



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

Appeal Number: HU/08475/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 January 2019**

**Decision Promulgated  
On 29 January 2019**

Before:

Lord Beckett sitting as an Upper Tribunal Judge  
Upper Tribunal Judge Gill

Between

The Secretary of State for the Home Department                      Appellant

And

Rohan Roger Scott    Respondent  
**(ANONYMITY ORDER NOT MADE)**

Representation:

For the Appellant:                      Mr D Clarke, Senior Presenting Officer.

For the Respondent:                      Ms K McCarthy, of Counsel, instructed by Powell Spencer &  
Partners Solicitors.

**DECISION AND REASONS**

1. The Secretary of State has been granted permission to appeal against the decision of Judge of the First-tier Tribunal Iqbal who, in a determination promulgated 29 March 2018 following a hearing on 12 February 2018, allowed the appeal of Mr Rohan Roger Scott (hereafter the "claimant"), a national of Jamaica born on 22 November 1996, on human rights grounds (Article 8) against an automatic deportation order made on 1 December 2016 under the provisions section 32(5) of the UK Borders Act 2007.
2. Deportation proceedings were commenced against the claimant following his conviction on 16 September 2016 at Harrow Crown Court of an offence of possession

with intent to supply a class A controlled drug, namely, cocaine, for which he received on 23 September 2016 a sentence of 21 months' imprisonment.

3. The claimant first arrived in the United Kingdom on 1 December 2002, aged 6 years. He was granted leave to enter as a visitor for six months, until 1 June 2003. He applied, in-time, for indefinite leave to remain. On 31 October 2003, he was granted indefinite leave to remain.
4. It was not in dispute before the judge that the claimant was a "foreign criminal" who fell within para 398 (b) of the Immigration Rules by reason of the fact that he had received a sentence of imprisonment of 21 months, this being a sentence of at least 12 months and less than four years.
5. The judge considered para 399A of the Immigration Rules. Para 399A provides:  
399A. 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.
6. It was accepted before the judge on the Secretary of State's behalf that the claimant had been lawfully resident in the United Kingdom for most of his life. However, the Secretary of State disputed that the claimant satisfied the requirements of para 399A(b) and (c).
7. The judge found that the claimant satisfied para 399A(b) and (c) and therefore allowed the appeal.
8. In relation to para 399A(b), the judge considered the evidence at paras 27-31 of her decision and concluded, at para 32, as follows:  

"I find on balance that the conviction and the offence for which he was convicted, does not in all the circumstances, before me detract from the fact that given he has been here since 2003, with indefinite leave to remain, through the schooling system and developed young adult through his formative years, such that he has demonstrated complete integration both socially and culturally in his life in the United Kingdom from the time he has been here."
9. The grounds do not challenge the judge's finding that the claimant was socially and culturally integrated in the United Kingdom. They only challenge her finding that there would be very significant obstacles to his integration into Jamaica.

#### The judge's decision

10. The judge gave her reasons for her finding that there would be very significant obstacles to the claimant's integration into Jamaica at paras 34 to 42 of her decision. At para 34 of her decision, she quoted paras 36-37 of decision of the Upper Tribunal in Treebhawon and Others (NIAA 2002 Part 5A – compelling circumstances test) [2017] UKUT 00013 (IAC). At para 37 of Treebhawon, the Upper Tribunal quoted from the judgment of the Court of Appeal in SSHD v Kamara [2016] EWCA Civ 813 as follows:

"It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a Court or Tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a 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."

11. The judge also reminded herself of the guidance in MK (Sierra Leone) [2015] UKUT 223, at para 46, concerning the other limb of the test, i.e. "*very significant obstacles*", as follows:

"The other limb of the test, "very significant obstacles", erects a self-evidently elevated threshold, such that mere hardship, mere difficulty, mere hurdles and mere upheaval or inconvenience, even where multiplied, will generally be insufficient in this context. The philosophy and reasoning, with appropriate adjustments, of this Tribunal in its exposition of the sister test "unduly harsh" in MK (Sierra Leone) [2015] UKUT 223 at [46] apply."

12. At para 35, she said that she had also considered the Home Office "*Criminality guidance*" at page 31 which she then quoted. At para 36, she said that she heard evidence from the claimant and his mother as to what his circumstances might be on return to Jamaica. The judge then set out what she considered to be the relevant aspects of such evidence, at paras 36-39, as follows:

"36. [The claimant] made clear that he had no immediate relatives in Jamaica to turn to and although he had a 72-year-old grandmother who had a two bedroom house, she was living with her daughter who had recently separated from her husband and another cousin and therefore there was no room for him to live there. Further that he was not really in touch with any family members as it was very difficult to keep in regular communication however, he did know that his mother was in communication with his grandmother.

37. [The claimant] confirmed he had travelled back to Jamaica, once in 2007 when he visited with his father's relatives, but since the permanent separation between his mother and father, when he was aged around 15 years old, he had no real contact with them. When he went for the Easter break with his mother and siblings in 2015, they stayed with an aunt and because of lack of space at night, his cousins would sleep at the neighbour's house and [the claimant] and his siblings and mother would sleep in their room. His mother also had one sister in the US and one other who lived in Canada.

38. [The claimant] had no strong ties to Jamaica having not lived there since he was a preschool child. [The claimant's] distant family in Jamaica would not be in a position for him to help him make a life for himself in Jamaica and certainly given the stage at which [the claimant] had reached in his life, he had not developed any skills or financial resources that could assist his life in Jamaica.

39. [The claimant] in evidence before me gave detailed evidence that he intended to pursue a career as a personal trainer and in fact had already developed a number of links and training his friends unofficially, until he was able to complete such training. It was put to him whether he could do such training and then be employed in this field in Jamaica however, [the

claimant's] evidence was that it would not be easy as such a career was more of a luxury."

13. The judge then set out her assessment and findings on the evidence before her, at paras 40-42, as follows:

"40. I find in the context of [the claimant's] background when looking at the relevant considerations and guidance, he is familiar with the language and the culture in the Jamaica, having visited on two occasions for a very short holiday period. However, he first arrived in the United Kingdom in 2002, aged 5 years old and whilst, there is some family in Jamaica, the evidence before me is that he has no real bond with either his maternal aunt, who is going through marital difficulties or his grandmother who is 72 years old. In these circumstances, I am satisfied on balance that he would not have the requisite support required to integrate in life in the Jamaica.

41. Although, [the claimant] has now turned 21, I find on balance he has always lived in the remit of his own family unit with his mother and two siblings, save for his time in prison. He has not lived an independent life and whilst one could expect someone at the age of [the claimant] to fend for themselves, I find that this [claimant] is indeed a vulnerable individual having been the victim and certainly a witness to domestic violence at the hands of his father against his mother and himself as confirmed by the report from Ealing Social Services. I have already noted the probation report and the Judge's sentencing remarks are certainly weighty factors with reference to consideration of [the claimant's] circumstances and ability to rehabilitate.

42. I have also kept in mind the deportation of foreign criminal is in the public interest and that the public interest in an individual's removal is not the same in each case and will vary depending on the seriousness of the offence: s.117C (1) and (2). However, on the cumulative facts of [the claimant's] case, as I have accepted above, I find that on balance that he would face very significant obstacles on return back to Jamaica and given that the test under Exception 1, of the Immigration Act 2014 Part 5A Section 117C(4) is mirrored in the immigration rules, I find the public interest does not require the deportation of [the claimant]."

14. It is therefore plain that the judge found the evidence of the claimant and his mother credible.

#### The Secretary of State's case

15. Mr Clarke did not pursue paras 5-8 of the grounds. These relate to the judge's finding that the claimant presented a low risk on return; that the judge had failed to take into account the various facets of the public interest pursuant to the Court of Appeal's judgments at para 15 of OH (Seria) v SSHD [2008] EWCA Civ 694 and para 20 of Danso v SSHD [2015] EWCA Civ 596.

16. In our view, Mr Clarke rightly did not pursue paras 5-8 of the grounds, in view of the Supreme Court's judgment in KO (Nigeria) and others v SSHD [2018] UKSC 53.

17. The remainder of the written grounds may be summarised and follows:

- (i) The reasons provided by the judge were not sufficient to outweigh the very compelling public interest in his removal.

- (ii) The judge failed to consider the threshold explained in Bossade (ss.117A-D – interrelationship with Rules) [2015] UKUT 00415 (IACC) and the guidance at para (III) of the judicial head-note of Treebhawon as to the meaning of “*very significant hurdles*”.
  - (iii) The judge noted, at para 32 of her decision, that the claimant had been schooled in the United Kingdom. According to para 31, the claimant had benefitted from his time in the cadets where the judge said that the claimant had learnt how to uphold the law (para 31). The claimant is familiar with the life and culture in Jamaica, having visited Jamaica. He has various family members in Jamaica (para 37 of the judge’s decision) and there was no suggestion that he was dependent on his family in the United Kingdom. The grounds therefore contend that there is nothing which elevates the claimant’s situation out of the ordinary such as to satisfy the “*very significant hurdles*” test.
18. At the hearing, Mr Clarke accepted that the judge had reminded herself of the guidance in Kamara and Treebhawon. However, he submitted that, given the evidence before the judge at paras 36-39 of her decision, her findings at paras 40-42 were wholly inconsistent with Kamara. Mere inability to obtain a job is insufficient to satisfy the relevant threshold. He submitted that the judge overlooked the capacity of the claimant to become an insider given that he is familiar with the language and culture in Jamaica and that he does have family in Jamaica. He submitted that, given the evidence that was before the judge, her finding that there would be very significant obstacles to the claimant’s integration into Jamaica is perverse.
19. Without meaning any disrespect, we do not summarise Ms McCarthy’s submissions, as we shall incorporate them into our assessment.

### Assessment

20. We shall deal first with the written grounds, summarised at our para 17 above.
21. Point (i), that the reasons provided by the judge were not sufficient to outweigh the very compelling public interest in his removal, cannot survive the judgment of the Supreme Court in KO (Nigeria) which determined, at para 21, that Exception 1 is a self-contained assessment which does not involve a further balancing against the public interest.
22. Point (ii) ignores the fact that the judge specifically quoted the guidance as to the meaning of “*very significant obstacles*”, at para 34 of her decision (see our para 11 above). This is the same guidance relied upon in the written grounds.
23. In relation to point (iii), the contention that there was no suggestion that the claimant was dependent on his family ignores the judge’s finding that the claimant has always lived within the remit of his own family unit, save for the time that he was in prison, and that he has not lived an independent life. The judge considered the remainder of the evidence relied upon in the grounds.
24. This is the reason why Mr Clarke put the Secretary of State’s case the way he did at the hearing, i.e. that, although the judge did direct herself to the applicable guidance as to meaning of “*very significant obstacles*” and “*integration*”, her finding that there would be very significant obstacles to the claimant’s integration into Jamaica is inconsistent with the guidance or her conclusion was perverse.

25. Before we deal with Mr Clarke's submission that the judge's finding that there would be very significant obstacles to the claimant's integration into Jamaica was inconsistent with the guidance in the case-law or that her conclusion was perverse, we should say that we are of the view that his submission, that the Court of Appeal had said in Kamara that mere inability to obtain a job is insufficient, is based on a misreading of what the Court of Appeal said in Kamara. In this regard, the Court of Appeal said that the term "*very significant obstacles to integration*" is not confined to the mere ability to find a job or to sustain life while living (see the first sentence quoted at our para 10 above). This runs contrary to Mr Clarke's submission, that mere inability to obtain a job is insufficient.
26. We do not accept Mr Clarke's submissions that the judge overlooked the capacity of the claimant to become an insider to be able to integrate in Jamaica. It is plain from the judge's decision that that was the precise issue she considered, the capacity of the claimant to become enough of an insider to be able to integrate into Jamaica.
27. It may be that the claimant is the beneficiary of a generous finding by the judge. However, given that she specifically reminded herself of the meaning of "*very significant obstacles*" and "*integration*", we are simply unable to conclude that her conclusion is inconsistent with such guidance and/or that her conclusion is perverse. In particular, we should say that she took into account the fact that he had visited Jamaica twice and found that he was familiar with the language and culture in Jamaica. However, she also noted the evidence that the two visits were short holidays. She noted that he had distant relatives in Jamaica but also found that they were in no position to give him the requisite support to integrate into life in Jamaica. She also took into account that, although the claimant is 21 years old, he has always lived within the remit of his own family save for his time in prison and that he had not lived an independent life. She said that, whilst one could expect someone of the claimant's age to fend for themselves, she found that that he was a vulnerable individual having been a victim of domestic violence and also a witness to domestic violence.
28. In all of the circumstances, we concluded that the Secretary of State's case amounts to no more than a disagreement with the judge's reasoning and findings. We are satisfied that the judge did not err in law. Her decision therefore stands.

### **Decision**

The decision of Judge of the First-tier Tribunal Iqbal did not involve the making of any error of law.



Upper Tribunal Judge Gill

Date: 24 January 2019