



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

Appeal number: DA/01196/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17 December 2015**

**Determination Promulgated
On 14 January 2016**

Before

UPPER TRIBUNAL JUDGE WARR

Between

JUNIOR ALEXANDER GAYLE
(Anonymity Order not made)

Appellant

and

SECRETARY OF STATE

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr S Kotas, Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Jamaica born on 21 September, 1970. He appeals the determination of a panel dismissing his appeal against the decision of the respondent to deport him on 20 June, 2014.
2. The appellant arrived in this country on 15 June, 1986 as a visitor and was granted leave to remain as a student until 23 December, 1988. Following his marriage to a British citizen he was granted leave to

remain until 29 January, 1992. He was granted indefinite leave to remain on 13 February, 1992.

3. On 21 May, 1992 the appellant was convicted at the Central Criminal Court of attempted robbery and possessing an imitation firearm with intent to commit an indictable offence and he was sentenced to 7 years imprisonment.
4. On 4 April, 1993 the appellant absconded having been issued with a day pass to participate in a weightlifting competition. After absconding for some 19 years the appellant was arrested on 22 October, 2012.
5. The respondent regarded the appellant's offence as particularly serious. She found that under the immigration rules there was a presumption in favour of deportation. It was in the public interest to deport the appellant in accordance with section 32 of the UK Borders Act 2007. Under the immigration rules, as the appellant had been sentenced to a term of imprisonment exceeding four years, the respondent noted that it would only be in exceptional circumstances that the public interest in deportation would be outweighed by other factors. The respondent took into account her duties under section 55 of the Borders, Citizenship and Immigration Act 2009. The respondent was not satisfied that the appellant had established a genuine and subsisting family life with his son who had been born while the appellant was in prison. It was not considered that the appellant was a suitable role model for him. It was in the best interests of the appellant's son to remain with his mother. It was not accepted that the appellant's relationship with the child's mother amounted to exceptional circumstances. The appellant's relationship with his partner had been established while the appellant had been absconding. It was noted that the appellant's marriage to a British citizen had ceased to exist. The appellant had provided insufficient information about his claimed medical condition.
6. The appellant's offence was serious and while in custody he had received an adjudication for using insulting words and had received various warnings including being abusive to staff. In all the circumstances deportation would not place the respondent in breach of her international obligations.
7. The appellant was not represented at his hearing before the First-tier Tribunal. The panel heard from the appellant and his partner and his niece.
8. The appellant put forward a substantial number of legal submissions before the panel which the panel summarises at paragraph 47 to 52 of its determination. The panel found the submissions to be without merit. In paragraph 54 the panel concluded that the appellant had been "the author of his own misfortune in relation to the very substantial period of time during which he absconded from prison." The panel rejected an argument that the appellant would be at risk on return to Jamaica. In

relation to article 8 of the panel directed itself by reference to Razgar v Secretary of State [2004] UKHL 27 and Huang [2007] UKHL 11.

9. The panel found that the appellant was leading a family life with his partner and son and accordingly the first four criteria in Razgar were satisfied. It then considered the issue of proportionality. However, having taken full account of the matters advanced on behalf of the appellant and having guided itself by reference to sections 117A-117D of the Nationality, Immigration and Asylum Act, 2002 inserted by the Immigration Act 2014, it found that the public interest required deportation and dismissed the appeal.
10. The appellant applied for permission to appeal. Reliance was placed on A.A. v the United Kingdom (No 8000/08). Permission to appeal was granted on 27 February, 2015 by a First-tier Judge. At the hearing the appellant filed a skeleton argument referring to his employment record and the fact that he had committed no crime since 1992, even during his period of absconding. While absconding he had paid his taxes and national insurance contributions. He had returned to work with his former employer and referred to a letter from his employer and examples of the firm's work. He had been cleared to work in the US embassy.
11. The appellant had enrolled with the Open University and was currently studying for a law degree. He was successfully bonded with his son and was still in a subsisting relationship with his partner. He hoped to marry his partner shortly. He had given information to the police about a criminal and regretted the offence he had committed. The panel had failed to take into account positive aspects that the appellant had relied on in submissions. He had undertaken various educational programs and courses while in prison. The fact that he had an unblemished driver's license had not been taken into account among other things. The decision to dismiss his appeal had been irrational in that it had failed to take into account a number of relevant factors. It was inadequately reasoned.
12. The appellant relied on his skeleton argument and emphasised that he had not re-offended since his release from prison. Mr Kotas submitted that the first ground of appeal merely expressed disagreement with the decision of the panel. The panel had clearly had regard to the steps in Razgar. The panel had approached matters correctly and this was not a freestanding article 8 appeal - it was necessary to demonstrate very compelling circumstances as the panel had noted in paragraph 75 of its decision over and above the circumstances described in the second exception in section 117C (5).
13. The principal point was the case of A.A. v United Kingdom. The legislative context had completely changed since that date. The applicant in that case had been a minor aged 15. It was apparent from paragraph 14 of the decision that the applicant had been released from prison on licence

for good behaviour and there was a world of difference between his circumstances and those of the appellant who had absconded. In paragraph 61 the court had noted the applicant's period of residence in the UK. The applicant had served his term of imprisonment. He had spent some seven years in the United Kingdom following his release. The appellant in this case by contrast had been unlawfully at large. Again the applicant had not visited his home country for 11 years whereas the appellant had frequently visited Jamaica and had family there. The decision in the appellant's case was focused on the type of the offence the appellant had committed and was not simply based on the risk of reoffending.

14. Mr Kotas referred to Danso v Secretary of State [2015] EWCA Civ 596 at paragraph 20 where the Court of Appeal considered the issue of rehabilitation:

“Mr. Dixon submitted that the tribunal should have placed much greater weight on the appellant's rehabilitation and the fact that he did not pose a significant risk of re-offending. He suggested that far too little importance is attached to factors of that kind, with the result that those who commit offences have little incentive to co-operate with the authorities and make a positive effort to change their ways. I have some sympathy with that argument and I should not wish to diminish the importance of rehabilitation. It may be that in a few cases it will amount to an important factor, but the fact is that there is nothing unusual about the appellant's case. Most sex offenders who are sentenced to substantial terms of imprisonment are offered courses designed to help them avoid re-offending in future and in many cases the risk of doing so is reduced. It must be borne in mind, however, that the protection of the public from harm by way of future offending is only one of the factors that makes it conducive to the public good to deport criminals. Other factors include the need to mark the public's revulsion at the offender's conduct and the need to deter others from acting in a similar way. Fortunately, rehabilitation of the kind exhibited by the appellant in this case is not uncommon and cannot in my view contribute greatly to the existence of the very compelling circumstances required to outweigh the public interest in deportation.”

15. Reliance had been placed in the grounds on the case of Bossadi [2015] UKUT 00042 (IAC). This was “hopelessly misguided” as the appellant was a foreign criminal and could not meet the suitability requirements.
16. In relation to s 55 of the Borders, Citizenship and Immigration Act 2009 it was clear the panel had well in mind the best interests of the appellant's child as was apparent for example from paragraphs 52 (where the panel had recorded the appellant's submissions) and paragraph 69. Mr Kotas referred to LC (China) [2014] EWCA Civ 1210 where it had been argued that the tribunal had erred in failing to recognise and give sufficient weight to the interests of the appellant's children and their British nationality. Reliance was placed on Zoumbas v Secretary of State [2013] UKSC 74 and ZH (Tanzania) v Secretary of State [2011] UKSC 4. Mr Kotas referred to paragraph 24 of the decision:

“However, it must be borne in mind that both of those cases concerned the removal of persons who were in this country illegally. In neither case was the court concerned with the deportation of a foreign criminal. Mr. Slatter's submissions would carry a good deal of force if the appellant were at risk of being removed merely on the grounds that he did not have leave to remain, but in this case the appellant is susceptible to deportation for other, much more serious, reasons. The Secretary of State was obliged to make a deportation order in respect of him pursuant to section 32 of the UK Borders Act 2007 unless he could bring himself within one of the exceptions in section 33, in this case by establishing that to remove him would involve an unlawful interference with his article 8 rights, and in making her determination she was obliged to weigh up the competing considerations in accordance with paragraphs 398 - 399A of the Immigration Rules. The starting point for any such assessment is the recognition that the public interest in deporting foreign criminals is so great that only in exceptional circumstances will it be outweighed by other factors, including the effect of deportation on any children. However, in cases where the person to be deported has been sentenced to a term of imprisonment for less than 4 years and has a genuine and subsisting parental relationship with a child under the age of 18 years who enjoys British nationality and is in the UK, less weight is to be attached to the public interest in deportation if it would not be reasonable to expect the child to leave the UK and there is no one else here to look after him. By contrast, however, where the person to be deported has been sentenced to a term of 4 years' imprisonment or more, the provisions of paragraph 399 do not apply and accordingly the weight to be attached to the public interest in deportation remains very great despite the factors to which that paragraph refers. It follows that neither the fact that the appellant's children enjoy British nationality nor the fact that they may be separated from their father for a long time will be sufficient to constitute exceptional circumstances of a kind which outweigh the public interest in his deportation. The appellant's children will not be forced to leave the UK since, if she chooses to do so, their mother is free to remain with them in this country.”

17. The grounds were erroneous in law and went no further than expressing disagreement with the decision of the panel.
18. The appellant submitted that the previous law prevailing in 1992 should apply to him. He had been in the country lawfully. Although he had absconded the situation should be compared with the position of someone who had been released on bail and had committed a crime. He had not committed a crime. He had not used an alias. The Home Office had known where he was. His divorce was not yet finalised and his marriage had lasted a lengthy time. The decision was unfair and disproportionate. He had come to the United Kingdom aged 15 and he had a medical condition. His partner was on income support and the panel had overlooked relevant points. He only had a single conviction. The panel had downplayed or overlooked significant matters such as his illness. He made significant contributions to national insurance. He would lose this money.

19. At the conclusion of the submissions I reserved my determination. I can only interfere with the decision of the panel if it was materially flawed in law. Although the appellant was representing himself he has the benefit of some legal training and he made his submissions orally and in writing in a clear and attractive manner.
20. The appellant considered that the panel had not done justice to his arguments. In my view the panel fully and properly set out the submissions that the appellant made before it. As mentioned above the panel stated in paragraph 53 of its decision that it found the submissions to be without merit. I have to say I agree. The panel applied the correct legal provisions in the appellant's case. As the panel say, the appellant was the author of his own misfortune by absconding for such a long period. He cannot complain that the respondent should have applied the law as it would have been had he not absconded. He cannot rely on his own wrong. The appellant further complains about the respondent's delay but again he was the author of his own misfortune. He could have turned himself in at any time. As the panel state in paragraph 66 of its decision "the onus was upon the appellant to comply with the criminal law the United Kingdom. He had been sentenced. He had received a long sentence. He chose not to comply with it having abused the privilege of day release."
21. The panel states as follows in paragraph 67:

"We find that it is necessary for the principle of deterrence to be applied. We find that it would send out entirely the wrong signal if the appellant were to be successful in resisting deportation given the existence of the twin factors of the seriousness of the original offence and the fact of absconding in conjunction with the length of it. It is necessary for us to conduct a balancing exercise in analysing the positive factors to be weighed in favour of the appellant. We take full cognizance of that which he has put forward in his own favour. We take the evidence of the appellant and the witnesses called on his behalf and the evidence of the witnesses who were not called whose statements have been provided including after the hearing at their highest. We have considered the nature of the family life which the appellant leads."
22. The panel find in paragraph 69 of its decision that the appellant was not a suitable role model for his son. The panel correctly reminds itself about the effect of the amendments made to the Nationality, Immigration and Asylum Act, 2002 by the Immigration Act 2014. It took all positive factors into account. While it noted that the appellant had achieved social and cultural integration in the United Kingdom it did not find that there would be very significant obstacles to his integration into Jamaica "given that his mother still lives there and he could stay with her pending finding employment. We also find that the appellant's level of intelligence and ability to react to circumstances equip him to re-establish himself in Jamaica."
23. In paragraph 75 of its decision the panel accepted that the appellant had a genuine and subsisting relationship with his partner and child who are

British citizens. It accepted that the effect of the removal of the appellant would be unduly harsh upon both his partner and child and as the panel states: "The difficulty which confronts the appellant is that there must be very compelling circumstances over and above those described in the exception."

24. The panel did not arguably err in law or misdirect self or act irrationally in concluding that the appellant had not demonstrated that there were such very compelling circumstances. It also gave consideration to the question of the appellant's medical condition and was entitled to find that treatment would be available for the appellant for that condition in Jamaica. The panel concluded by noting that the appellant had been afforded the fullest opportunity of presenting his case and adducing all relevant material in relation to it. The argument that the appellant would be at risk on return to Jamaica was rightly rejected by the panel in paragraphs 55 to 57 of its determination and was not pursued on appeal.
25. I have taken full account of the points made by the appellant. However, his offence was a very serious one carrying a substantial period of imprisonment and the appellant chose to abscond for 19 years. The circumstances of the appellant are very far removed from the circumstances of the applicant in A.A. v United Kingdom as Mr Kotas submitted. I accept the submissions of Mr Kotas as summarised above. The panel considered the matter properly under the current rules and legislation. It did not fail to reflect or downplay any salient argument the appellant presented to it.
26. Accordingly the challenge to the panel's decision fails and this appeal is dismissed.

Anonymity Order

The First-tier Tribunal made Anonymity Order and I make none.

Signed

Upper Tribunal Judge Warr

18 December 2015