



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

Appeal Number: DA/00858/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 10 June 2014**

**Determination Promulgated
On 9th July 2014**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**AM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Loughran, instructed by Wilson Solicitors LLP
For the Respondent: Mr S Kandola, Senior Presenting Officer

DETERMINATION AND REASONS

1. The First-tier Tribunal made an anonymity direction. There has been no application before me for this direction to be discharged. Consequently, unless and until a Tribunal or Court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of his family. Failure to comply with this direction could lead to a contempt of court.
2. The appellant is a citizen of Jamaica, born in October 1986. On 7 June 2010 he was convicted of an offence of robbery for which he was sentenced to a period of four years imprisonment. On 23 October 2012 a decision was made that Section 32(5) of the UK Borders Act 2007 applies to the appellant and, on the same date, a deportation order was signed against him. The appellant exercised his right of appeal to the First-tier Tribunal against the former decision. The appeal initially came before a panel of the First-tier Tribunal on 6 December 2012, but was dismissed on all grounds. This determination was subsequently set aside by the Upper Tribunal (UTJ Reeds and UTJ Kebede) in a determination of 11 June 2013 and the appeal was remitted back to the First-tier Tribunal for redetermination. The appeal then came

before First-tier Tribunal Judge Morgan and Mrs E Morton (non-legal member) on 26 March 2014, but was once again dismissed on all grounds, in a determination of 27 March 2014.

3. On 28 April 2014 First-tier Tribunal Judge Hemingway granted the appellant permission to appeal to the Upper Tribunal in the following terms:

“2. The grounds of application contend that the panel erred in these ways; a) failing to make findings as to whether there is family life within the meaning of Article 8 of the ECHR between the appellant and various family members; b) failing to treat the best interests of the children as a primary concern; c) failing to determine whether the weight to be attached to the deportation of foreign criminals is to be reduced where the proposed deportee is rehabilitated; d) failing to apply the correct test with respect to be met when it is argued the public interest in deportation is outweighed.

3. The panel produced a careful and thorough determination. However, it is arguable they erred in failing to evaluate more fully and in a more individualised way the individual family relationships and failed to treat the interests of the children as a primary concern...”

4. Thus the matter came before me.

5. Taking the grounds in turn, contrary to that submitted in first ground I do not accept that the First-tier Tribunal failed to make findings as to whether family life existed between the appellant and the various family members referred to in his evidence, nor do I accept that the Tribunal failed to identify with precision the features of such relationships.

6. At paragraph 17 of its determination the Tribunal identify that it was not necessary for it to hear oral evidence from the appellant’s siblings and aunt because the evidence they had given regarding the appellant’s private and family life was not in dispute. From the terms of this paragraph it is clear that the Tribunal proceeded in its considerations on the basis of the evidence as contained within the respective witness statements. There was, in my conclusion, no need for the Tribunal to recite this evidence any further in the determination.

7. The Tribunal continued by setting out relevant features of the appellant’s relationship with his mother and partner, including the fact that (i) he has lived with his family, and particularly his mother, throughout his time in the United Kingdom; (ii) he is currently required by his bail conditions to remain living in the family home and (iii) that the appellant is in a ‘serious’ relationship with his partner.

8. In paragraph 25 of its determination the Tribunal state as follows on this issue:

“We accept the particularly strong relationship between the appellant and his siblings and in particular the relationship between the appellant and his younger brother ... who attended a school for children with learning disabilities. We accept the quality of the relationship between the appellant and his nephew and between the appellant and his fiancée and her son. We accept that most of the appellant’s family ties were formed before the appellant was convicted of any offence. We accept the United Kingdom nationality of the three children involved in the appellant’s life ... we accept that the effect of the appellant’s removal is to significantly impair his family life with all of these people ...” (my emphasis)

9. In my conclusion it is clear from reading the Tribunal’s determination as a whole, and in particular paragraph 25 of the determination that:

- (i) it accepted the nature of the relationships between the appellant and his various family members as they were asserted to be in the evidence before it; and
 - (ii) that each of these family relationships constituted family life for the purposes of a consideration of Article 8 of the Human Rights Convention.
10. I do not accept that the Tribunal were required to identify with any more precision than it did, the nature and extent of each individual relationship the appellant had with his various family members. It accepted the evidence as given, summarised the most salient parts of that evidence, and found that each of the relationships amounted to family life.
 11. Moving onto the second ground, i.e. the submission that the Tribunal erred in failing to treat the best interests of the children as a primary consideration; the Tribunal accept, in paragraph 25 of its determination, that the best interests of each of the children lie in them remaining in the United Kingdom. This finding was reiterated in paragraph 26 of the determination, where the Tribunal conclude that the best interests of both the children and the adult members of the family *“lie in the appellant not being deported but being allowed to remain and continue his present role within the family”*.
 12. Whilst it is correct to say that the Tribunal do not identify, on the face of the determination, that it directed itself that the aforementioned best interests must be treated as a primary consideration, there is no reason in my conclusion to believe that it did not treat them as such. The determination was written by an experienced and specialist Tribunal. The fact that reference was made, and consideration given to, the best interests of the children is in my conclusion sufficient to demonstrate that the Tribunal were well aware of the obligations under Section 55 of the 2009 Act. This conclusion is re-forced by the Tribunal’s identification in paragraph 10 of the determination that it had given consideration, *inter alia*, to the appellant’s skeleton argument, which itself references section 55 of the 2009 Act, Article 3(1) of the Convention on the Rights of the Child, as well as associated case law. I do not, therefore, accept that the First-tier Tribunal erred in the manner submitted in ground two of the appellant’s grounds.
 13. I find the third ground somewhat difficult to understand. It identifies that the appellant submitted before the First-tier Tribunal that the weight to be attached to the public interest in deporting a person who has committed a serious crime should be reduced as a matter of public policy where that person has been fully rehabilitated. It is asserted that the First-tier Tribunal erred in (i) failing to engage with this submission and (ii) failing to identify that it had so reduced the weight in the public policy side of the proportionality scales.
 14. In paragraph 24 of its determination the Tribunal accept that the appellant poses a low risk of reoffending, in line with an assessment made by the Probation Service, and that he is continuing his rehabilitation. It further refers to the fact that the appellant has in the past repeatedly been exposed to the severe domestic violence suffered by his mother. It plainly took all of these factors into account when coming to its conclusions on the issue of proportionality.
 15. In paragraph 27 of its determination the Tribunal observe that:

“Mr Chirico quite correctly accepted, there is a strong public interest in removing foreign citizens convicted of serious offences even where there is little or no evidence of future risk to the general public.”

16. Looking at the determination as a whole I do not accept that the Tribunal erred in its consideration of the fact of the appellant's rehabilitation. It is somewhat artificial to require a Tribunal to compartmentalise its considerations in the manner submitted by the appellant in his grounds. It is clear that significant weight must be attached to the policy of deporting foreign criminals, given that parliament has spoken in this regard in the 2007 Act (as to which see SS (Nigeria) v SSHD [2013] EWCA Civ 550). It is also important that a Tribunal identifies all the relevant features of an individual's case which are relevant to the balancing exercise. In this case the Tribunal identified those features put forward by the appellant as being relevant, and took those into account (see for example paragraph 23 of the determination where the Tribunal refer to paragraph 46 of the appellant's skeleton argument). It clearly weighed in the appellant's favour the fact that he is now at a low risk of reoffending and is continuing his rehabilitation, as well the history of exposure to the severe domestic violence that his mother has suffered. The Tribunal was, in my view, required to do no more than it did in this regard.
17. Turning finally then to the fourth ground, in which it is said that the Tribunal applied a legally incorrect test and/or came to a perverse conclusion. The grounds cite from the decision of the Court of Appeal in MF (Nigeria) v SSHD [2013] EWCA Civ 1192 and in particular paragraphs 43, 44 and 46 of that decision which relevantly (according to the grounds) state as follows:
- “43. The word exceptional is often used to denote a departure from a general Rule. The general Rule in the present context is that, in the case of a foreign prisoner to whom paras 399 and 399A do not apply, very compelling reasons will be required to outweigh the public interest in deportation. These compelling reasons are the ‘exceptional circumstances’.
44. We would, therefore, hold that the new Rules are a complete code and that the exceptional circumstances to be considered in the balancing exercise involve the application of a proportionality test as required by Strasbourg jurisprudence
46. ... it is necessary to consider whether there are circumstances which are sufficiently compelling (and therefore exceptional) to outweigh the public interest in deportation.”
18. In its conclusory paragraphs the First-tier Tribunal found:
- “27. In summary we consider that there are unusually strong factors weighing in the appellant's favour, arguably the most important of which is that he came to the United Kingdom as a minor and was granted indefinite leave to remain in the United Kingdom as a minor and that his entire family, with whom he has close ties, will remain in the United Kingdom. However, as Mr Chirico quite correctly accepted, there is a strong public interest in removing foreign citizens convicted of serious offences even where there is little or no evidence of future risk to the general public. Whilst we find that the deportation of the appellant will have harsh consequences both for the appellant and more importantly his family we are unable to find either that these consequences are unjustifiably harsh or in the alternative that even if they were unjustifiably harsh that deportation, given the offence in question, would not be proportionate.
28. In summary whilst we accept the serious consequence of deportation both to the appellant and his family we consider that on the facts of this case that the decision to deport is not disproportionate.”
19. It is important to observe that in paragraph 10 of its determination the Tribunal cite from the Upper Tribunal's decision in Kabia (MF: para 398 – “exceptional circumstances”) [2013]

UKUT 00569, setting out the head note in that case in full - paragraph 3 of which states as follows:

“The new Rules speak of exceptional circumstances but, as has been made clear by the Court of Appeal in MF (Nigeria), exceptionality is a likely characteristic of a claim that properly succeeds, rather than a legal test to be met. In this context exceptional means circumstances in which deportation would result in unjustifiably harsh consequences for the individual or their family such that a deportation would not be proportionate.”

20. The Tribunal correctly directed itself in this regard and there is nothing in the determination that identifies the Tribunal as failing to properly apply that self-direction to its considerations. I do not accept that the Tribunal applied a higher threshold or “put a gloss” on the test set out in MF Nigeria. It carried out a careful assessment of all of the evidence before it, including everything advanced on the appellant’s behalf, and explained why those features of the case did not outweigh the public interest in the appellant’s deportation occasioned by his extremely serious past criminal behaviour. This was a conclusion the Tribunal was entitled to come to on the evidence before it and, had I been required to consider this matter for myself, I would undoubtedly have come to the same conclusion.
21. Having carefully considered all of the grounds of application, as well as Ms Loughran’s careful and eloquent submissions, I do not accept that it has been demonstrated that the First-tier Tribunal erred on a point of law such that its determination should be set aside. The First-tier Tribunal’s determination is therefore maintained and the appellant’s appeal is dismissed on all grounds.

Signed:



Upper Tribunal Judge O’Connor

Date: 1 July 2014