



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/13209/2012

THE IMMIGRATION ACTS

Heard at Field House
On 28th March 2014

Determination Promulgated
On 25th July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE HARRIS

Between

MR MICHAEL TATE
(NO ANONYMITY ORDER MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss B Poynor, Counsel
For the Respondent: Mr C Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Jamaica, born on 10th January 1961. The Appellant claims to have come to the United Kingdom in September 1974 to join his mother and to have continually resided in this country thereafter.

2. On 21st October 2008 the UK Border Agency wrote seeking reasons why the Appellant should not be deported from the United Kingdom following his conviction on 13th August 2008 at Harrow Crown Court for assault occasioning actual bodily harm, criminal damage and handling stolen goods and a sentence of 15 months imprisonment, and in particular were there any reasons why the Appellant would fall within one of the exceptions to automatic deportation under Section 32(5) of the UK Borders Act 2007. On 1st April 2009 the Secretary of State concluded that the Appellant did not fall within any of the exceptions of automatic deportation in Section 33 of the UK Borders Act 2007 and did not accept the Appellant's human rights claim. The Secretary of State also rejected the application made on 26th June 2006 for settlement on the basis of long term residency.
3. On 11th February 2011, the Secretary of State made a Deportation Order under Section 5(1) of the Immigration Act 1971. On 3rd March 2011 and 4th May 2012 the Appellant's legal representative submitted fresh representations on the Appellant's behalf that constituted a fresh claim under the European Convention of Human Rights. The Secretary of State noted that they were submitted after the Deportation Order was obtained and therefore they were treated as an application to revoke the signed Deportation Order. That application was refused on 28th May 2012.
4. The Appellant's appeal was heard before Judge of the First Tier Tribunal Elek sitting with a lay member on 12th August 2013 at Taylor House. In a determination promulgated on 27th August 2013 the Appellant's appeal was dismissed on both immigration and human rights grounds.
5. On 5th September 2013 application was made for permission to appeal to the Upper Tribunal. Those grounds contended
 - (i) A failure by the First Tier Tribunal Judge to give adequate reasons and an irrational finding that the Appellant has ties to Jamaica.
 - (ii) That there is an error of law in the findings on Article 8.
 - (iii) That the findings of the Tribunal regarding the expert evidence of Dr Winton are irrational and failed to consider all the evidence.
6. On 18th September 2013 First Tier Tribunal Judge Baker granted permission to appeal. In granting permission Judge Baker noted that the decision was following evidence from the Appellant, his sister, his half brother and a primary care mental health team worker as well as submissions from both representatives and a report from the Georgetown Law Human Rights Institute on the deportation of Jamaicans with mental health problems. Judge Baker noted that the grounds asserted at paragraph 23 that the Tribunal had made no reference to that objective evidence which was before them and that the determination did not appear to address the report which is arguably highly material.
7. In granting permission the Judge noted that paragraph 22 of the ground had merit and that it was arguable that although the Panel plainly addressed Dr Winton's report, it was arguable that the impact of the Appellant's likely failure to take medication and relapse in his mental health condition, having regard particularly to medical records of his time spent in Brook House Immigration Removal Centre and the psychotic symptoms recorded there, were not addressed. The Judge noted that whilst the Panel had taken into account the previous Judge's findings at paragraph 73 of the earlier determination, that no evidence had been

presented to that Panel in relation to his alleged mental health problems and that it was plain that there was a considerable amount of more current evidence before the Panel which post dated those findings. Judge Baker considered that it was arguable that not having regard specifically to the background evidence relied on as to the current position in supporting those with mental health problems in Jamaica, and in not addressing the detail of the psychiatric report, there was arguably a material error of law in the conclusion that notwithstanding the content of that report which had not been explored by the Panel, the Appellant was not at an increased risk of suicide due to a real risk of ceasing to take medication for lack of personal support.

8. On 17th October 2013 the Secretary of State responded to the grounds of appeal under Rule 24. That response opposed the appeal and in summary submitted that the Panel directed themselves appropriately and that they were entitled to conclude on the basis of the evidence that they cited that the Appellant had retained social and cultural ties with Jamaica. The Rule 24 Response contended that the principles in *Maslov* were not directly applicable as the grounds would seem to imply because the Appellant in this case never acquired lawful status and also the crimes he committed were committed as an adult. Further, the Judge not having referred to the fact that the Appellant had not offended since December 2007 did not indicate that he was not aware of this, or that the proportionality exercise under Article 8 was not flawed as a result, and that the Judge was entitled to conclude that the Appellant could not establish a case under Article 3 or Article 8 on the basis of his health.
9. It was on that basis that the matter came before me on 15th November 2013 purely for the determination as to whether or not there was a material error of law in the decision of the First Tier Tribunal. The Appellant appeared by his instructed Counsel Miss Poyner. Miss Poyner has considerable experience of this matter. She appeared before the First Tier Tribunal and she is also the author of the grounds of appeal. The Secretary of State appears by her Home Office Presenting Officer Mr Avery.
10. I found that there were material errors of law in this determination. I accepted Miss Poyner's submission that there had been a failure by the First Tier Tribunal to give adequate reasons and an irrational finding that the Appellant had ties to Jamaica. Firstly, the Tribunal failed to analyse the guidance given in paragraphs 123 to 125 of *Ogundimu* and the approach adopted at paragraph 19 was wrong. The reasons given to the Tribunal at paragraph 19 of the determination for finding that the Appellant had ties to Jamaica appeared to be:-
 - a) He maintains the speech patterns of Jamaica.
 - b) He wore a black hat.
 - c) He maintains contact with his sister who is also of Jamaican heritage.
 - d) His mother returned to Jamaica although she now resides in the USA.
 - e) His sister has returned to visit Jamaica.
11. I agreed with the submission made by Miss Poyner that it was an error of law for the Tribunal to draw such conclusions as to whether or not the Appellant's speech or dress sense is Jamaican, where they do not have the expertise themselves or evidence before them to draw the conclusions, and certainly there was no reason given for concluding that the Appellant's black hat was Jamaican. Further or alternatively, I accepted that Jamaican speech and dress did not equate to cultural ties. The evidence before the Tribunal was that the Appellant's sister and half brothers are British Nationals, who are residing in the United Kingdom, that his sister has only occasionally returned to Jamaica due to the expense and

that his mother has for many years now resided in the USA. It was an error of law to equate the Appellant's sister's ties to Jamaica to his own.

12. Further, I was satisfied that the analysis of the evidence of Dr Winton had not been fully considered in the determination and that had it been done so, the Tribunal may well have come to a different determination. Dr Winton's view is that the Appellant has suffered psychotic symptoms that are most likely to be due to schizophrenia. He has explained that many of the descriptions given are indicative of chronic psychosis or provide evidence that he is suffering from schizophrenia. I think Miss Poyner is correct, but when looked at the conclusions at paragraph 17 of the determination, the Tribunal have failed to have regard to the fact that Dr Winton's report recalls the Appellant as being forgetful with fluctuating or poor attention and concentration and was wandering off the point and displaying impaired memory. Further, there seems to have been a lack of consideration whatsoever by the Tribunal to the report of Georgetown Law Human Rights Institute on the deportation of Jamaicans with mental health problems, and a lack of reference to the objective evidence which Mr Avery does not challenge was before the Tribunal.
13. I therefore concluded that the Tribunal had not given due and proper consideration to all the medical evidence that was before them, and as such the decision was unsafe and should be set aside.
14. Whilst it was agreed with the legal representatives that if I found an error of law that the Appellant would not be asked to attend the rehearing and that it would be dealt with by way of submissions, save for any useful additional medical evidence that the Appellant's instructed Solicitors sought to adduce, I note that the Appellant is in attendance. I am also considerably assisted in this matter by the fact that both Mr Avery and Miss Poyner who appear before me on the rehearing, both appeared before me when I heard submissions as to whether or not there was a material error of law.

The Up to Date Law

15. *Ogundimu (Article 8 - new rules) Nigeria [2013] UKUT 00060 (IAC)* is authority for the following propositions: -
 - 1) *The expectation is that it will be an exceptional case in which permission to appeal to the Upper Tribunal should be granted where the lodging of the application for permission is more than 28 days out of time. Where, in such a case, a judge is minded to grant permission, the preferable course is to provide an opportunity to the respondent to make representations. This might be achieved by listing the permission application for oral hearing.*
 - 2) *The introduction of the new Immigration Rules (HC 194) does not affect the circumstance that when considering Article 8 of the Human Rights Convention "for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in [this] country very serious reasons are required to justify expulsion." The principles derived from Maslov v Austria [2008] ECHR 546 are still be applied.*
 - 3) *Paragraph 399(a) of the Immigration Rules conflicts with the Secretary of State's duties under Article 3 of the UN Convention on the Rights of the Child 1989 and section 55 of the Borders, Citizenship and Immigration Act 2009. Little weight should be attached to this Rule when*

consideration is being given to the assessment of proportionality under Article 8 of the Human Rights Convention.

- 4) *The natural and ordinary meaning of the word 'ties' in paragraph 399A of the Immigration Rules imports a concept involving something more than merely remote or abstract links to the country of proposed deportation or removal. It involves there being a connection to life in that country. Consideration of whether a person has 'no ties' to such a country must involve a rounded assessment of all of the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances.*

Submissions

16. Mr Avery is brief in his submission. He states that it was the original contention of the Secretary of State that the Appellant had ties to Jamaica. He accepts that the Appellant does not have family any longer in Jamaica, noting that he has two siblings in the United Kingdom and a son in the USA. Consequently, providing the Appellant therefore meets the Immigration Rules, it is not necessary to go further, and that the definitive case law indicates it is not necessary to go on to consider the relevant medical evidence. He acknowledges the length of time that the Appellant has been in the United Kingdom and indicates that in such circumstances it is merely a matter for me to decide whether or not the Rules are met.
17. Miss Poyner in response merely refers to her previous submissions and her grounds for appeal.

Findings

18. Under the Immigration Rules paragraph 399A(a) applies where a person claims that their deportation would be contrary to the United Kingdom's obligations under Article 8 of the Human Rights Convention and has made an application for revocation of a Deportation Order on that basis. That paragraph states
- (a) The person has lived continuously in the United Kingdom for at least 20 years immediately preceding the date of the immigration decision (discounting any period of imprisonment) and he has no ties (including social, cultural or family), within the country to which he would have to go if required to leave the United Kingdom ...
19. Reference has also been made in submissions to me and above within this determination, to the leading authority of *Ogundimu (Article 8- new Rules) Nigeria [2013] UKUT 00060 (IAC)*. There are important extracts within that determination which are relevant to these proceedings. They are to be found at paragraphs 110 to 113 and gives a far more detailed and concentrated analysis of the word ties. It is not necessary within this determination to recite those specific paragraphs other than to say that I have fully read and considered them.
20. Paragraph 111 defines the natural and ordinary meaning of the word "ties" and paragraph 112 states the consideration of whether a person has no ties to a country must involve a rounded assessment of all the relevant circumstances and is not to be limited to social cultural and family circumstances. Paragraph 113 goes on to note that whilst each case turns on its own facts, the circumstances relevant to the assessment of whether a person has ties to the country to which they would have to go if they were to leave the United Kingdom, must include a number of factors which are set out therein.

21. In this matter, the Appellant has lived in this country for 38 years, having arrived from Jamaica at the age of 14. He was aged 52 at the date of decision. I have detailed submissions from both parties and it is accepted by Mr Avery that the Appellant does not have family in Jamaica. Paragraph 113 of *Ogundimu* does not limit ties to family. It does set out other criteria namely
- The length of time a person has spent in the country to which he would have to go if he were to be required to leave the United Kingdom,
 - The age that the person left that country.
 - The exposure that person has had to the cultural norms of that country
 - Whether that person speaks the language of the country
 - The extent of family and friends that that person has in the country to which he is being deported or removed and the quality of the relationships that person has with those friends and family members.
22. The Appellant arrived from Jamaica at the age of 14. He has consequently spent, save for those first few years of his life, all his life in the United Kingdom. Whilst he may well still possess some cultural connection in that being of Jamaican origin he is aware of cultural aspects of his country no family member resides in Jamaica. He has sisters and half brothers who are British Nationals who reside in the United Kingdom, and his son resides in the United States. Further, he has developed an extensive private life in the United Kingdom following his lengthy period of residence, and I also give due consideration to his acknowledged mental health problems which in the past have caused him to be sectioned under the Mental Health Act. Dr Winton's report is both revealing and helpful.
23. In such circumstances, I find that there is very clear evidence that the Appellant does not have ties with Jamaica i.e. the country he would be required to return to if he was asked to leave the United Kingdom. For all the above reasons, (and I am very grateful for the assistance provided by Mr Avery in this matter) I accept that this is an Appellant who does not have those relevant ties, and therefore he meets the requirement of paragraph 399A(a) of the Immigration Rules and the Appellant's appeal is allowed under the Immigration Rules.

Decision

24. The Appellant's appeal is allowed under the Immigration Rules.
25. The First Tier Tribunal did not make an Order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. No application is made to vary that Order and none is made.

Signed: D N Harris

Dated: 30 June 2014

D N Harris
Deputy Upper Tribunal Judge