



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

000211

Case No: UI-2023-

First-tier Tribunal No:
HU/53739/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

1st November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

SHAVON LAMAR WALKER
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E. Rutherford, Counsel instructed by Cartwright King Ltd.

For the Respondent: Ms A. Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 10 October 2023

DECISION AND REASONS

Introduction

1. The Appellant challenges the decision of Judge Hussain (hereafter “the Judge”) who dismissed his Article 8 ECHR appeal (on 28 December 2022) against the Respondent’s decision to refuse the Appellant’s human rights

claim (dated 9 June 2022) made in response to the Respondent's notice of intention to make a deportation order, dated 2 November 2021.

2. Permission to appeal was granted by Judge Cruthers on 5 February 2023; whilst the Judge expressed some doubt as to the overall merits of the appeal nonetheless there was no restriction on the Grounds to be argued.

The relevant background

3. For the purposes of this decision there is no need to lay out the extensive detail of the Appellant's background in the United Kingdom in any great detail as it is dealt with in the Judge's decision but nonetheless it is important to highlight that:
 - a. The Appellant entered the United Kingdom on 4 February 2002 when he was approximately 15 months old as a dependent of his mother who had a visit visa valid until 4 August 2002.
 - b. It was not until May 2013 that an application was made to regularise the Appellant's status and this led to a grant of Leave to Remain until 18 December 2015.
 - c. There were then further extensions of the Appellant's Leave to Remain until 29 July 2021.
 - d. It is also apparent that the Appellant has a fairly lengthy criminal record starting in 2015 leading up to the index offence on 1 February 2020 in which the Appellant was convicted for conspiracy to supply class A drugs and received a sentence of 42 months imprisonment, (para. 8).
 - e. The totality of the Appellant's criminal history in the United Kingdom is summarised at para. 24 of the judgment as consisting of 11 convictions for 24 offences.
4. Ultimately, the Judge proceeded to conclude that the Appellant had not established that he took the benefit of Exception 1 in section 117C(4) of the NIAA 2002 on the basis that he had: (1) failed to show that he had resided lawfully in the United Kingdom for most of his life (as properly conceded by the Appellant), see para. 61; (2) that he was not socially and culturally integrated into the UK, (para. 62) and (3) that he would not face very significant obstacles to reintegrating into Jamaica due to being brought up in a Jamaican family in the United Kingdom and that he would be able to look to support from his extended family in Jamaica to help him settle on return, (para. 62).
5. The Judge also concluded that even if there were very significant obstacles to his integration, this alone was not enough to meet all of the requisite three subsections of the private life exception in s. 117C(4).

6. It is important to note that both parties are in agreement that the Judge did not go on to then apply the parachute test of very compelling circumstances over and above the exceptions, as per s. 117C(6). The Judge dismissed the Article 8 ECHR appeal.

Findings and reasons

7. The Appellant has sought to challenge the Judge's decision on a number of bases. In making my findings I have carefully considered Ms Ahmed's oral submissions and the Respondent's r. 24 response.

Ground 1 (paras. 3, 5, 7)

8. The Appellant's overall complaint is that the Judge materially erred in not carrying out an holistic assessment of Article 8(2) proportionality for the failure to apply section 117C(6) and the very compelling circumstances over and above test.
9. I find that the Judge did materially err in law in not considering s. 117C(6) of the Act. Fundamentally, s. 117A makes plain that the Tribunal must consider all of s. 117C (and s. 117B) when assessing the public interest and therefore the balancing exercise in Article 8(2) ECHR:

"117A Application of this Part

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—

(a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C."

10. Therefore the failure of the Judge to apply s. 117C(6) means that an Article 8 compliant assessment has not been carried out despite the primary legislation requiring it.
11. Such an approach materially mischaracterises the Exceptions deployed by Parliament at ss. 117C(4) & (5) as being determinative of the Article 8(2) assessment even if not met. That is not what the Exceptions are designed to do - they are relatively narrow assessments of particularised, thematic considerations which are determinative of the Article 8(2) balancing exercise (in favour of the foreign national offender) in certain circumstances; they do not purport to stand as the **only** relevant considerations.

12. The absence of any application of s. 117C(6) also means that the Appellant's arguments in respect of his minority at the time of most of his earlier offending; his ties to the UK including his mother, grandmother and sister; the fact that he cannot be held personally responsible for much of his overstaying due to the fact that he was a minor at the time and any actual rehabilitation have simply not been considered.
13. I therefore accept the Appellant's argument that the 'holistic assessment' is missing from the judgment and that this is a material error in law. This is not to be read as a finding that these missing elements would inexorably lead to the conclusion that deportation breaches the Appellant's Article 8 ECHR rights but merely to recognise that he is entitled to a decision which properly engages with the materially relevant issues and disposes of them with adequate reasons.
14. However, if I am wrong about that, I have nonetheless also concluded that the Judge's failure to apply s. 117C(6) is a material error even if it is likely that the Judge would have found against the Appellant on s. 117C(6). This is how the case was in fact argued by Ms Rutherford.
15. For completeness, I therefore also make the following findings in respect of the other Grounds.

Ground 2 (para. 4)

16. In this Ground, the Appellant contends that the Judge effectively sidelined the sentencing judge's decision to reduce the sentence of imprisonment from 4 ½ years to 3 ½ years at para. 55 of the judgment and that this was impermissible.
17. I should start by making reference to para. 54 in which the Judge quoted the sentencing remarks. In those remarks, the sentencing judge did not accept that the Appellant played only a limited role in the conspiracy and found that the Appellant was controlling others including two boys who were 15 years of age. Therefore the Appellant was treated as a category 3 case on the basis of a *significant role*.
18. The sentencing judge noted that the Appellant previously had six drugs possession offences between 2016 and 2019 and that the Appellant had been given lots of chances with non-custodial orders. At this stage the judge indicated that there were significant aggravating features due to the county lines aspect of the Appellant's criminality and the exploitation of two young children. However, the judge limited the starting point to one of 4 ½ years in prison and reduced it to 3 ½ years because of the Appellant's personal mitigation and the covid conditions which existed at that time.
19. The Appellant criticises para. 55 in which the Judge said "*[w]hat comes clear from the above is that ordinarily the judge would have sentenced the appellant to 4 and half years and that the offence committed by the*

appellant was for financial gain which involved exploitation of two young men.” (sic)

20. I firstly find that this particular argument only comes into play if the Judge did materially err in not considering the very compelling circumstances assessment.
21. Secondly, in any event, I conclude that the Judge did not seek to go behind the sentencing decision of the Criminal Court but was merely emphasising that the sentence would have been longer but for the mitigation and, as I have already noted, the covid conditions in prison at that time.
22. The Judge has therefore not sought to treat the Appellant as if the sentence was 4 ½ years and he was entitled to take into account that the Appellant’s offending behaviour was for financial gain and involved the exploitation of two children.

Ground 6 (para. 8)

23. At para 8. the Appellant asserts that the Judge materially erred at para. 62 in which he concluded that the Appellant is not socially and culturally integrated into life in the UK on the basis of his criminal behaviour. The Appellant criticises the finding for not factoring in his residence in the United Kingdom since the age of 15 months old which was, as he describes it, highly relevant.
24. In my view there is force in this submission especially when considering the court’s decision in CI (Nigeria) v The Secretary of State for the Home Department [2019] EWCA Civ 2027:

“62. Clearly, however, the impact of offending and imprisonment upon a person's integration in this country will depend not only on the nature and frequency of the offending, the length of time over which it takes place and the length of time spent in prison, but also on whether and how deeply the individual was socially and culturally integrated in the UK to begin with. In that regard, a person who has lived all or almost all his life in the UK, has been educated here, speaks no language other than (British) English and has no familiarity with any other society or culture will start with much deeper roots in this country than someone who has moved here at a later age. It is hard to see how criminal offending and imprisonment could ordinarily, by themselves and unless associated with the breakdown of relationships, destroy the social and cultural integration of someone whose entire social identity has been formed in the UK. No doubt it is for this reason that the current guidance ("Criminality: Article 8 ECHR cases") that Home Office staff are required to use in deciding whether the deportation of a foreign criminal would breach article 8 advises that:

"If the person has been resident in the UK from a very early age it is unlikely that offending alone would mean a person is not socially and culturally integrated."

25. This authority was not put before me as it perhaps should have been, but it is a binding decision of the Court of Appeal and in this paragraph clearly contains reference to the Respondent's overview of the question of social and cultural integration in the context of a person who has lived in the United Kingdom from a very early age as this Appellant has.
26. I therefore conclude that the Judge did err in his limited assessment of the issues relevant to social and cultural integration. Whilst it is entirely true for the Judge to say that all three subsections of s. 117C(4) must be met in order for the Exception to apply in the Appellant's favour, the error made by the Judge rather reinforces the importance of his failure to go on to consider s. 117C(6) of the Act.
27. I therefore conclude that this error was material.

Ground 5 (para. 6)

28. The Appellant asserts a material error of fact at para. 57 in which the Judge notes that the Appellant has a particular penchant for dealing *with* class B drugs whereas it was only the most recent offence in which the Appellant was convicted for dealing drugs. I accept the Respondent's submission that this paragraph can equally be read as reflecting the fact that the Appellant's previous offences involve class B drugs and that this is not a finding that the Judge considered that the Appellant had in fact been dealing that drug and I therefore find that there is no mistake of fact.

Ground 7 (paras. 8 & 9)

29. I reject the Appellant's contention that the Judge materially erred in his assessment of whether or not there would be very significant obstacles to the Appellant's reintegration into Jamaica. It is clear from the decision that the Judge recognised that the Appellant had been residing in the United Kingdom since a very young age (para. 1); that he had been brought up in a British Jamaican household and therefore would have some affinity with Jamaican culture (para. 62) and that he could look to his extended family in Jamaica for support on return (para. 62). It is plain that the Appellant's mother has brothers, sisters, uncles and aunts in Jamaica (see para. 46).
30. In my view the Judge's assessment is compliant with Sanambar v Secretary of State for the Home Department [2021] UKSC 30.

Notice of Decision

31. For the reasons I have given, the Judge did materially err but I have also concluded that some findings can be maintained: that the Appellant would

not face very significant obstacles in reintegrating to life in Jamaica and that he has not been residing lawfully in the UK for most of his life.

32. Whilst the next hearing will not require completely new fact-finding, I nonetheless find that the appeal should be remitted to the First-tier Tribunal on the basis of the Judge's failure to consider a material part of the statutory scheme.

DIRECTIONS

- (1) The matter will be remitted to the First-tier Tribunal.
- (2) The Appellant and his mother are expected to give oral evidence.
- (3) The First-tier Tribunal will list the appeal in the normal way despite there being some preserved findings.
- (4) The appeal is to be heard by a judge other than Judge Hussain.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 October 2023