



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/04586/2018

THE IMMIGRATION ACTS

Heard at Field House
On 19th October 2018

Decision & Reasons Promulgated
On 20th November 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR NATHAN BLACK
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Allison of Counsel, instructed by Turpin & Miller
Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Jamaica born on 17th October 1995, appealed against a decision of First-tier Tribunal Judge Broe promulgated on 4th July 2018 dismissing his appeal against a decision of the Secretary of State dated 12th February 2018 to refuse his human rights claim following his notification of an automatic deportation order because of his conviction at Lewis Crown Court and sentence on 13th April 2017 to 28 months' imprisonment.

2. The First-tier Tribunal Judge in his/her decision recorded the following:
- (i) The appellant arrived in the country on 30th November 2000 with valid entry clearance as a visitor until May 2001. He remained without leave until January 2013 when he made an application for leave to remain under the ten-year route. On 16th January 2016 he was granted leave to remain until 16th January 2016 but on 9th August 2016 he was served with a notice of liability to removal.
 - (ii) On 13th April 2017 the appellant appeared at Lewis Crown Court and was convicted of two offences of possession of Class A drugs with intent to supply. He was sentenced to 28 months' imprisonment. On 18th August 2017 the respondent served a stage 1 deportation decision to which he responded, such that deportation would engage his Article 8 rights.
 - (iii) The appellant was born in Jamaica and came to the United Kingdom with his father's fiancée when he was 5 years old. He has no contact with his mother and does not know if she was still in Jamaica or even alive. He lived with his father for about a year but was then taken into care because his father was violent. His father formed a new relationship with a woman called [D] who arranged for him to live with them but he often stayed away. At the age of 16 he went to stay with an aunt. He took GCSEs at secondary school and went to college to do an apprenticeship. He could not continue with this because his lack of status meant he could not work. He maintained he first learned of his lack of status when he was arrested in 2016. He was issued with papers in 2014 and told he had Indefinite Leave to Remain.
 - (iv) The respondent then considered the appellant's deportation was conducive to the public good and in accordance with Section 32(5) of the 2007 Act. His immigration history and his convictions recorded in the Crown Court were material. The appellant did not have children in the United Kingdom and provided no evidence of a partner. He had been in the country for 17 years but only two years and six months had been lawful. It was accepted he was socially and culturally integrated, but the offences were particularly serious. There was little evidence he had made a positive contribution to society or that he was not a financial burden. It was not accepted that there would be difficulties in re-establishing himself in Jamaica which could be said to be very compelling circumstances. There was no evidence of an Article 8 claim over and above the circumstances provided for in the Exceptions.
 - (v) The judge specifically recorded at paragraph 13
"Mr Jagedesham accepted, properly and helpfully, that the appellant could not satisfy the requirements of the Rules. The issue was whether there were very compelling circumstances outweighing the public interest in removal".

- (vi) Mrs [DD] also gave evidence and described the appellant as her son who had stayed with her. He had no-one in Jamaica and she would not be able to support him from this country.

3. The judge also made this record at [16]

"The appellant provided a report prepared by Mr Luke de Noronha who is in the third year of a DPhil in anthropology at the University of Oxford. His research focuses on deportation from this country to Jamaica. The report was general in nature and contained his opinion on the risks faced by deportees to Jamaica. He also provided an extract from a document entitled Coming Home to Jamaica, listing 'dos and don'ts' for returning residents. The publisher is not identified."

4. The judge made the following findings:

- (i) At paragraph 21 the Rules emphasised the high public interest in deporting foreign criminals and in a case to which Rules 399 and 399A did not apply, very compelling reasons will be required if they are to constitute "exceptional circumstances" which outweigh the public interest in deportation.

- (ii) The judge set out paragraph 399 and 399A of the Immigration Rules.

- (iii) At paragraph 23 it was noted:

"Paragraph 399 does not apply to the appellant because he does not have a child or partner in this country. Paragraph 399A does not apply because he has not been lawfully resident in this country for most of his life. The issue therefore is whether there are very compelling reasons which constitute 'exceptional circumstances' which outweigh the public interest in deportation."

- (iv) There was little dispute about the factual background to the matter. The appellant's immigration history was set out above. There was no dispute about his criminal record and the respondent accepted that the appellant had been in this country since he was 5 and he was socially and culturally integrated. The judge accepted that the appellant had been educated in this country and that he attempted to undertake an apprenticeship.

- (v) The appellant was no longer in a relationship with his former partner and did not have any children. The judge noted the evidence regarding that of Ms [D] and the history of their relationship and that her father was regarded as his grandfather and concluded

"I accept that family had been established between them and with her children. I note that he does not live with them" [25].

- (vi) The appellant had been convicted of possession of heroin and crack cocaine with intent to supply and the judge had given careful consideration to the judge's sentencing comments and that the appellant travelled from London to Brighton to supply the drugs. The judge sentencing noted in his comments the damage to those who have used

drugs and the effects on community generally. The First-tier Tribunal Judge found the nature of these offences weighed heavily in the balance.

"I have had regard to the expert's report provided by the appellant. It is general in nature and does not address his particular circumstances. The expert describes the problems that may be faced by deportees on return to Jamaica but notes that individual cases must be judged on their particular facts" [27].

- (vii) The judge had regard at [28] to **AB (protection - criminal gangs - internal relocation) Jamaica CG [2007] UKAIT 0018** in which it was held that authorities in Jamaica were generally willing and able to provide effective protection.
 - (viii) The strongest element of the appellant's case was the length of time he had spent in the country and as a consequence the difficulties he has faced on return to Jamaica. There was no dispute he had socially and culturally integrated in the United Kingdom and he may have problems "adjusting to life in Jamaica although there are organisations to assist people in his position".
 - (ix) The judge asked himself whether the circumstances amounted to "very compelling reasons" constituting "exceptional circumstances".
 - (x) He concluded the decision to deport the appellant was justified. The appellant had not discharged the burden of proof and the appeal was dismissed.
5. The application for permission to appeal there were two main grounds of challenge;

Ground 1. The judge had undertaken a flawed inadequate assessment of very significant obstacles in assessing whether there were exceptional circumstances. The judge should have had regard to matters falling within the scope of circumstances described in Sections 117C(4)/(5) of the Nationality, Immigration and Asylum Act 2002 and paragraphs 399-339A of the Immigration Rules (see **NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662**). As set out in **Kamara [2016] EWCA Civ 813**

"The idea of integration calls for a broad evaluative judgment to be made as whether the individual will be enough of an insider in terms of understanding how life in that other country is carried on and 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."

- (i) First it was submitted that the judge failed to carry out an adequate assessment of very significant obstacles to integration in Jamaica. The appellant had never visited Jamaica since the age of 5 and had no contact with anyone in that country.

- (ii) The judge failed to have regard to the report of Luke De Noronha "Deportees in Jamaica - Expert Report 2017". At section 1 this report states:

"Some have no family members to return to and end up homeless ... without family support, deported persons who have often forgotten how things operate both practically and culturally in Jamaica tend to face myriad difficulties on return".

Section 2 recorded that deported persons "are especially vulnerable to crime in Jamaica and regularly become targets for robberies and different forms of extortion". ... "numerous examples of newly deported persons being mugged, sometimes in broad daylight, because they were instantly recognisable as foreigners". Section 3 reintegration "language, health, housing and employment" "put simply, if you are returning to the island poor, it is important to know people".

Such difficulties were highly relevant to the appellant's appeal and Judge Broe did not have adequate regard to the contents of the report merely referring to organisations to assist people.

- (iii) the judge failed to have any or adequate regard to the obstacles the appellant would face on return as per the respondent's own guidance provided to Jamaicans which advises Jamaicans to avoid the use of overseas non-Jamaican accents which could attract unwanted attention and returnees are warned against discussing their personal situation they do not know. Overall there was a concern about the language.

6. In all the circumstances under this ground the judge had failed to carry out an adequate assessment.
7. Ground 2. The judge failed to have regard to relevant considerations and there was a need to consider any other relevant factors. The judge
 - (1) failed to consider the fact that the appellant posed a low risk of harm; and
 - (2) failed to address or consider the impact of the appellant in forced separation from Mrs [D] and her family.
8. The appellant himself spoke of the importance of his relationship with Mrs [D] and her evidence testified to the family life would be affected. The judge erred in failing to address adequately or at all the impact on the family of his being deported.
9. At the hearing Mr Allison submitted that albeit there was a concession that the appellant did not meet the Rules, the judge needed to consider the very significant obstacles and any further relevant circumstances when coming to the decision. That was the basis of the consideration of any exceptional or compelling circumstances. The judge had failed to address the expert's report

in anything other than general terms. It was relevant that the appellant had had discretionary leave. He came here at the age of 5 and had eighteen months in local authority care. There was a lack of reasoning as to why there were no very compelling circumstances.

10. Mr Melvin submitted that there was no indication that the concession was made solely in relation to the first limb of 399A and that was the way that the judge pursued the appeal. In fact, there was nothing which raised very significant obstacles in this appellant's case. There were no health issues, no language issues, the appellant had been raised in a Jamaican household and he was an educated man with GCSEs and had commenced an apprenticeship. His "grandfather" had returned and died in Jamaica, in other words he did have connections, and there were persons in the UK who could assist him when he arrived there. The judge had formed a sufficient analysis and there was nothing to be reargued.
11. In response Mr Allison stated that the scope of the concession on the immigration rules could be seen from the skeleton argument. There should have been an overall evaluation and engagement with a vulnerability of deportees.

Conclusions

12. It was asserted in the skeleton argument that as the Court of Appeal explained in the case of **NA (Pakistan) [2016] EWCA Civ 662** in considering whether a claim is very compelling a decision maker should still have regard to the matters falling within the scope of the circumstances described in Sections 117C(4)/(5) of the Nationality, Immigration and Asylum Act 2002/paragraphs 399-399A of the Immigration Rules (19) and (29-32) of **NA**. Thus, in relation to a "medium offender" (sentence below four years) who does not meet all of the Exceptions the court explained that at 32

"... in principle there may be cases in which such an offender can say that features of his case of a kind described in Exceptions 1 and 2 have such great force for Article 8 purposes that they do constitute such very compelling circumstances whether taken by themselves or in conjunction with other factors relevant to Article 8 but not falling within the factors described in Exceptions 1 and 2. The decisionmaker, be it the Secretary of State or a Tribunal, must look at all the matters relied upon collectively, in order to determine whether they are sufficient compelling to outweigh the high public interest in deportation".

13. It is quite clear from the record of the judge's decision at both paragraph 13 and paragraph 18 that he understood that the issue was whether there were very compelling circumstances outweighing the public interest in removal. It is not evident that he failed to take into account any assessment of the 'Exceptions'. I have scrutinised the skeleton argument submitted for the First-tier Tribunal by Mr Jagedesham and note that at paragraph 9 of the skeleton argument the court was urged towards the correct approach to deportation cases "including the

great weight to be attached to the public interest in the deportation of foreign offenders and the requirement for “very compelling reasons” when the Immigration Rules are not met. At paragraph 10 in considering whether a claim is “very compelling” a decision maker should still have regard to the matters falling within the scope of the circumstances described at Section 117C(4) and (5) and paragraph 399 to 399A and what the court should do when the “medium offender did not meet all of the Exceptions and then at paragraph 20 the skeleton argument records that

“recalling what was said in Kamara and given that the appellant has no-one in Jamaica or any familiarity with that country having left at the age of 5, it is submitted that there is a very compelling basis on which it can be said that this appellant will face very significant obstacles in integrating into Jamaica”.

14. At paragraph 21 of the skeleton argument it was stated “it is further submitted that the above submissions, taken together with those below disclose a very compelling case against the appellant’s deportation”.
15. What was clearly relayed to the judge was that the Immigration Rules had not been complied with in relation to very significant obstacles, but the case was put on the basis that when considering the ‘Exceptions’ the appellant’s time in the UK fell to be treated as “special” and “very compelling”. Further the skeleton argument argued that he was integrated and finally there were very significant obstacles in reliance on the report of Mr Noronha. I am not persuaded that the judge failed to appreciate the force of the skeleton argument.
16. The Immigration Rules paragraph 399A sets out

‘This paragraph applies where paragraph 398(b) or (c) applies if –

 - (a) the person has been lawfully resident in the UK for most of his life;*
 - and*
 - (b) he is socially and culturally integrated in the UK; and*
 - (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported’.*
17. The judge, as can be seen from above, clearly set out the background for the appellant and was fully aware of his length of residence. He had not been lawfully resident in the UK for most of his life further to paragraph 399(a) and indeed the judge was fully aware that he was born in 1995, came to the UK in 2000 at the age as a minor and only obtained leave in 2014. The appellant was an adult from 2013 onwards but had not resolved his status. The fact is that this appellant had spent much of his life in the UK but could not comply with the Immigration Rules because he had not been here lawfully. Much of what was cited from **NA (Pakistan)** was in relation to someone who had lived in the UK lawfully, **NA (Pakistan)** paragraph 31.

18. Nonetheless the judge specifically accepted that the respondent had accepted the appellant was integrated but his time and circumstances in the United Kingdom did not disclose very compelling features. As the judge recorded the appellant had been schooled in the United Kingdom but he did not live with any family in particular and was not working.
19. Turning to very significant obstacles as to the integration in Jamaica, the judge specifically as identified above addressed the 'expert' report but found it to be "general in nature and contained his opinion on the risks faced by deportees to Jamaica". This is a report prepared by a third-year student of a DPhil in anthropology of the University of Oxford and does not approach identifying very significant obstacles or even very compelling reasons for the appellant not to relocate to Jamaica.
20. Clearly the judge did not accept the expert's report and stated

"It is general in nature and does not address his particular circumstances. The expert describes the problems that may be faced by deportees on return to Jamaica but notes that individual cases must be judged on their particular facts" (paragraph 27).
21. The judge assessed those facts. The context, for the expert report, as drawn out by the judge in relation to his personal and family circumstances was that the appellant had GCSE education and had commenced an apprenticeship. There was no evidence that he had any health difficulties, no evidence that he had language difficulties or had been brought up in anything other than a Jamaican household. That he had little family in Jamaica does not signal very significant obstacles or compelling reasons. Indeed, the decision noted that Mrs [D]'s grandfather returned and died in Jamaica. Suffice it to say the appellant had not produced evidence to demonstrate that he had no connections.
22. Specifically, the judge noted that there were organisations to assist people in the appellant's position and in the face of the evidence in the round and as he states at paragraph 31 "*on the totality of the evidence*" the judge clearly found neither very significant obstacles nor enhanced significant obstacles such that they amounted to compelling circumstances. The judge referred to **AB (Protections -criminal gangs -internal relocation)** and was alert to the difficult circumstances for some returnees in Jamaica but it was not the appellant's case that he was to be specifically targeted. The respondent's guidance for those returning to Jamaica is just that assistance on reintegration and the avoidance of unwanted attention. It is not a confirmation that appellants may not return.
23. Turning to Ground 2, that the appellant is said to pose a low risk of reoffending does not mean there is no risk of reoffending. It was open to the judge to find that the strongest element of the appellant's case was the length of time he had spent in the UK but that he would merely have problems in adjusting to Jamaican life rather than anything more forceful. The judge did consider the contact that the appellant would have with the witness, [D], and her family but

noted specifically that they did not live together. They are not related in any way. They may have some family life but the strength of that connection did not reveal very compelling circumstances such as to undermine the deportation order and lent limited support to the assertion of very compelling circumstances. The appellant no longer had a partner and had no child in the United Kingdom as the judge noted at [25].

24. As reflected in the decision, there was a broad evaluation as per **Kamara** regarding very significant obstacles. The appellant came nowhere near to compliance with the Immigration Rules, the provisions of which are conjunctive. There was adequate assessment of any very significant obstacles and nothing in the evidence which pointed with such force to very compelling circumstances when considering the circumstances under the exceptions or overall cumulatively.
25. The conclusions were brief but open to the judge. The fact is that the appellant could not comply with paragraph 399A because he had not been lawfully resident in the UK for most of his life. On reading the decision carefully, there is no indication that the judge merely by reference to paragraph 30 to the Article 8 outside the Rules failed to address the issue of very compelling circumstances or that he did not take into account all the relevant factors. The judge understood the reasons that the appellant was not resident lawfully in the UK. There is adequate reasoning for his conclusions, simply, no very compelling circumstances had been made out.
26. As such I find that the decision contains no error of law and shall stand.

Notice of Decision

The First-tier Tribunal made no material error of law and his decision shall stand.

Signed *Helen Rimington*

Date 15th November 2018

Upper Tribunal Judge Rimington