



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

Appeal Numbers: DA/02455/2013

THE IMMIGRATION ACTS

Heard at Field House

On 27 October and 03 November 2014

Determination

Promulgated

On 10 November 2014

Before

The President, The Hon. Mr Justice McCloskey

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LAMAR ANTHONY BOWEN

Respondent

Representation:

Appellant: Mr E Tufan, Home Office Presenting Officer

Respondent: In person

DETERMINATION AND REASONS

1. The background to this appeal is as follows. By a decision dated 6 November 2013 Mr Bowen was notified by the Secretary of State that he would be deported from the United Kingdom for the reasons given, the precipitating factor being Mr Bowen's conviction of a drugs offence. This decision also concluded that deportation would not infringe any person's rights under Article 8 of the Human Rights Convention. Mr Bowen, who has at all material times been unrepresented, appealed to the First-tier

Tribunal (the “FtT”). He made the case that to deport him would be in contravention of Article 8 of ECHR. He also asserted that he had lived in the United Kingdom for more than half of his life and had no ties to his country of origin, Jamaica.

2. In paragraphs [22] to [42] of the FtT’s determination, the Judge rehearsed certain provisions of primary legislation, namely sections 33 and 35 of the UK Borders Act 2007. The Judge also referred extensively to the Immigration Rules, specifically paragraphs 322(5), 397, 398, 399 and 399A. Next, the Judge reproduced in their entirety sections 117A, 117B and 177C of the Nationality, Immigration and Asylum Act 2002 (the “2002 Act”). I interpose that these latter provisions constitute a new Article 8 ECHR regime, having been inserted by section 19 of the Immigration Act 2014, which came into operation on 28 July 2014. Further, on the same date, certain provisions of the Immigration Rules were modified and came into operation: see paragraphs A362, 397, A398, 398, 399A, 399B, 399C and 399D. In the determination, the FtT reproduced the old, superseded provisions of the Rules. At this juncture, it is appropriate to record that the hearing before the FtT was conducted on 18 August 2014 and the determination was promulgated on 08 September 2014.
3. The Judge then made a series of factual findings in paragraph [44], in particular:
 - i) that the Appellant has a long standing relationship with his partner;
 - ii) that his partner is a British citizen who has lived in the UK for all of her life;
 - iii) that the Appellant has not had leave to be in the United Kingdom during the relevant 15 year period; and
 - iv) that there are considerable obstacles to the Appellant’s life with his partner continuing in Jamaica and it would be unreasonable to expect her to go to live there

Notably, the Judge purported to make all of these findings under the former paragraph 399B of the Rules. The Judge elaborated on the fourth of these findings, focusing mainly on certain factors bearing directly on the Appellant’s partner. Having done so, the Judge concluded that having regard to the third of the four aforementioned findings, the criteria in paragraph 399(b) of the (old) Rules were not satisfied. Once again, in this context, the Judge was referring to the superseded provisions of the Rules.

4. Next the Judge gave consideration to paragraph 399A of the Immigration Rules. This was followed by two further specific findings:

- (a) the Appellant has lived in the United Kingdom since at latest January 2001, in other words since the age of nine. Accordingly he has lived in the United Kingdom for over half of his life; and
- (b) he has no meaningful ties to Jamaica taking into account his age on entry to the United Kingdom firstly, that he has not returned there since and that he was unaware of any relations who live there.

This prompted the Judge to conclude that paragraph 399A of the Immigration Rules was satisfied. This too was a reference to a superseded provision of the Rules.

5. The Judge then reasoned that it was unnecessary to proceed to what was described as “stage two”. One of the reasons given for this assessment was his finding that the criteria in paragraph 399A(b) were satisfied (*supra*). A further expressed reason was the following:

“Section 19 of the Immigration Act 2014, and, in particular, Part 5(A) inserts new Sections 117A-D into the Nationality Immigration and Asylum Act 2002. Part 5(A) only applies where the Tribunal considers Article 82 of the Human Rights Convention directly are not required to consider Article 8 directly outside the Immigration Rules given the above”.

As a result the Judge declined to give any consideration whatsoever to what maybe described for convenience as the new statutory regime. He formulated his decision in these terms:

“I find that the decision to deport the Appellant to Jamaica is not in accordance with paragraph 399A(b) of the Immigration Rules and not in accordance with the law.”

The FtT allowed the appeal accordingly.

6. Since the FtT determination the Court of Appeal has considered the new statutory provisions in the case of YM (Uganda) [2014] EWCA Civ 1292. Paragraphs [37] - [39] of this decision make clear that subsequent to the operative date of 28 July 2014 it is incumbent upon a court or tribunal in appropriate cases to give effect to the new statutory regime viz the combination of the newly created Part 5A of the 2002 Act and the modified provisions of the Immigration Rules.
7. While the grant of permission to appeal is opaque, it is clear from the terms of the application for permission that the central complaint ventilated about the determination of the FtT is its failure to apply the new statutory regime. This, it is contended, is a fundamental error or law.

8. At the error of law hearing conducted on 03 November 2014, I concluded that the FtT had erred in law for failing to give effect to the correct legal regime. This error is elementary and of unmistakable materiality. Accordingly I ordered that the determination of the FtT be set aside and I retained the case in the Upper Tribunal for the purpose of remaking the decision.

The Decision Remade

9. The reconvened hearing took place on 03 November 2014. Once again, the Appellant was unrepresented. He accepted the invitation to address the Tribunal, in the form of combined evidence and submissions. He stated that he has been in the United Kingdom since December 2000, when he was aged 9 years. He has, therefore, spent 14 years in the United Kingdom and has not returned to Jamaica at any time. His brother, mother and father were all born in the United Kingdom. So was his younger step sister. He asserted that his only cultural tie with Jamaica relates to his food preferences. Following his arrival in the United Kingdom, he was granted leave to enter for a period of 6 months. He accepted that his presence has been unlawful ever since.
10. The Appellant asserted that he has had a female partner, a British citizen, for the last four years. He stated that she was unable to attend the Tribunal hearing on account of her university studies. He was unable to identify the university she is allegedly attending. He believes that her course began in September 2014 and further believes that it is a course in health and social care and business management. He stated that although he asked her to write a letter to the Tribunal on his behalf, she had not done so. This was unexplained. He claimed that they lived together in 2012 for some 5 - 7 months. There has been no cohabitation subsequently, taking into account his effective period of imprisonment of 10 months and his further 6 months in immigration detention, together with the conditions of his bail requiring him to reside at a specified address. His partner has never been to Jamaica and, in his words, "*her whole home life is here*". He added that it would be "***a bit hard***" for her to resettle in Jamaica with him. Finally, he suggested that there would be very significant obstacles in his reintegrating in Jamaica, highlighting that he would have no accommodation or financial support there.
11. On behalf of the Respondent, it was asserted, without contradiction, that the Appellant's father and younger brother are the beneficiaries of discretionary leave to remaining the United Kingdom, while his mother - whom he has not seen for four years - has no leave to remain.
12. I apply the new provisions of Part 5A of the 2002 Act to this appeal in the following way:

- (a) No issue was raised with regard to section 117B(2) or (3).
 - (b) In accordance with section 117B(4), I attribute little weight to the Appellant's private life in its entirety.
 - (c) I find that the Appellant does not have the relationship claimed with the female UK citizen. If this relationship were real, I would expect, as a minimum, a written statement or letter from this person. There is none. It is also of particular note that the lady did not attend any of the three Tribunal hearings involving the Appellant. My reservations are fortified by the Appellant's vagueness about her studies. I find that, whatever may have happened in the past, the relationship claimed does not exist.
 - (d) In the alternative, assuming that this is a real relationship, it qualifies for little weight having regard to section 117B(4)(b).
 - (e) No issue arises under section 177B(6).
 - (f) By virtue of section 117C(3), the public interest requires the Appellant's deportation unless "Exception 1" or "Exception 2" applies. Exception 1 does not apply since, per subsection (4)(a), the Appellant has been unlawfully resident in the United Kingdom for most of his life. Furthermore, having regard to his age and maturity, I find, with reference to subsection (4)(c), that there would not be "*many significant obstacles to [the Appellant's] integration into the country to which [the Appellant] is proposed to be deported.*" As regards subsection (4)(b), I find that the Appellant is "*socially and culturally integrated in the United Kingdom*".
 - (g) As regards "Exception 2", I have found that the Appellant does not have "*a genuine and subsisting relationship with a qualifying partner*". I further find, in any event, that the effect of his deportation on the female person concerned would not be "*unduly harsh*". There is no evidential foundation whatsoever for any different finding: see especially [10] above. Finally, I record that there is no question of any "*genuine and subsisting parental relationship with a qualifying child*".
13. It follows from the above that neither "Exception 1" nor "Exception 2" applies. Accordingly, pursuant to section 117C(3), the public interest requires the Appellant's deportation.

Decision

14. Giving effect to the findings and conclusions rehearsed above, I remake the decision by dismissing the Appellant's appeal against the Respondent's decision to deport him from the United Kingdom.

15. For the record, at the conclusion of the hearing, I explained the effect of my decision to the Appellant. In response to a question, I reiterated the desirability of obtaining legal advice and indicated to him that a limited mechanism for seeking to challenge this decision exists.

Signed:

Seamus McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE

UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER

Date: 04 November 2014