



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/27541/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9 March 2018

Decision & Reasons Promulgated  
On 22 May 2018

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ZAMAR ROMANDO GOULDBOURNE  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr F Norton, Home Office Presenting Officer  
For the Respondent: No representation

**DECISION AND REASONS**

1. The Secretary of State appeals against the determination of First-tier Tribunal Judge Scott-Baker promulgated on 24 April 2017 after a hearing that took place over no less than two days at Taylor House on 18 and 19 January 2017. I shall refer to Mr Gouldbourne as the appellant as he was before the First-tier Tribunal. During the course of the hearing the appellant was unrepresented. The respondent was represented by Mr Norton, the Presenting Officer.
2. The appellant is a citizen of Jamaica born on 26 November 1985 and he appeals against a decision made by the Secretary of State on 19 June 2013 to refuse him further leave to remain on the basis that removal would not place the appellant in breach of her

obligations to him under the Human Rights Act. The determination is a lengthy document, I do not know exactly how many pages, but it consists of some 138 paragraphs spanning many pages. During the course of the determination it appears to be accepted that the findings that were made by the judge were both detailed and comprehensive. This was a case which was concerned not simply with specific criminal convictions but it was a case where there was evidence from CRIS Reports which dealt with the general position of the appellant among the gangland community in Brixton. The judge pulled no punches as far as the findings were made against the appellant and went into a great deal of detail into the various matters which were both the subject of criminal prosecutions but also went to his general level of background behaviour.

3. The case took place against a history of an earlier appeal. That was an appeal heard by a panel of judges, Judges Keane and Cockrill. They allowed the appeal by a determination that was made on 20 January 2014. That was subsequently set aside by Upper Tribunal Judge Deans who found that there was an error of law in the Tribunal's approach to *Farquharson (removal – proof of conduct) Jamaica* [2013] UKUT 146 and accordingly it went before an experienced First-tier Tribunal Judge, Judge Scott-Baker. She too allowed the appeal. Consequently the background to this case is that there have been no less than three First-tier Tribunal Judges who have found in favour of this appellant in two separate appeals. That does not of course mean that Judge Scott-Baker did not make an error but it is a sobering thought that this appellant has been seen by a number of judges who have in each case found that his removal would be disproportionate.
4. There is no challenge to the broad background of this case. According to the appellant he arrived in the United Kingdom aged 13 on 21 July 1999, that is some eighteen years ago. His leave was extended but his first arrest took place on 27 July 2004 for drugs offences. These are dealt with in much greater detail by the judge in her determination, summarised in paragraph 16. The judge then goes on to deal with a number of relationships that the appellant had with various women and broadly sets out the position as to his domestic circumstances.
5. In paragraph 26 there is reference to a social worker's report following an assessment that was made on 12 December 2013, some three years before the judge dealt with it and it was followed by the appellant's convictions and associations with drug gangs, offences of violence, rape and kidnap between 2000 and 2011. An unannounced home visit took place but eventually contact was made and enquiries were pursued by the social worker which included enquiries with the GP and an assessment of the appellant in the context of his past criminal conduct.
6. The Secretary of State provided evidence. There were witness statements from DC Burrows, PC Haysen and DC Rowntree, CRIS Reports and printouts. The First-tier Tribunal Judge heard the oral evidence from PC Haysen.
7. The offences which took place between 2002 and 2012 are listed in paragraph 35 of the determination and they consist of seven counts of possession of class B drugs, possession of an offensive weapon, using a vehicle whilst uninsured, driving other

than in accordance with a licence, taking a motor vehicle without consent, affray and failing to surrender to custody at an appointed time. In paragraph 36 the judge also records a conviction of ABH on 13 February 2007.

8. The judge then embarks upon a very detailed assessment not simply of the criminal convictions but also of a number of other matters which were before her. It is of use to point out in summary form the attention which the judge showed to the material. For example in paragraph 44 she says, "I am satisfied on the evidence produced from the CRIS Report that there was an incident of domestic violence with K P on 9 November 2008 and that the appellant had assaulted her". She concluded that she was satisfied that the incident did amount to an event of domestic violence.
9. She then went on in paragraph 48 to deal with a CRIS Report dealing with the appellant being found in possession of a pointed and bladed article. She finds on balance of probabilities that the appellant was in possession of a bladed article.
10. She then considers an incident where the appellant appeared before the Crown Court in London and pleaded not guilty to a charge of common assault but no evidence was offered and the case was dismissed. Then there was an incident of sexual assault where he was found not guilty and a case of common assault in the Magistrates' Court where the matter was dismissed. The judge then deals with an incident which took place on 9 November 2007 which arose from the CRIS Reports. Once again the judge concluded that the incident amounted to domestic violence.
11. In paragraph 52 the judge set out a catalogue of matters, eighteen 'non-convictions' as she records them between 18 January 2005 and 31 October 2013. The judge then in paragraph 53 begins a series of findings in relation to those matters. By far the most serious was an offence which was not the subject of a conviction. It was an allegation of rape on 20 February 2005. That of course was some twelve years before the judge made her decision. She set out the various contentions that were made and she concluded in paragraph 56:

"I make the following findings of fact on this incident. It is clear that the CPS had not proceeded with any prosecution due to the lack of evidence. There was no evidence that sexual intercourse had occurred in the cubicle as there was no ejaculation by the perpetrator and whilst a condom wrapper had been found, no fingerprints were on that wrapper and it therefore could not be linked to the appellant."

12. The evidence before me is such that it is not possible to make a finding of fact that an act of intercourse occurred in the male WC, let alone a finding that the act of intercourse amounted to rape. That was a sustainable finding of fact and was one which was of course supported by the fact that the CPS had decided not to proceed with any prosecution because of lack of evidence. That has to be right.
13. There was then another assault that was said to have taken place in September 2004. Once again the evidence is set out over a number of paragraphs beginning with paragraph 57 and concluding at paragraph 62 where the judge concludes:

"I find on this evidence that the appellant did have access to S's car and that this is confirmed by the presence of his fingerprints and DNA on the cigarette. The appellant accepted this fact."

Having however considered the evidence she concluded:

"Accordingly on the evidence that there is before me it is not possible to make a finding of fact on a balance of probabilities that the appellant was one of the suspects who had assaulted and kidnapped the victim on 23 September 2004."

That once again is a sustainable finding that was made on the material before her and no criticism is or could be made as to her approach to these matters.

14. The judge then went on to deal with the formidable list of sixteen incidents or 'non-convictions' between January 2005 and October 2013. Those are considered by the judge by reference to the statements that were made. I do not need to analyse those matters; all I need say is that the judge found that there was a propensity to offend. The findings culminate in a passage in the determination which covers paragraphs 86 to 100. In relation to the incidents which involved assault against women the judge finds in paragraph 86 and following:

86. I find that all these incidents bear similarities and given the number of claims made I find that at the least the appellant has displayed conduct which shows an aggressive tendency towards females, that he can resort to the use of violence and has assaulted females in the past.

87. There are however further offences recorded against the appellant in respect of violence shown to women in that in the affray in 2004 the victim was injured when she handed over keys to the appellant.

88. I therefore find that the appellant has shown violent tendencies towards women.

15. The judge then went on to deal with his use of cannabis. In paragraph 90 the judge makes a finding that the appellant has been a regular user of cannabis and on numerous occasions detailed in the CRIS Reports has been stopped when he was smelling strongly of the drug. She finds in paragraph 91 that the appellant has been an habitual user of cannabis and he started to use crack cocaine in 2014. To that she added the fact that there had been some 32 occasions from June 2001 to September 2013 when he had been stopped and searched. However, in paragraph 94, looking at the history of offending, she reaches the sustainable conclusion that she was not prepared to make a finding that the appellant was involved in the *supply* of drugs rather than the *use* of drugs. It is at this stage that the judge summarised the criminal conduct.

16. In paragraph 98 she refers to the most serious incidents, that being the allegation of rape on 20 February 2005 and the evidence about kidnap and sexual assault in 2004 and for the reasons which she had earlier given she determined that they could not be established on balance of probabilities. She then looks at the criminal associations of the appellant and she mentions various names of people who, in the same area as the appellant, have been convicted of such offences as assault, theft and possession of

drugs, and concludes that the appellant had associated with persons with known criminal records. As a result of that and crucially, she finds in paragraph 106 that the appellant cannot satisfy the requirements of the Immigration Rules.

17. Pausing there, it has to be said that this conclusion was very carefully considered. There is no sense in my judgment in which the judge has fallen into any error in trying to marginalise the offending or to misclassify it or to overlook it or to misrecord it. There is a blow by blow account of the various matters which were raised against him, most of which were found by the judge to have taken place. It is only the two most serious matters of 2004 and 2005 that the judge made sustainable findings that she could not be satisfied that they took place. So there was before the judge the plainest evidence, which she accepted, and which she set out in graphic detail the appellant's criminal offending.
18. She then went on to deal with the Article 8 claim and the family life that he enjoyed with his two daughters, K and A. She sets out the nature of that relationship and concluded that he was involved in the lives of those two children. She rejected the claim that the relationship he had with his own parents was such as to amount to protected family life on the basis of which he could not be removed. She then considered the position of Section 117B and in particular Section 117B(6). In a detailed passage she refers to the case-law in relation to Section 117B(6) and makes reference to the decision in *MM (Uganda) v Secretary of State for the Home Department* [2016] EWCA Civ 450. She gives a proper self-direction that it is not simply the child's interests which are assessed when considering the reasonableness criteria set out in Section 117D(6) but there is a wider public interest. That wider public interest clearly was engaged in the appellant's case because of the criminal misconduct and misbehaviour with which the first 100 paragraphs of the determination are devoted. The self-direction is repeated in paragraph 133 where it is said that the wider criterion and the public interest has to be factored into her consideration. It was at that stage that she then dealt with the appellant's removal in the context of his daughter N-S and his partner N and the work and the material that had already been referred to in relation to the Southwark Children's Services Assessment.
19. It would have been easy for the judge to have fallen into the trap that she treat the relationship with a British child as a trump card which overcome all of the wider public interest criteria but in paragraph 135 she expressly reminds herself that a British child is *not* a trump card in these cases but, if the appellant is removed, there will be a significant interference of the family life between the appellant, his partner and child. On the basis of all of this material the judge determines in paragraph 136 that she found the decision to remove him was not proportionate.
20. I have spent a considerable amount of time (as I did at the hearing during the course of this morning) looking at the determination and trying to assess where we could see there was a fault. It seems to me that the determination cannot be faulted up until paragraph 135. The judge made correct findings in relation to the criminality. She set out the claim. She set out the nature of the family life he enjoyed. Were there to be another appeal, it would have to be on the basis that paragraphs 1 to 135 are both factually accurate and contain correct findings. It also would have to be accepted that

the self-directions that were given by the judge were correct self-directions including reference to the wider public interest that is identified in *MM (Uganda)* as well as the children's position not being a trump card as set out in *ZH (Tanzania)*. So those matters would have to stand. In essence what Ms Isherwood would have to establish is that, at the end of that consideration, instead of the judge finding in paragraph 136, 'I find therefore that the decision to remove is not proportionate' that a further judge should on those findings be required to find 'I find therefore that the decision to remove is proportionate'.

21. In my judgment that is simply a disagreement with the final conclusion that was reached by the judge after a determination that is otherwise without fault. It is clear that the grounds that were provided by the Secretary of State were not made out save as identified in the grant of permission by Upper Tribunal Judge Kebede made on 2 January 2018 that there was merit in grounds 7 and 8 in regard to the adequacy of the judge's assessment of reasonableness in relation to the appellant's daughter. That is a reference to paragraphs 133 to 135. However, that is counter to a large extent by what is said in the determination in the preceding paragraphs and in particular in relation to the consideration that the judge gave to the immigration history of the appellant, the background to his life in the United Kingdom (which is set out in paragraphs 15 to 25) and to the social worker's report which is dealt with in paragraphs 26 onwards of the determination. So it is not as if the judge had overlooked the position of the family life within the United Kingdom.
22. The grounds of appeal in paragraphs 7 and 8 allege that the judge was wrong in his approach to Section 117D(6) and his conclusion that the appellant had family in the United Kingdom. In my judgment that criticism cannot be made out because it is clear that in the passages to which I have referred proper reference was made to the wider public interest which is a requirement of the proper consideration of Section 117D(6). The attempt at paragraph 8 of the grounds is to seek to re-argue that the appellant's youngest child's parents are both Jamaican and the child is 6 years of age and yet to start secondary education and it would be reasonable for them to leave the UK if they chose to do so. That is the point that is made in paragraph 8 of the grounds and is simply re-arguing the point that was before the judge in the hearing and which the judge considered but did not accede to. In those circumstances my view is that there may be judges who might have reached a different conclusion on the evidence but unless the Upper Tribunal can point to an error in the determination then this appeal has to fail. I hope I have set out in the preceding paragraphs of my determination that a careful analysis of the determination reveals that the judge looked at just about everything that she was required to look at. It is only her conclusion that is the subject of challenge. That was in my judgment a conclusion that was lawfully open to her. In those circumstances I conclude that the judge made no material error of law and the determination of the First-tier Tribunal Judge shall stand.
23. I do however want to say something to Mr Gouldbourne:
24. Mr Gouldbourne, I would like you to stand if you would whilst I say this. There is no doubt that your behaviour over a period of many years has been appalling behaviour. The judge pulled no punches in finding just how bad that behaviour was. You have

been, I think, exceedingly lucky on two occasions when you have come before the Tribunal in which conclusions have been reached that it would be disproportionate to remove you. Those decisions have been given with a great deal of consideration, with a great deal of care, but you must understand that your life must change; that if there is to be another occasion when you misbehave or are involved in criminal offending, there will come a stage when, notwithstanding the relationship that you have with your children or your partner or indeed with anybody else, there will come a moment when the judge is bound to say: Enough is enough. If this judge had ended her determination by saying, 'I find it would be proportionate to remove you', nothing could have been said which would have amounted to an error of law. Very wisely, perhaps, she decided that you had come to the end of your criminal behaviour. But you must, if you wish to remain in the United Kingdom and share the life with your partner and your children that you want to share, you must accept that there must be no more criminal offending. I hope you take that warning seriously. What is being said in this room is recorded. I shall have a copy of what I have said put into writing and it will be provided to you. It will also be provided to the Home Office and will go on the file in this case. Therefore, what I have just said will not be forgotten. If you have turned the corner and have become a responsible father and partner then you have a future in the United Kingdom but if you do not, you do not have such a future. I hope you understand that.

## DECISION

- (i) The First-tier Tribunal Judge made no error of law.
- (ii) The appeal of the Secretary of State is dismissed.
- (iii) The determination of the First-tier Tribunal will stand.

Date: 16 May 2018

ANDREW JORDAN  
JUDGE OF THE UPPER TRIBUNAL