



IAC-FH-CK-V2

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06112/2017**

THE IMMIGRATION ACTS

**Heard at Field House
On 15 June 2021**

**Decision & Reasons
Promulgated
On 13 July 2021**

Before

**UPPER TRIBUNAL JUDGE ALLEN
DEPUTY UPPER TRIBUNAL JUDGE COTTON**

Between

**KEVIN LANDU MANSENDE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Z Besso, instructed by Irving & Co Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Zambia. He appealed to the First-tier Tribunal against a decision of the Secretary of State of 4 April 2017 refusing a human rights claim.

2. That appeal was dismissed by the First-tier Tribunal Judge. The appellant sought and was granted permission to appeal and, following a hearing on 3 December 2020, Upper Tribunal Judge Allen found errors of law in the judge's decision and the matter was listed for a re-hearing in respect of the findings of the judge which had been found to be legally flawed. As will be seen below, however, certain of the judge's findings were preserved.
3. This decision should be read together with the error of law decision as that sets out in some detail the earlier decision of the First-tier Tribunal Judge. As regards the appellant's background, it is relevant to note that he was born in the United Kingdom in 1994, his mother having been in the United Kingdom since 1992, initially as a visitor and subsequently as a working holidaymaker. The appellant and his mother were granted indefinite leave to remain under the long residency concession, in 2003. In 2009 the appellant returned to Zambia to attend his mother's funeral.
4. Between 5 March 2008 and 3 June 2016 the appellant received nineteen convictions for 46 offences in the United Kingdom, as set out in his PNC record. These include offences of robbery, possession of crack cocaine, heroin and cocaine with intent to supply, dangerous driving, violent disorder and wounding/inflicting grievous bodily harm. He also received three further convictions between 16 November 2016 and 3 January 2018 which related to offences committed whilst serving his prison sentence. Most recently, it appears that he pleaded guilty at Bromley Magistrates' Court on 13 November 2019 to an offence of possession of a class A drug (cocaine) – one wrap of cocaine, and pleaded not guilty to charges of obstructing/resisting a constable in the execution of his duty and driving without insurance. We have not been told what the outcome of the trial, if there was a trial, in relation to those matters was.
5. The most serious offences for which he was convicted were: the conviction of 26 October 2012 of dangerous driving, driving while disqualified, possession with intent to supply of a class A drug (crack cocaine) and failing to comply with the requirements of a youth rehabilitation order, for which he was sentenced to 34 months' detention at a Young Offenders Institute and the 15 January 2016 conviction of violent disorder and wounding/inflicting grievous bodily harm, for which he was sentenced to 27 months' imprisonment on each count to be served concurrently.
6. The judge in her decision noted the terms of the decision under appeal, including the fact that a deportation order had been made against the appellant as that was challenged. The judge heard evidence from the appellant, his aunt, father, other relatives and girlfriend and considered a psychological report of Lisa Davies, a registered psychologist, and a country expert report of Professor Aguilar. She did not find the appellant to be a credible witness. There was no challenge to her adverse credibility findings. She was not satisfied that the appellant or any of the witnesses had been consistent or credible as to the lack of any connections or family in Zambia. The judge concluded that the appellant's mother had more

relatives in Zambia at the time that she was visiting in the past and was satisfied that the witness was not consistent as to family members or connections in Zambia and they were not credible as to any remaining family members in Zambia. She did not accept the evidence of the appellant's aunt, Ms Kunda, that her brother had passed away nor that she did not have remaining siblings in Zambia nor that the appellant did not have remaining family members in Zambia.

7. The judge accepted that the appellant has had a dysfunctional family life and that his mother had died in 2009. He had spent many of his formative years in custody and received inconsistent discipline from his parents/family members. He was on a RESOLVE Programme in 2019 and had expressed to Ms Davies, the registered psychologist, the resolve to live an offence-free life for himself in the future. However, it seems that despite this resolve he had re-offended, the judge noting the plea of guilty to possession of cocaine in 2020. She considered that it was evident that he was continuing to obtain and use drugs as evidenced by the guilty plea and that there was no supportive evidence that he had rehabilitated or that he presented a low risk of re-offending in the future. She said that whilst there were no charges relating to gang-related matters or supply of drugs, he had re-offended and was in possession of a class A drug, which was not consistent with the reduction in the assessed moderate risk of re-offending. He was not credible and overall she was not persuaded that he was genuinely rehabilitated or remorseful of his past offending. As a consequence, she was not satisfied that he had shown that he would face very significant obstacles to his integration in Zambia. She accepted that he did not speak Bemba, but given that English was the official language in Zambia she was not persuaded that he would not be able to integrate into Zambia due to his lack of knowledge of Bemba.
8. The judge was not persuaded by the country expert report of Professor Aguilar. She considered this also in the context of very significant obstacles. She found flaws in the report in that the expert had not been in Zambia since the 1990s, certain of his conclusions were very vague and not supported or evidenced by any research or contemporary document relating to the treatment of Zambian nationals brought up outside Zambia and the expert did not appear to have taken into consideration that the appellant was brought up by his Zambian mother and was close to other Zambian relatives who have returned to Zambia in recent years. Carrying out a broad evaluative assessment of the appellant's situation and circumstances, and bearing in mind relevant case law, the judge was satisfied that he was enough of an insider to Zambian culture, having family members there and having been brought up by a Zambian mother and having been there himself in 2009, for him to be able to integrate properly into Zambia. He did not have a diagnosed mental health condition which could prevent his integration and she was not satisfied that he did not have extended family there nor that he would not have a reasonable opportunity to be accepted in Zambia as a young male Zambian national of working age and fitness to work. She found that it was likely that he would be able to carry out unskilled manual jobs and he

would be able to study or carry out vocational training in Zambia if he wished to improve his skills.

9. The essential flaw in the judge's decision, as found in the error of law decision, was that she erred with regard to her approach to the issue of the appellant's integration in the United Kingdom. In effect, she failed to take into account, when concluding that the appellant was not integrated into the United Kingdom, that he had lived in the United Kingdom for his entire life, and had the relationships he had with his family and girlfriend which had been accepted, and also erred in basing her findings on severance of integration purely on his offending and failing to consider the extent to which that behaviour broke the social and cultural ties he had formed during his childhood. It was concluded therefore that that challenge to the decision was borne out and therefore, since the judge's reasoning on integration was factored into her assessment of whether or not there were very compelling circumstances that existed such as might justify the allowing of the appeal under Article 8 outside the Rules she had erred in law in that regard also.
10. However, no error of law was found in respect of her findings on the expert report and, as noted above, there was no challenge to the adverse credibility findings. As a consequence, her findings with regard to the expert evidence in the context of very significant obstacles to the appellant's integration to Zambia were preserved and will form part of our consideration in this appeal.
11. In her submissions Ms Besso argued that in effect it had been found at paragraph 31 of the error of law hearing that the appellant was integrated in the United Kingdom. He had lived in the United Kingdom all his life and had his relatives and his father and aunt and his girlfriend and all had given evidence at his appeal. Not all the evidence had been accepted, but the fact of the relationships and that they were extant at the time of the appeal were accepted. Those relationships were not said to have been destroyed by the appellant's imprisonment. His whole social identity had been forged by being in the United Kingdom. The Tribunal had all the witness statements and reliance was still placed on them. The only live issue was that of whether there were very significant obstacles to the appellant's return to Zambia and the consideration of Article 8 outside the Rules.
12. Ms Besso provided a document from Urban MBA, The University for Street Entrepreneurs which was supportive of the appellant and referred to him having volunteered for five to fifteen hours a week. This evidenced that he had taken steps to do something useful and progressive with his time. It was of course limited in terms of the work he could do, given his prison history, but he was doing something relevant in the community and that was relevant to integration. The guidance in CI (Nigeria) [2019] EWCA Civ 2027 was of significance in this regard.

13. The appellant had been in the United Kingdom lawfully for all his life. His early life had been affected by his mother's illness and lack of parental support. Pages 36 to 38 of the bundle evidenced the involvement of Social Services in his life. This had always been in the context of the United Kingdom. His formative years were spent in the United Kingdom with his mother and with Social Services.
14. It was true that he had a long offending history, but there was no evidence of that disrupting his identity in the United Kingdom or his strong relationships. At the most recent hearing, evidence provided attested to the strength of the relationships and supported his claim to remain in the United Kingdom.
15. With regard to the issue of very significant obstacles, the appellant had no knowledge of Bemba and had never lived in Zambia for any significant period of time and hence there were very significant obstacles to his integration into that country. No further evidence had been produced in respect of the expert report, which the judge had not accepted as assisting.
16. With regard to Article 8 outside the Rules and whether there were circumstances over and above those set out in paragraphs 399 and 399A, it was argued that the appellant had had a difficult early life with his mother's illness and a lack of parental support. The document put in today showed an effort on his part to engage his time usefully. If not for his family background he would not be in this position now as he would have been registered as a British citizen and would not have been able to be deported. The Tribunal was asked to take all those circumstances into account as amounting to circumstances over and above those set out in paragraphs 399 and 399A.
17. In her submissions Ms Cunha relied on the deportation decision of 4 April 2017. She referred to paragraphs 62 and 63 of CI (Nigeria). There needed to be an appreciation of the length and quality of the residence beyond the criminality. It was the case that social and cultural integration could be broken by criminality as had been held in Binbuga at paragraph 57. This was compatible with what was said in CI. The relationships had all been formed in the United Kingdom but nevertheless the offending was a factor. The appellant clearly had a pattern and history of offending and it was persistent offending which had got worse. This was relevant to integration in particular. It was accepted that he had had a problematic upbringing, with the early death of his mother, but he was also in foster care, nevertheless all factors were to be considered together. Integration was fact-specific. There had been a lack of engagement with his schooling and he had not been integrated despite the length of time in the United Kingdom.
18. It was argued that in any event there were not very significant obstacles to the appellant's return to Zambia. The guidance in Kamara [2016] EWCA Civ 813 was relevant, setting out as it did at paragraph 14 the test of a

broad evaluative judgment requiring 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. More recently, as had been said in AS [2017] EWCA Civ 1284, it was necessary for there to be shown to be more than difficulties and discomfort in returning. It was a heightened threshold, especially with a persistent offender. The guidance in Binbuga at paragraphs 40 and 41 was also relied on. The appellant accepted that he had returned to Zambia for his mother's funeral and did not say she did not have family there and that there were no integrative ties there. He had returned there with his aunt for his mother's funeral. He had said he did not know family members in Zambia and it was unclear whether he had stayed in his aunt's house but he was able to access accommodation there. There was no evidence to say he did not have family who could assist his integration.

19. Little weight should be paid to the language issue, bearing in mind what had been said by the judge and in the error of law decision, noting that the judge, who had observed that English was the official language of Zambia. He would be able to attend church in Zambia and play football there. There was no evidence as to why he could not do the kind of social work he was doing in the United Kingdom in Zambia. The extended family member who had put in a witness statement did not say that the family did not exist. As regards the appellant's lack of skills or specialist qualifications it was true in the United Kingdom that he was able to get a job and being a repeat offender would be detrimental whereas he would be starting afresh in Zambia. He had not shown that he was in bad health and though the social worker identified historical risk factors it had not been shown that he had health problems requiring medication or that he needed family in the United Kingdom for his mental health. Little weight should be attached to what was said by the psychologist concerning the risk factors and family breakdown and the causes of his crimes. He had had his uncle as a figure in his life even if no father. He had lost his mother when he was young.
20. With regard to his offending, the PNC had not been provided but it was said that albeit that he had been in prison and had sentences including 27 months he had still been convicted of a further offence on 16 November 2016, which was indicative of his lack of remorse and integration. The very compelling circumstances test was a very high threshold and there was no evidence of that nature provided. The appeal should be dismissed.
21. Ms Besso had no points to make by way of reply.
22. We reserved our decision.

Discussion

23. We consider first the issue of social and cultural integration in this case. In the case of an appellant such as Mr Mansende, it is clear from section 117C of the Nationality, Immigration and Asylum Act 2002 that in a case of a foreign criminal such as him, who has not been sentenced to a period of imprisonment of four years or more, the public interest requires his deportation unless Exception 1 or Exception 2 applies. Exception 2 is not relevant in this case. Exception 1 applies where first, he has been lawfully resident in the United Kingdom for most of his life, secondly, that he is socially and culturally integrated in the United Kingdom and thirdly, that there would be very significant obstacles to his integration into Zambia.
24. It is clear that the appellant has been lawfully resident in the United Kingdom not only for most but indeed all of his life. That element of section 117C(4) is therefore met. As regards social and cultural integration in the United Kingdom, though we did not agree with Ms Besso that at paragraph 31 of the error of law decision there was a clear decision that the appellant was socially and culturally integrated into the United Kingdom, it had been rather a finding that the judge had erred in finding that he was not, we have little difficulty in agreeing with the submission capably made by Ms Besso, that the appellant is socially and culturally integrated into the United Kingdom. He has lived here all his life, he has a number of family members here and a girlfriend and has worked here. Although it is clear that it is possible for a degree of criminal offending and imprisonment to destroy a person's social and cultural integration, we remind ourselves of what was said in CI, in particular in the quotations from paragraphs 62 and 77 of that judgment, set out at paragraph 11 of the error of law decision. There has not been in our view at any time a breach in the appellant's social and cultural integration in the United Kingdom. That remains despite his criminal behaviour, and therefore that element of Exception 1 is satisfied.
25. As regards the issue of very significant obstacles to his integration into Zambia, the point is essentially decided by the judge's decision. That is not infected by the flaws in the judge's decision about social and cultural integration. Bearing in mind the guidance in Kamara and the judge's adverse credibility findings, there are the factors that English is the official language of Zambia, the appellant is a national of Zambia, he was brought up by a Zambian mother and at times by other relatives of Zambian origin and is likely to have extended family and/or connections in Zambia who would be able to assist him on arrival into Zambia. Also relevant is the absence of health problems and the fact that he is a young man of working age and fitness to work. We consider that it has not been shown that there exist very significant obstacles to his integration into Zambia. We adopt the sound findings of the judge on this point. The appellant therefore does not satisfy this requirement of Exception 1 of section 117C.
26. The final issue is that of whether there have been shown to be very compelling circumstances such as to justify the appeal being allowed under Article 8 outside the Rules. In this must be factored our findings

above on his social and cultural integration in the United Kingdom and the absence of very significant obstacles to his integration into Zambia. The test is a high one, bearing in mind also that he has not been able to satisfy the requirements of Exception 1. We bear in mind his family and other relationships in the United Kingdom and the amount of time that he has lived here. Against that, we factor in the points made above about the absence of very significant obstacles to his integration into Zambia. The public interest must of course be borne in mind and in that regard we must of course recall his significant criminal history. Bringing these matters together, we consider that it has not been shown that there exist such compelling circumstances as to justify the appeal being allowed under Article 8 outside the Rules and as a consequence, this appeal is dismissed on all grounds.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed
Upper Tribunal Judge Allen

Date 7 July 2021