



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

Appeal Number: HU/05618/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 24 September 2019**

**Decision & Reasons Promulgated
On 21 October 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**T C P
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani of Counsel instructed by Migrant Legal Action Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because it is part of the appellant's case that he fears criminal gangs in the United Kingdom and, by implication, their associates in Jamaica. Publishing his identity *could* create a risk for the appellant.

2. The appellant is a citizen of Jamaica. He was born in November 1998. He appeals against a decision of the respondent on 22 February 2018 refusing him leave to remain on human rights grounds.
3. This appeal has previously been dealt with unsatisfactorily in the First-tier Tribunal. This led to an appeal by the Secretary of State. An error of law was found and the First-tier Tribunal's decision was set aside. The Upper Tribunal directed that the appeal be re-determined in the Upper Tribunal when the appellant must prove his case. It is for this reason that, in the title above, the person seeking to remain in the United Kingdom is named, and is described as the "Appellant", and the Secretary of State for the Home Department is described as the "Respondent".
4. The appellant is subject to deportation. The appellant was convicted at the Crown Court at Woolwich of possessing a firearm with intent to cause fear or violence and was sent to Youth Offenders Institution for four years. Clearly he is liable to deportation but he has lived in the United Kingdom since he was 3 months old and he is now aged almost 21 years. It is the appellant's case that the deporting him would be a disproportionate interference with his private and family life.
5. I have read the judge's sentencing remarks and the essence of the appellant's criminality was taking with him to a public park a firearm and ammunition. He was showing off. I do not find the details of the criminal offence to be particularly important. What matters is that the offending attracted a custodial sentence of four years.
6. Although unsatisfactory for many reasons the First-tier Tribunal made sensible findings of fact which bind me. I consider below the findings that I consider to be of relevance.
7. The First-tier Tribunal Judge accepted evidence that the appellant has contact with both his parents and their respective partners and other relatives in the United Kingdom. The judge found that he is "socially and culturally integrated" into the United Kingdom and that neither the appellant nor his mother have been to Jamaica since arriving in the United Kingdom when the appellant was 3 months old. The appellant has had some modest work as a painter and wants to work in construction. The appellant's maternal grandmother and aunt live in Spanish Town in Jamaica but the appellant's grandmother has a medical condition and would not be able to look after the appellant. It was the appellant's case that his mother's relatives, other than his grandmother, spend most of their time in the USA and are not in a position to help.
8. Mr Bandegani's skeleton argument listed the findings of fact that he considered important. He added to the above that the relationship between the claimant and his mother and his father and their partners and other family were categorised as "family life" and that the appellant had not developed an independent life but still lived with his mother. The appellant had done anger management courses in prison but had

managed to lose the certificates. Spanish Town is very dangerous and the appellant would have nowhere to go in Jamaica if he were deported. The appellant's mother felt able to keep him out of trouble if he remained in the United Kingdom. The appellant identifies as "British" rather than "Jamaican".

9. Mr Bandegani also set out the appellant's immigration history. He entered the United Kingdom when he was three months old. The respondent says that the appellant entered with leave as his mother's dependant in February 1999. She applied to extend their leave but the application was unsuccessful and their leave ran out in February (or perhaps early March) 2000. Mr Bandegani said that the appellant had leave from 2012 but the leave stopped when the deportation order was made in 2016. This is supported by the respondent's "Decision to Refuse a Human Rights Claim". Importantly, whilst the appellant clearly cannot be blamed for overstaying as a child, he has not resided lawfully in the United Kingdom for over half his life.
10. I accept Mr Bandegani's points are a fair summary of the decision and I have kept them in mind.
11. I have also read the statements that were relied upon in the First-tier Tribunal. These included a statement from the appellant's father in the United Kingdom. He said that his only relatives in Jamaica were his parents. They live in Portmore which I understand from a map in the respondent's papers, to be a coastal region between Kingstown and Spanish Town. However the appellant's paternal grandmother was preoccupied caring for her husband who has dementia.
12. It has been a feature of this case that there has been concern that the appellant might have some kind of mental illness which needed to be considered. There is no evidence to show that the appellant does have serious mental health problems.
13. I have seen a psychological assessment from a Mr James Perkins (no relation to me). Mr Perkins has assessed the appellant following their contact through the charity "Safer London". Mr Perkins is a psychotherapist with appropriate graduate and postgraduate qualifications. The "measurable assessments" following an examination in June 2019 show that the appellant showed "very high" levels of stress, emotional stress, behavioural difficulties, concentration difficulties and difficulties forming relationship. The appellant achieved "slightly low" for kind and helpful behaviour. Mr Perkins concluded that the appellant was at a high risk of some kind of disorder and a high risk of behavioural disorder. However, he emphasised that this was not to a diagnosis of an illness but findings that warranted an assessment by, at least initially, a general medical practitioner. As far as I am aware no such report has been done. I discount there being any question of a significant mental illness that ought to be considered. There were perfectly proper reasons

to be concerned which had been identified but that is as far as the evidence goes.

14. There is a letter from the probation officer dated 19 September 2019. It is largely positive and refers to the appellant having “attended most probation appointments as instructed” and having maintained good communication throughout the supervision period. The appellant is now removed from Lewisham to a different part of the country and there have been no “police incidents” that have come to the attention of the probation officer.
15. There was also a statement from a Ms Melanie Nelson who gave evidence before me. Her statement is dated 24 September 2019. Ms Nelson describes herself as a “personal adviser”. Her role was to assist the appellant to find employment or education and integration into the community. She was frustrated because the appellant is not able to engage in many activities because of restrictions arising from his immigration status. I note that the appellant and his family were removed from their former home on the advice of the police who feared for their safety. Ms Nelson gave evidence before me and adopted her statement. She said that the appellant’s presently lives somewhere that she believed that was safer for him.
16. There was also a signed additional statement from the appellant. This confirmed his reasons for removing which are, essentially, that the police visited him and advised him to relocate because his life was in danger. He said that “the Trident Gang Unit of the Met Police came to see me at home and told me that my life was in danger my name was mentioned during shootings and that someone had been shot when they were looking for me”.
17. The appellant said he had not been charged with any crime since coming out of prison. He concluded by saying in his statement that he would like to continue his involvement with Safer London. He had developed an understanding of how he should behave. He would like to get a driver’s licence and start working.
18. There is an unsigned statement in the bundle from someone identified as the appellant’s partner. She did not give evidence and I attach no weight to the alleged relationship. It was never suggested that the appellant has established a home with a partner. Before removing to a different part of London he lived with his mother.
19. I am satisfied that the people who gave evidence before me, including the appellant, gave truthful evidence in the sense that they believed what they said. It does not follow that any fears that were expressed are well founded.
20. The appellant also relied on a report of Yvonne McCalla Sobers dated 23 September 2019. Ms Sobers identifies as a human rights activist, writer,

educator, and management consultant. She said that a “major focus of my work is lobbying and advocating for changes in Jamaica’s justice and security systems especially as regards the most vulnerable”.

21. Ms Sobers said that she is familiar with the Jamaican justice system because of her work, experience and residence in Jamaica.
22. I regard her report with a degree of caution. I accept that she is honest in the sense that she is advancing an opinion she holds sincerely. I also accept that she is informed by reason of her work and her report is cross-referenced to independently published sources. However, although she claims to be writing as an expert she does not claim to be a sociologist, anthropologist or political scientist and she does not claim to have published articles in peer reviewed learned journals. I do not regard her as someone who is trained in objectivity or professional detachment but neither do I regard her as a charlatan or rabble rouser. I am cautious about her objectivity not her integrity.
23. It is, I find, important to consider exactly what she says. Her concern is that people who have been deported from the United Kingdom will be spotted because of their foreign accents and general conduct because they are new arrivals to the area where they live. Deportees in Jamaican society regarded as the lowest of the low. They are rejected by the established community because they have squandered an opportunity of doing well in a rich country and they will often be assumed to be some kind of pervert or offender of a particularly repugnant kind. She researched examples of people who had been deported and had not done well and were frightened of continuing to live in Jamaica. She drew attention to the particularly troubling statistic that during the fourteen months preceding May 2019 five men who had been deported from the United Kingdom were killed.
24. She also speculated that the appellant would be the victim of homophobic anger and would be vulnerable to corruption by gangs. This concern arises from an incident in the Appellant’s past involving an allegation of sexual misconduct. There was sufficient evidence to warrant a police investigation but no charges were brought. The appellant is not a sex offender and I see no point in giving details of allegations which were not substantiated. There is no reason for the appellant to be suspected of such behaviour. If challenged he can say truthfully that he has one criminal conviction for a firearms offence.
25. Ms Sobers also suggested there would be no effective protection because the police could not be trusted. Spanish Town, where the appellant is thought to have a relative is a particularly unattractive place to go.
26. I reflected on these things. The difficulty is that although there may well be accurate reports of what happened in particular cases it is difficult to look at the report and distil anything that will enable me to predict the risk generally. For example, I know nothing about the five people who had

been deported and were then murdered. (I assume they were murdered; the report refers to their being “killed”). I do not know, for example, if they went back expecting trouble with gangs and looking for protection on a specific basis which they did not get, or if they had been involved in gangs in the United Kingdom and that was one of the reasons they got into trouble and one of the reasons they were removed. The statistic is too general to be helpful although it is a shocking number. I do not find the report a helpful indication of what is reasonably likely to happen to this appellant.

27. Mr Lindsay produced two Home Office documents, one a country background note on Jamaica dated September 2019, and the other a Country Policy and Information Note on Jamaica entitled “Fear of organised criminal groups”.
28. Mr Lindsay relied particularly on the CPIN Report. This noted that although the murder rate is high, most murders are committed against those involved in gang-related activities. The report concluded that “in general, a person who is not involved in gang-related activity will not be at real risk of serious harm or persecution”. There is a general willingness by the state to provide effective protection. There might be reasons to doubt the effectiveness of that protection in the case of a person who is targeted specifically. The country background note refers to the high level of corruption amongst the Jamaican police but that is not a difficulty unless there is some reason to think that the appellant will attract enemies.
29. Mr Lindsay’s submissions were, understandably, predictable. He referred to the very high degree of public interest in deportation. He reminded me, uncontroversially, of the requirements of Section 117C(6) which provides:

“In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2”.
30. Exception 1 applies where a person has been lawfully resident in the United Kingdom for most of his life, is socially and culturally integrated into the United Kingdom and there would be very significant obstacles to his integration into the country to which he will be deported, and Exception 2 applies in the case of parents and life partners. The appellant has not been lawfully resident in the United Kingdom for half of his life. He is not a parent and does not have a partner.
31. It is the thrust of Mr Bandegani’s submissions that “very compelling circumstances” exist here.
32. He also maintained that there are “very significant obstacles” to the appellant’s integration into the country to which he would be deported.
33. Clearly these concepts are different. The “very significant obstacles” test goes to the difficulties people might have in establishing themselves in a

different country but “very compelling circumstances” includes all of the reasons why a person should not be removed. I doubt if there are “very significant obstacles” that do not amount to “very compelling circumstances” but clearly there can be “very compelling circumstances” that are not “very significant obstacles”.

34. I do not agree that there are “very significant obstacles”. The appellant has not visited Jamaica since he left when he was about 12 weeks old. He does not know his grandmothers or his aunt. I cannot assume that he has any relatives who have either the inclination or ability to help him but he is physically fit and willing to work. He speaks English which is commonly spoken in Jamaica. He is not incapacitated by poor mental health. I accept the evidence that he is likely to attract some opprobrium because he will be identified as someone who has been deported but I do not accept that he will be ostracised as a sex offender. I accept too that he will be vulnerable to corruption but not that he cannot be expected to resist inducements from the criminal community. He is an adult and will have to find the moral fibre to behave.
35. I have a lurking concern about how he might be treated by criminal gangs in Jamaica. There is independent evidence that he had to remove in the United Kingdom on police advice because his life was at risk. I do not have the figures but it must be only a very small percentage of the population of the United Kingdom that receives such advice and I am aware of the risks faced by people who return to Jamaica who have enemies in gangs because it is explained in the Country Policy and Information Note on Jamaica dated August 2019. However it is also clear that some people with a well-founded fear of gangs can expect protection in Jamaica. Although the appellant made clear that the police advised him to change his address he has not laid the evidential foundation to support a finding that there is a real risk of his troubles with gangs in the United Kingdom following him to Jamaica and, as an abundance of caution, I have ordered anonymity in this appeal. In short, there is nothing that give substances to my lurking concern.
36. I do not accept that there are “very significant obstacles” in the way of reintegration.
37. However, even if I am wrong about that it does not assist the appellant. There have to be “very compelling circumstances, over and above” those described in the Exceptions to satisfy the requirements of Part 5A.
38. Mr Bandegani relies on a matrix of facts to establish the “very compelling circumstances” and starts with the fact that the appellant has spent nearly all of his life in the United Kingdom. This may well be a telling factor in an application for leave to remain on human rights grounds and was, no doubt, a significant feature in his application for leave in 2012 being successful. The problem for the appellant is that he is a foreign criminal who has been punished with a sentence of detention for at least 4 years. I do not have to explain why it is in the public interest to deport him

because Parliament says that it is and that determines my approach. Further, Parliament has decided that the more serious the offence the greater the public interest in deportation. The offence involves the possession of a firearm in a public place. That is a serious matter as reflected in the sentence of 4 year's detention imposed on a young person with no previous convictions. There is nothing in the offence that diminishes the imperative of deportation. It follows that there is a strong interest in his being deported. If I gave great weight to his having lived for nearly all of his life in the United Kingdom then I treat him as if he was not a foreign criminal but a British national and that, I find, would be incompatible with the clear requirements of Part 5A.

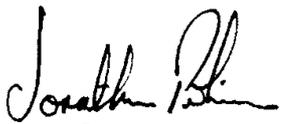
39. I accept that the appellant's deportation will interfere with the "private and family" lives of his father and mother and the interference will be at the "family" rather than "private" life end of the continuum but not that such interference, even with other factors, will be disproportionate.
40. I accept too that the appellant seems to have benefitted from the support given him by the probation service and by Safer London. Everything is too recent to conclude that he has turned around his life but he is doing the right things. There are reasons to suggest that he will not be in trouble again in the United Kingdom. He has removed from the bad influences and has avoided further conviction. It will be much harder for him to continue to behave in Jamaica where he will not get the support that has benefitted him in the United Kingdom.
41. If the worth things postulated by Ms Sobers actually happened the case might be made out, albeit tragically too late. If everything that could go wrong did go wrong then the appellant could be in trouble but I am not able to discern from this evidence, notwithstanding Mr Bandegani's realistic and thoughtfully put submissions, anything that would support a finding that there is a real risk of the very serious harm which would be necessary to establish "very compelling circumstances, over and above ..." that would permit me to allow the appeal with reference to.
42. I pause and reflect on the evidence before me. I confirm that I have read all of the papers including the bundles prepared for the hearing before the First-tier Tribunal and the Supplementary Bundle and both skeleton arguments prepared by Mr Bandegani. This appeal concerns a young man who has committed a serious criminal offence for which he has been punished by the law. He has been in the United Kingdom for most of his life. It is not his fault that he overstayed his leave when he was a baby and he has had leave since 2012. His life in the United Kingdom has been problematic and the support given him following his conviction appear to have done him good.
43. He has been sent to custody for four years. I do not accept that his alleged lack of support and length of time in the United Kingdom even cumulatively amount to "very compelling circumstances". Since the deportation order was made, or indeed since he was sent to prison, he

could have returned to Jamaica at any time. He cannot be allowed to make much of the fact that he has not been able to work since the deportation order was made. He has no status in the United Kingdom but he does not have to remain in the United Kingdom.

44. It is to the appellant's credit that he has not been convicted of anything since he has come out of custody. He has not been out of custody for a long time but it is often a dangerous time for people when they have just come out of prison. Clearly, his bad behaviour has caused everyone involved in his life to reflect on what has been going on, it is unsurprising that people things could have been done better to support him but these are not anyway near "very compelling circumstances". They are, more realistically, what happens to someone who has been sent away.
45. I have little doubt that if the appellant were allowed to remain in the United Kingdom people will continue to support him and there are reasons to think that he will continue to keep out of trouble and become an industrious citizen and contribute to society. Certainly, he has expressed resolve to do that and there are signs that he will do it but that is as far as it goes. All resolutions towards good behaviour can go with him to Jamaica. What cannot go with him is the support mechanisms that have been developed in the United Kingdom but he is not entitled to those as a human right.
46. The difficulty he faces is the very demanding tests imposed by parliament. They are not discharged here. I must and do dismiss this appeal.

Notice of Decision

47. The appellant's appeal is dismissed.



Signed

Jonathan Perkins
Judge of the Upper Tribunal

Dated 17 October 2019



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

Appeal Number: HU/05618/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 27 November 2018**

Decision & Reasons Promulgated

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Before

**THE HONOURABLE LORD MATTHEWS
SITTING AS AN UPPER TRIBUNAL JUDGE
UPPER TRIBUNAL JUDGE PERKINS**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

T C P

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondent: Mr A Bandegani, Counsel instructed by Migrant Legal Action

REASONS FOR FINDING ERROR OF LAW

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal (First-tier Tribunal Judge Chana) allowing the appeal of the respondent, hereinafter the claimant, against the decision of the Secretary of State to deport him.
2. The decision of the First-tier Tribunal is clearly wrong in at least two important respects. First, it has regard to the appeal provisions of the

Immigration Rules in an old version of paragraph 364 which created the “exceptional circumstances test”. It was deleted from the Rules in 2012 and really should not be mentioned in a determination promulgated in 2018.

3. Second, and even more remarkably, the decision of the First-tier Tribunal seems to have no regard whatsoever to the requirements of part 5A of the Nationality, Immigration and Asylum Act 2002, which is the statutory regime which judges are required to take into account when engaged in an Article 8 balancing exercise. We have no hesitation whatsoever in setting aside the decision of the First-tier Tribunal and record that Mr Bandegani made it clear that he could not defend the decision.
4. We have given some thought about the best way to proceed in this matter.
5. Certainly there are findings of fact about the claimant and his family which are helpful to the claimant. We make no particular comment about those except to say that they are unchallenged findings and on the principles set out in the well-known case of *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka* * [2002] UKIAT 00702, they would be a necessary starting point.
6. We have decided that the best approach on this occasion is to keep the matter in the Upper Tribunal and it will be listed in due course.
7. We have noted that Mr Bandegani asked for time to gather further evidence but we make no ruling on that application at this stage. It may well be that the ordinary listing processes will give him sufficient time but if they do not then we encourage him to make a detailed application because we do understand the potential importance of a proper medical diagnosis in this case and proper evidence of the considerable difficulties that the claimant says he would face in the event of return to Jamaica, although we also note these are things he has had time to consider.
8. We set aside the decision of the First-tier Tribunal and we direct the case be determined again in the Upper Tribunal on a date to be fixed before any panel.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 27 February 2019