



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-001714
First-tier Tribunal Nos:
HU/50382/2020
IA/00833/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 March 2023

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

DEAN ANTHONY MORANT
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pipe (Counsel)
For the Respondent: Mr C Williams (Senior Home Office Presenting Officer)

Heard at Birmingham Civil Justice Centre on 12 January 2023

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Lloyd-Lawrie, promulgated on 17th October 2021, following a hearing at Columbus House, Newport, on 5th October 2021. In the determination, the judge dismissed the appeal of the Appellant, following which the Appellant was granted permission to appeal to the Upper Tribunal by First-tier Tribunal Judge Mills, on 6th December 2021. The matter now comes before us today.

The Appellant

2. The Appellant is a male, a citizen of Jamaica, who was born on 16th August 1976, and who appeals a decision dated 27th October 2020 refusing his claim for international protection and leave to remain based upon his family and private life,

The Appellant's Claim

3. The Appellant's claim is that he would be at risk of persecution or serious harm if returned to Jamaica because he would be subjected to attacks from gangs if he returned. Moreover, a decision to deport him to Jamaica would breach his rights pursuant to Article 8 of the ECHR.

The Judge's Findings

4. The judge observed how the Appellant had initially entered the UK on 7th October 2001 on a visitor's visa. He had then overstayed. On 14th November 2003, he was convicted of conspiracy to supply class A controlled drugs. He was sentenced thereafter to a term of imprisonment of five years and six months. There was also a recommendation for deportation. On 22nd February 2005 the deportation order was made. The Appellant appealed the deportation order, but then withdrew the appeal prior to the hearing. On 22nd December 2005 he was deported from the UK. In October 2006 he married his partner in Jamaica. However, he then claims to have re-entered the UK on a false passport, and with a false identity, in late 2007. He then made an application for the revocation of his deportation order on 21st March 2015 which was duly rejected. He appealed that decision, and although this was allowed by the First-tier Tribunal, it was subsequently reversed upon appeal by the Respondent in the Upper Tribunal, which re-made the decision refusing the Appellant's application on 20th March 2019. The Appellant stood appeal rights exhausted on 2nd September 2019. He then made fresh representations on 25th September 2019 and again on 16th October 2019, and it was pursuant to those representations that the Respondent made her decision on 27th October 2020 in relation to the Appellant's protection and human rights claims. It was the Appellant's appeal against that decision by the Respondent which Judge Lloyd-Lawrie sat to consider on 5th October 2021. Judge Lloyd-Lawrie made three specific findings.
5. First, given that the Appellant was convicted of conspiracy to supply class A drugs and sentenced to five years and six months, the conditions under Section 72(2) were met and it must be presumed that he had been convicted of a particularly serious crime and that his continued presence in the UK would constitute a danger to the community (see paragraph 15). The Appellant had also failed to rebut the statutory presumption that he has been convicted of a particularly serious crime (see paragraphs 17 to 18). He further continued to pose a danger to the community (paragraph 19). This is not least because "his re-entering and remaining in the UK illegally for so many years, does not demonstrate that he is a changed person and that the risk that he clearly posed in 2003 has gone" (paragraph 20).
6. Second, the Appellant's Article 3 ECHR claim that he was shot at when in Jamaica by a gang member and that he fears gangs on return on grounds that he is, "someone who has been in the UK and would therefore be seen as a target" (paragraph 26) also stood to be rejected. The Appellant had first mentioned this

risk only after he was appeal rights exhausted, during his human rights appeal against the Respondent's refusal to revoke his deportation order, and he had been unclear with respect to the precise details of this incident (paragraph 27).

7. Third, the judge observed how there was a public interest in the Appellant's deportation because he was a foreign criminal (see Section 117C(1)) of NIA Act 2002), and that the public interest required the Appellant's deportation unless one of the statutory exceptions applied (Sections 117C(3), (4), and (5) of the NIA Act 2002) as well as there being very compelling circumstances, but that this was not the case. When on 10th January 2019, Upper Tribunal Judge Grubb re-made the decision he "was very clear why he said there were not very compelling circumstances over and above those in the exceptions and why he did not even find that it was unduly harsh for the children of the Appellant" (paragraph 30). IJ Lloyd-Lawrie did, however, go on to finally say that although it was accepted

"That there are some up-to-date letters from the Appellant's children and a social worker report, it was wholly accepted by Upper Tribunal Judge Grubb that it would of course have an effect on the Appellant's children for him to be deported as it would all children of deportees".

The judge's own conclusions were that "there is no significantly different evidence placed in front of me to cause me to depart from the findings of the Upper Tribunal on this matter ..." (paragraph 32). With this Judge Lloyd-Lawrie dismissed the appeal.

Grounds of Application

8. The Appellant's grounds of application are predicated on the following four points. First, that the judge wrongly treated UTJ Grubb's findings in the 2019 appeal as an end point, rather than a starting point, because this absolved the judge from considering the impact of deportation upon the Appellant's children, including an independent social worker's report, which had not been before UTJ Grubb. Second, the judge failed to make any findings upon the oral evidence provided by the Appellant's wife. Third, the judge was wrong to have concluded that the Appellant remained a "danger to the community", for the purposes of Section 72 of NIA Act 2002, even though he had not offended since 2003, on the basis that he had not accepted any guilt, when in fact his own statement expressed remorse. Fourth, the judge had made a mistake of fact in referring to the previous conviction as being in 2013 when in fact it had been in 2003.

Submissions

9. At the hearing before us on 12th January 2023, we began by drawing the parties' attention before us to the Rule 24 response of the Secretary of State dated 14th December 2021, given that there had been the Christmas break, which may well have prevented the Appellant's side from having sight of this document. We explained that it was recognised in this document that a typo (at paragraph 15) of the judge's determination may have wrongly referred to the index offence, which led to the Appellant's deportation, having taken place in 2013, when in fact what was meant that it took place in 2003. In the Rule 24 response, the Respondent's view was still that the Appellant was capable of breaching the laws of the UK to benefit his own ends, given his illegal entry and use of false documents to remain in hiding in the UK, when in breach of the deportation order (paragraph 2). The Appellant had not challenged the rejection of the claim under Article 3 that he

was at risk from gangs as a member of a particular social group which the judge below had rejected as lacking in credibility. Therefore, “it is submitted that even if the FTT is considered to have erred in relation to Section 72 it would make no material difference to the findings made in relation to risk on return. As such no material error has been made in this regard” (paragraph 3).

10. That said, however, what the Rule 24 response also stated was that

“It is accepted that the FTTJ failed to engage and provide reasons as to why the social worker (albeit written six months after Upper Tribunal Judge Grubb’s decision of 2019) and medical evidence/witness evidence did not establish a significantly different case to meet the demanding threshold of very compelling circumstances”,

and that “in this regard material error is accepted” (paragraph 4). The Rule 24 response ended with the observation that the Respondent requested the Tribunal to preserve the findings made in relation to Section 72 and Article 3 but “for the matter to be reconsidered in relation to Article 8 and very compelling circumstances”.

11. Mr Williams’ submission in response to our explanation in relation to the Rule 24 response was to say that although there was “an inadequacy of findings on Article 8”, nevertheless, “having looked at Rule 24 the Section 72 findings needed to be looked at again *de novo*” because “the reasons the judge gives are relatively thin”. Accordingly, he submitted that there should be no preserved findings and that the matter should go back to the First-tier Tribunal for a *de novo* hearing.
12. Mr Pipe agreed that this was the proper course of action in all the circumstances of this appeal. The Appellant’s eldest son was now an adult but he may nevertheless need to be called as witness to give evidence. This was a matter that he could not say definitively but may need revisiting closer to time. Accordingly, since the parties were *ad idem* with each other this is how we propose to dispose of this appeal.

Notice of Decision

13. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside.
14. We set aside the decision of the original judge and remit this appeal to the First-tier Tribunal pursuant to Practice Statement 7.2(b) because the nature or extent of the judicial fact-finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal.
15. No anonymity order is made.

Satvinder S. Juss

Appeal Number: UI- 2021-001714
First-tier Tribunal Nos: HU/50382/2020
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Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

31st January 2023