



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

Appeal Number: HU/16849/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 8 March 2022**

**Decision & Reasons Promulgated
On 01 April 2022**

Before

**UPPER TRIBUNAL JUDGE L SMITH
DEPUTY UPPER TRIBUNAL JUDGE WELSH**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**WCJF
(ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Ms Miszkiel of Counsel, instructed by Freemans Solicitors
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

Anonymity Order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, we make an anonymity order, given the sensitive medical information relating to the Appellant. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

Introduction

1. This is an appeal against a decision of First-tier Tribunal Judge Morgan (“the Judge”), promulgated on 22 June 2021. By that decision, the Judge allowed WCJF’s appeal against the decision of the Secretary of State for the Home Department to refuse his claim under Article 8 of the European Convention on Human Rights (“ECHR”). His claim arose out of the making of a deportation order following his conviction, on 19 June 2014, at the Croydon Crown Court of robbery and possession of an offensive weapon, for which he was sentenced to a term of 42 months’ detention in a Young Offender Institution.
2. Throughout this decision, we refer to the parties as they were in the First-tier Tribunal, with WCJF as the Appellant and the Secretary of State for the Home Department as the Respondent.
3. At the conclusion of the hearing, we determined that the decision of the First-tier Tribunal did not involve an error on a point of law. We now provide our reasons.

Factual background

4. The Appellant is a national of Jamaica, born on 7 February 1999. He entered the UK United Kingdom (“UK”) in July 2007 on a settlement visa and was granted Indefinite Leave to Remain in May 2009.
5. Deportation proceedings were not commenced following the appellant’s conviction for knife-point robbery in 2014. However, following a subsequent conviction in July 2019, the Respondent notified the Appellant of the intention to make a deportation order against him. In response, the Appellant made a human rights claim, relying on his private life.
6. In a decision dated 3 October 2019, the Respondent refused the Appellant’s human rights claim. The Respondent considered the Appellant’s case under paragraph 399A of the Immigration Rules and concluded that the requirements of the Rules were not met and that there were no very compelling circumstances relating to his private life such that the public interest in his deportation was outweighed. The Appellant appealed the Respondent’s decision pursuant to section 82 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”).

The decision of the First-tier Tribunal

7. Applying the statutory framework in section 117C of the 2002 Act, the Judge considered whether the Appellant met the requirements, relating to his private life, in Exception 1. It was not in dispute, and the Judge found, that the Appellant had been lawfully resident in the UK for more than half his life. Contrary to the submissions of the Respondent, the Judge found that the Appellant is socially and culturally integrated in the UK and that there are very significant obstacles to his integration into Jamaica. It followed

that the public interest did not require the deportation of the Appellant and his appeal was allowed.

The grounds of appeal and grant of permission

8. The Respondent relies upon 3 grounds, which we summarise below:
 - (1) Ground 1 - procedural unfairness. The Judge, contrary to the wishes of both representatives, decided that oral evidence from the Appellant and his witness was unnecessary.
 - (2) Ground 2 - inadequacy of reasoning. In finding that the Appellant is socially and culturally integrated, the Judge failed to engage adequately with the Appellant's criminal convictions.
 - (3) Ground 3 - inadequacy of reasoning. In finding that there are very significant obstacles to integration, the Judge failed to take into account relevant factors and failed to explain his conclusion that the Appellant had spent his "critical childhood" [34] in the UK.
9. On 8 July 2021, permission to appeal was granted by First-tier Tribunal Judge Parkes. The grounds upon which permission was granted were not restricted.

The Upper Tribunal

10. The error of law hearing was originally listed on 9 December 2021 before Mrs Justice Farbey and Upper Tribunal Judge L Smith. By the date of that hearing, both parties had filed documents that addressed the substance of Ground 1 but neither party had adduced a witness statement from the advocates who appeared in the First-tier Tribunal. Consequently, the hearing was adjourned with directions made for the filing and serving of such statements.
11. At the hearing before us, the direction had been complied with and we therefore had the benefit of witness statements from the advocates who had appeared at the First-tier Tribunal. We had also obtained the audio recording of proceedings at the First-tier Tribunal, which we played during the course the hearing.
12. We heard oral submissions from Mr Tufan. We did not need to hear from Ms Mizkiel. During the course of this decision, we address the points made in the advocates' written and oral submissions.

Discussion and conclusions

Ground 1 - procedural unfairness

13. The audio recording of proceedings demonstrates that, at the start of the hearing, the Judge clarified the issues with the parties. He stated that there appeared to be no factual dispute and that the matter in issue was the conclusions to be drawn from those undisputed facts. The Judge

indicated to the parties that, if he were correct in this view, the case could proceed by way of submissions only. He invited the views of both parties and neither advocate made any submissions to the contrary. He therefore proceeded to hear submissions only.

14. The Judge's management of the hearing, both in relation to the identification of the issues and his decision that oral evidence was unnecessary, was a proper exercise of his case management powers under rules 2 and 14 of the Tribunal Procedure (First-tier) (Immigration and Asylum Chamber) Rules 2014. By giving both advocates the opportunity to make submissions as to the correctness of his approach, he ensured that the hearing was fair to both parties.
15. We observe that there is nothing in the witness statements of either of the advocates who appeared at the First-tier Tribunal that conflicts with the audio recording. Their recollections are, understandably, an imperfect record and focus on those matters which most concerned each in their capacity as a representative. We further observe that the grounds of appeal, though a rather ambitious interpretation of the Home Office Presenting Officer's written account, were not designed to mislead.

Ground 2 - social and cultural integration

16. The Judge referred at [28] to one of the leading decisions on social and cultural integration, CI (Nigeria) v SSHD [2019] EWCA Civ 2027 and he must be taken to have had the principles considered in that authority in mind. In CI (Nigeria), Lord Justice Leggatt noted that a person's social identity:

"... is constituted at a deep level by familiarity with and participation in the shared customs, traditions, practices, beliefs, values, linguistic idioms and other local knowledge which situate a person in a society or social group and generate a sense of belonging." [58]

"The phrase "socially and culturally integrated in the UK" is a composite one, used to denote the totality of human relationships and aspects of social identity which are protected by the right to respect for private life. While criminal offending may be a result or cause of a lack or breakdown of ties to family, friends and the wider community, whether it has led or contributed to a state of affairs where the offender is not socially and culturally integrated in the UK is a question of fact, which is not answered by reflecting on the description of criminal conduct as "anti-social"". [79]

17. The Judge was aware of the nature and extent of the Appellant's previous convictions and the nature of the sentences imposed, setting them out accurately at [9,10]. At [29-31], the Judge went on to consider the offending history together with the positive evidence of social integration, in the form of the Appellant's employment, relationships, education and the length of time the Appellant had been in the UK. He concluded that he found it "difficult to see how it could be said that the integrative links established by the Appellant between the ages of 8 and 22, have been

severed by his offending and imprisonment to such an extent that he is no longer socially and culturally integrated in the United Kingdom.”

18. We are only permitted to interfere with the Judge’s decision if he made a mistake on a point of law. Whilst another Judge may have reached a different conclusion on the facts, the Judge took into account all relevant evidence, correctly identified and applied relevant case law, gave brief but adequate reasons and his conclusion was within the range of rational conclusions open to him.

Ground 3 - very significant obstacles to integration

19. We remind ourselves of the need for appropriate restraint before interfering with a decision of the First-tier Tribunal, having regard to numerous exhortations to this effect emanating from the Court of Appeal in recent years: see, for example, Lowe [2021] EWCA Civ 62, at paragraphs 29-31 and AA (Nigeria) [2020] EWCA Civ 1296; [2020] 4 WLR 145, at paragraph 41. We also remind ourselves that the Judge’s decision must be read sensibly and holistically and that we are neither requiring every aspect of the evidence to have been addressed, nor that there be reasons for reasons.

20. The Judge correctly directed himself according to the authority of SSHD v Kamara [2016] EWCA Civ 183. In Kamara, Sales LJ (as he then was) stated at [14]:

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.

21. The findings that led to the Judge’s conclusion that the Appellant will face very significant obstacles to integration are as follows:

... the Appellant has effectively no ties to Jamaica ... He has no family, familiar links or friends in Jamaica ... the Appellant has spent his critical childhood, adolescence and young adult life in the United Kingdom and had been integrated into the British educational system and undertook studies in higher education. He has spent well over half his life in the United Kingdom. Throughout this period his life has been shaped by the United Kingdom culture, values, past times and the prevailing education system. Critical milestones have been passed both in his personal and educational development and his connections with Jamaica are minimal if not non-existent ... [34]

... He would struggle to operate in Jamaica, without family to whom he can turn to for support and with nowhere to live he would face risks of exploitation and would be without capacity to operate and build up the variety of human relationships necessary to give substance to his private life. ... [35]

... the Appellant will face difficulties in obtaining accommodation and access to health services which will be aggravated by his mental health problems and his previous suicide attempts. [36]

22. The Respondent submits that the Judge erred in his reasoning by failing to take into account two relevant factors, namely that the Appellant will face no language barrier on return and that he has a Jamaican heritage. It is apparent that the Judge did not take into account these factors but the failure to do so will only amount to an error of law if it is demonstrated that these factors were capable of having a material effect on the outcome. It is apparent that the Judge carried out a holistic assessment consistent with the need for a broad evaluative judgment. The matters identified by the Respondent are not of such force that they are capable of having had any effect on the Judge's conclusion.
23. The Respondent is unclear as to what the Judge meant at [34] when he referred to the Appellant having spent "his critical childhood" in the United Kingdom. However, we consider it clear, when the phrase is read in the context of paragraph 34, that the Judge was referring to the fact that the Appellant arrived in the UK when he was eight years old and that therefore his private life, to a greater extent, has developed whilst he has been in the UK. There is no error in the reasoning of the Judge in this regard and it was a factor relevant to the question of the Appellant's ability to integrate on return to Jamaica.

Decision on error of law

24. The decision of the First-tier Tribunal did not involve an error on a point of law and that the decision to dismiss the appeal stands.

C Welsh

Signed
Deputy Upper Tribunal Judge Welsh

Date 27 March 2022