



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001373

First-tier Tribunal No: HU/02914/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14 July 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

TOMMY O'DANIEL BROOKS
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Lateef Kareem, Solicitor of Atlantic Solicitors
For the Respondent: Amrika Nolan, Senior Presenting Officer

Heard at Field House on 23 June 2023

DECISION AND REASONS

1. The appellant appeals with the permission of First-tier Tribunal Judge Sills against the decision of First-tier Tribunal Judges Rodger and Roots ("the FtT"). By its decision of 15 February 2023, the FtT dismissed the appellant's appeal against the respondent's refusal of his human rights claim.

Background

2. The appellant is a Jamaican national who was born on 4 May 1966. He entered the United Kingdom as a visitor on 11 August 2001. His leave to enter expired on 11 February 2002 but he remained in the United Kingdom without leave.
3. Shortly after the tragic fire at the Grenfell Tower in June 2017, the appellant made an application for leave to remain on the basis that he had been a resident there. As I understand it, he also sought compensation from the Grenfell Tower Fund. There was an investigation which culminated in the discovery that the appellant had never resided in Grenfell Tower. By that stage, the appellant had been accommodated in a hotel at the taxpayer's expense for some months on account of his claim to have been made homeless by the fire. He was charged with two

offences of fraud and one of attempting to obtain leave to remain by deception. He pleaded guilty to all three counts on the indictment and, on 13 July 2018 at the Crown Court at Isleworth, he was sentenced by HHJ Wood to a total of three years' imprisonment.

4. The respondent initiated deportation action, in response to which the appellant made a human rights claim on 14 December 2018. That claim was refused on 5 February 2019 and on 7 February 2019 the respondent made a deportation order against the appellant. He appealed against the former decision to the FtT.
5. The appellant's appeal was heard by the FtT on 25 January 2023. It heard oral evidence from the appellant only, although it noted that two other individuals had attended the hearing with him. Submissions were made by the solicitor representing the appellant (who was not Mr Kareem) and by counsel representing the respondent. At the conclusion of the submissions, the FtT reserved its decision.

The Decision of the First-tier Tribunal

6. The FtT's decision was written by Judge Roots. It is a comprehensively reasoned decision, spanning 79 paragraphs in total. The FtT began by setting out the background, the evidence and the issues between the parties, at [1]-[13]. It directed itself on the law at [14]-[17]. The FtT considered the appellant's offences at [19]-[28]. It did so in much greater detail than my summary at [3] above. That analysis concluded with the FtT finding that there was a 'very strong public interest in deporting this appellant'.
7. The FtT then noted that there had been some intention on the part of the appellant's solicitor to contend that the appellant was a British citizen. That rather surprising contention had not been developed orally before the FtT, however, and it formally concluded at [33] that the appellant was a Jamaican national and a foreign criminal who was liable to deportation as such.
8. Since the appellant is a 'medium offender' the FtT then turned to consider the statutory exceptions to deportation in s117C(4) and (5) of the Nationality, Immigration and Asylum Act 2002. It noted at [34] that the appellant's case was unclear in both regards but it proceeded to consider those exceptions in any event. It noted at [35] that no family life claim was pursued, and certainly no claim based on a relationship with a partner in the UK.
9. At [36]-[47], the FtT considered the appellant's health and his cognitive abilities, since it understandably considered those issues to be relevant to the private life exception. It noted at [37] that there was no expert evidence about the appellant's health. It made reference to a clinical psychology report, however, which suggested (four years before the date of the hearing before the FtT) that the appellant had some cognitive impairment. The appellant's solicitor asked the FtT to note the appellant's physical health, noting that he had suffered a stroke and had been brought to court in a wheelchair. He was said to be receiving assistance from social services due to his stroke and mobility issues. Concern was expressed by the appellant's solicitor that he would not be able to access any services in Jamaica, whereas he had a support network in the UK.
10. The FtT was evidently concerned that the appellant's solicitor had been unable to direct them to a medical summary of the appellant's conditions. In the absence

of such a document, the FtT accepted the summary given by the appellant's social worker in a letter which was written on 24 January 2023. That letter documented an accident which the appellant had suffered in 2022, during which he was struck by a piece of concrete on a building site at which he was working unlawfully. The FtT recorded at [39] that the accident had

“...led to a brain injury, stroke, rib fractures and other fractures, and no function on his left side arm and shoulder. He has no use and no feeling in his left arm and shoulder. We accept he has some ongoing communication difficulties. The letter states his cognition is slow but with time and patience he can communicate his wishes. He can mobilise very short distances with two crutches. He has to be careful when mobilising. He has been provided with accommodation suitable for his mobility issues. He is provided with a weekly allowance and a care package consisting of two visits a day to help with his personal care, dressing and monitoring his eating due to risk of choking. His partner provides him with assistance such as meal preparation and assistance to medical appointments.”

11. At [41] the Tribunal noted that it had no evidence which tended to show for how long the appellant would require support and, at [42], that there was no material 'of any sort' from the appellant about the services which might be available to the appellant in Jamaica. It accepted the submission made by counsel for the respondent that the appellant would have 'full access to free healthcare in Jamaica', that submission being based on the respondent's Country Policy and Information Note of March 2020.
12. The FtT noted at [44] that the appellant did not pursue an Article 3 ECHR claim. At [46], it concluded that the appellant had provided 'virtually no evidence' about the provision of healthcare in Jamaica. Since the burden was on the appellant, it proceeded on the basis that adequate care and treatment would be available.
13. At [48], the FtT turned to the private life exception to deportation. It noted that the appellant had not been lawfully resident in the UK. For the reasons it gave from [49]-[55], the FtT concluded that the appellant had not shown that he was socially and culturally integrated into the UK 'at any point'.
14. At [56], the FtT turned to consider whether the appellant would encounter every significant obstacles to re-integration to Jamaica. It recalled what had been said by Sales LJ (as he then was) in *SSHD v Kamara* [2016] EWCA Civ 813; [2016] 4 WLR 152 and confirmed that this was the approach it had applied. Having recalled its earlier findings about the appellant's health, the FtT noted the stance of the respondent in the decision under challenge. Again, the FtT noted that the appellant had not advanced any clear case in response to the decision letter. It adopted the respondent's reasons as its own and, having noted that the appellant had no family in Jamaica, it concluded that there were not very significant obstacles to integration; the appellant was an adult who had lived in Jamaica to the age of 35 and had not integrated to the UK: [61]. The FtT noted at [62] that it had received no argument that the appellant's health conditions 'amounted to very significant obstacles to integration'.
15. From [65]-[68], the FtT summarised the appellant's argument that there were very compelling circumstances over and above those in the statutory exceptions which outweighed the public interest in deportation. Those submissions clearly

centred on the appellant's health, his ties to the UK and his lack of ties to Jamaica.

16. At [69], the FtT reminded itself of what had been said in *NA (Pakistan) v SSHD* [2016] EWCA Civ 662; [2017] 1 WLR 207 about the inter-relationship between the statutory exceptions and the test of very compelling circumstances. It reiterated its finding that the public interest in deportation was strong: [70]. It proceeded on the basis, as it had before, that the appellant's health needs would be adequately met in Jamaica: [71]. The appellant was unable to meet any limbs of the private life exception: [72]. The absence of family in Jamaica was 'not a significant consideration', nor was his illiteracy: [73]. The appellant's previous good character counted for little and there was no evidence that he had supported the Jamaican community in the UK. There was 'no real evidence of substance' from the appellant's family in the UK: [75]-[76]. The appellant's expressions of remorse carried little weight: [77].
17. At [78], the FtT considered the factors set out in the Strasbourg authorities and reached the following conclusions:
 - (a) the nature and seriousness of the offence committed by the applicant. As set out above the offences were serious. We refer to our findings above, including his culpability, and the aggravating factors.
 - (b) the length of the applicant's stay in the UK. We accept that this is lengthy, since 2001 and have taken this fully into account, but he has only had leave for six months, up to February 2002.
 - (c) the time elapsed since the offence was committed and the applicant's conduct during that period. As noted elsewhere, we have very limited evidence as to what the appellant has been doing in the UK since 2001. Similarly, we have very little evidence of what he has been doing since his release from prison. He appears to have been working unlawfully at some points, and suffered an accident on a building site. We take into account he has not offended since his release from prison.
 - (d) the nationalities. He is Jamaican.
 - (e) the applicant's family situation. As above, there is extremely limited evidence of his claimed family and siblings in the UK. There was no evidence in front of us from his siblings or claimed current partner. We refer to our findings above.
 - (f) the solidity of social, cultural and family ties with the host country and with the country of destination. As above, we have found that there would not be very significant obstacles to integration, and that he is not integrated in the UK.
18. At [79], the FtT dismissed the appeal, finding that there were not very compelling circumstances.

The Appeal to the Upper Tribunal

19. The grounds of appeal to the Upper Tribunal began by requesting 'reconsideration on the basis that the Tribunal made an error of law'. It was said that the Tribunal's 'approach to the standard of proving materials [sic] facts in this case is wrong' and that the standard of proof was the balance of probabilities. There was reference to what was said by Lord Hoffman in *Re B* [2008] UKHL 35; [2009] AC 11 about the civil standard. The gravamen of the grounds seems to appear in the antepenultimate paragraph, which is in the following terms:

The Tribunal was therefore wrong not to put necessary emphasis on documentary evidence in this case, to wit, the expert clinical psychology report, especially to the fact of his impaired cognitive functioning and vulnerability. Furthermore, the Tribunal did not explore the effect of his having had a stroke and the resultant disability on his ability to reintegrate into life back in Jamaica. The fact that he was well and able when he left Jamaica over 20 years ago and now having to return disabled will affect his ability to reintegrate into life back in Jamaica was not adequately considered by the Tribunal. It is also a fact, not yet considered, that the appellant had an accident which further disable him with the complete loss of the use of his left hand.

20. In granting permission, Judge Sills stated that it was arguable that the FtT had failed to consider whether the appellant's health problems would prevent him building up a private life of substance within a reasonable space of time.
21. Mr Kareem submitted before me that the FtT had given inadequate consideration to the difficulties which would face the appellant on return to Jamaica. The appellant was unwell, he had no family there and no ability to work. The FtT had failed to consider *SSHD v Kamara, Paposhvili v Belgium* [2017] Imm AR 867, *AM (Zimbabwe) v SSHD* [2020] UKSC 17; [2021] AC 633 and *Akhalu (health claim: ECHR Article 8)* [2013] UKUT 400 (IAC). Mr Kareem accepted that Article 3 ECHR had been conceded before the FtT but he was not sure that this was the right decision.
22. For the respondent, Ms Nolan relied on the Secretary of State's response to the grounds of appeal under rule 24. The FtT had clearly considered the appellant's medical condition in detail notwithstanding the absence of proper evidence. It had accepted what was said in the social worker's evidence but the reality of this case was that there was nothing to show that the appellant would not receive adequate treatment in Jamaica. The FtT had cited and applied *SSHD v Kamara*. The appellant merely attempted to re-argue the case which was quite properly dismissed by the FtT.
23. In reply, Mr Kareem said that the appellant had been in the Tribunal for justice and all of the evidence had not been considered. The totality of the appellant's difficulties meant that he could not re-integrate to Jamaica. Realistically, submitted Mr Kareem, the appellant 'cannot be returned'. It had not been an Article 3 ECHR case before the FtT but it should have been considered as such.
24. I reserved my decision at the conclusion of the submissions.

Analysis

25. I propose to deal with some of the arguments before me quite briefly. The real issue in this case is as identified by Judge Sills when he granted permission to

appeal but it is appropriate to deal with some of the other points which were articulated by Mr Kareem orally and in the grounds of appeal.

26. Firstly, it is abundantly clear that the FtT did not err in relation to the standard of proof. The Tribunal directed itself that it was to apply the civil standard of the balance of probabilities at [17] and there is nothing within the remainder of its decision which suggests that this specialist panel of the FtT made such a fundamental error.
27. Secondly, Mr Kareem submitted before me that the FtT erred in failing to consider whether the appellant's rights under Article 3 ECHR would be breached by his return to Jamaica. There are two obvious and insurmountable problems with that submission: (i) the appellant's solicitor before the FtT disavowed any reliance on Article 3 ECHR; and (ii) the findings of fact which the FtT reached about the presence of adequate treatment in Jamaica were findings which it was bound to make on the evidence before it, and were determinative of any Article 3 ECHR argument in any event. This was not advanced as a health claim under Article 3 ECHR but if it had been, it would have failed on that basis.
28. Thirdly, it is simply incorrect to state that the FtT did not consider various matters. As my lengthy summary of the decision shows, it was well aware of the fact that the appellant had no family in Jamaica, that he had a cognitive impairment and that he suffered from physical disabilities as a result of the injury he suffered after his criminal sentence was completed. It made reference to the appellant's left arm being paralysed at [51].
29. As for the question raised by Judge Sills in granting permission, it is clear to my mind that the FtT had the appellant's ability to integrate into Jamaica at the forefront of its mind. It directed itself in accordance with *SSH D v Kamara* at [56], and that self-direction included reference to the consideration that the appellant should be able to 'build up within a reasonable time a variety of human relationships to give substance to the individuals' private and family life'. The FtT did not return to that formulation at a later point in its determination, but it plainly considered all factual matters which were relevant to it, including the absence of family, the appellant's various disabilities and the presence of adequate treatment. It also took into account the fact that the appellant had lived in Jamaica until he was 35 and that there would be no language barrier.
30. Having directed itself to the law and the facts of the case as it had found them to be, the FtT was entitled to conclude that there were not very significant obstacles to the appellant's re-integration. It did not separately articulate a finding that he would be able within a reasonable period of time to establish a variety of human relationships, but it was not required to do so; it made an overarching finding that there were not very significant obstacles.
31. The FtT was entitled as a matter of law to carry that finding through into its assessment of whether there were very compelling circumstances which sufficed to outweigh the obviously strong public interest in the appellant's deportation. It took account of the matters which were said to militate in the appellant's favour but it considered those matters to be outweighed by the public interest: [79] refers. It was entitled to reach that conclusion on the evidence before it.
32. Ultimately, the complaint in this case cannot be that the FtT failed to turn its mind to the correct questions or that it overlooked evidence or that it reached an

irrational conclusion on the evidence before it. None of those arguments are remotely made out, in my judgment. Mr Kareem's real complaint, on analysis, is that the FtT attributed the wrong amount of weight to the appellant's personal circumstances when it conducted the balancing exercise required by s117C(6). The attribution of weight was for the FtT, however, and I may only interfere with that attribution if I consider it to have been irrational: *Volpi v Volpi* [2022] 4 WLR 48, at [2].

33. I cannot reach that conclusion. The appellant will undoubtedly find it difficult to re-establish himself in Jamaica but the FtT was entitled to find on the evidence before it that those difficulties did not cross the 'very significant obstacles' threshold or that they sufficed to outweigh the obvious public interest in his deportation. The attribution of weight was demonstrably rational and it is not for an appellate body such as the Upper Tribunal to substitute its own view for that of the specialist panel of the FtT.

34. In the circumstances, the appellant's appeal against the decision of the FtT is dismissed.

Notice of Decision

The FtT's decision did not involve the making of an error on a point of law and the appellant's appeal is dismissed. The FtT's decision will accordingly stand.

M.J. Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 June 2023