I note that evidence of rehabilitation carries some weight, but not great weight bearing in mind the wider policy considerations of deterrence and public concern; Danso v SSHD [2015] EWCA Civ 596.
> d) The Appellant's offending, while serious, does not involve violent or sexual offences. The sentence received was 26 months, rendering him a medium offender. This is relevant in that the proportionality exercise to be conducted with respect of 'very compelling circumstances' does not involve the same threshold than if the Appellant was a serious, rather than a medium offender."

33. Those findings have to be read with what is said at [23] as set out above. Although Mr Melvin is right to say that the offence for which the Appellant was convicted is one which has an impact on the exchequer and is for that reason serious, the Judge has taken into account the nature of the offence. She has also had regard at [22] of the Decision to the "high level of importance attached by Parliament to the deportation of foreign criminals". As she there says, where, as here, the exceptions do not apply "the public interest can only be outweighed by very compelling circumstances". That is an accurate self-direction. The Judge was entitled to have regard also to the fact that the Appellant's offending did not involve violence or sexual attack. The Judge took into account that the Appellant is a repeat offender.

34. As Mr Grutters pointed out, the Judge has emphasised the great weight in deportation. It was for the Judge to carry out the balancing exercise taking into account all the factors whilst giving due weight to the public interest. The Judge has reached findings which were open to her in relation to the factors relevant to the Appellant's family and private life. The Judge has undertaken the final balancing exercise, in accordance with the balance sheet approach advocated in Hesham Ali at [32] of the Decision as follows:

> "I take into account the significant public interest in deporting the Appellant, particularly taking into account his criminal history. Against this I also balance against this [sic] all the factors in the Appellant's favour, which include his strong family life particularly with [A], the significant obstacles to his integration into Uganda, and the mitigating features which can be identified with respect of his offending. I bear in mind that I must look at all the factors relied upon collectively in order to determine whether taken together they are sufficiently compelling to outweigh the high public interest in deportation. On balance taking into account all the factors in this case I am satisfied that there are very compelling circumstances in this case which outweigh the strong public interest in the Appellant's deportation."

35. I do not accept that the Judge's conclusions in this regard disclose an inadequacy of reasons. What is said at [32] of the Decision has to be read in conjunction with the earlier findings regarding the extent of the Appellant's family and private life which the Judge finds to be established. That includes in particular the strong bond between the Appellant and [A] and the emotional and practical dependency of [A] on his brother which the Judge finds to amount to family life. It includes also the "very significant obstacles" to the Appellant's integration in Uganda which the Judge finds to be established for the reasons given at [30] of the Decision taking into account all the evidence about the situation which the Appellant would face in Uganda. The Judge has also found that the Appellant is socially and culturally integrated in the UK and that he has lived for much of his time in the UK lawfully. Those are all relevant considerations as set out in the judgment in Hesham Ali.

36. The Judge has given the public interest the weight which it deserves. She has taken into account the level of risk which the Appellant continues to pose and his work to rehabilitate himself. As I have already pointed out, the

index conviction is one for offences committed before the Appellant started to attend meetings to deal with his gambling addiction and in fact prior to his 2018 conviction for a similar offence. The Appellant has been compliant with his licence terms since his release. He has accepted his guilt and pleaded guilty to the offences. The Judge has taken into account the fact of repeated offending. Again, all of those are relevant considerations.

37. Ultimately, the balance between interference and justification and whether interference with family and private life is proportionate is an issue for the Judge. As I remarked in the course of the hearing, the outcome in this case is not one which all Judges would have reached. I doubt that I would have reached the same conclusion. That is however not the issue. As Mr Grutters pointed out, in order to show that the Decision is irrational, the Respondent has to show that no Judge properly directed could reach the same conclusion. That is a high threshold and one which the Respondent has not shown to be met in this case.

38. For those reasons, I am satisfied that there is no error of law in the Decision. I therefore uphold the Decision. The Appellant's appeal remains allowed.

CONCLUSION

39. For the foregoing reasons, I am satisfied that there is no error of law disclosed by the grounds. Accordingly, I uphold the Decision with the result that the Appellant's appeal remains allowed.

DECISION

The Decision of First-tier Tribunal Judge S Y Loke promulgated on 17 September 2020 does not involve the making of an error on a point of law. I therefore uphold the Decision. The Appellant's appeal remains allowed.

Signed: L K Smith

Upper Tribunal Judge Smith

Dated: 14 April 2021