IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001792

First-tier Tribunal No:
HU/53739/2022
IA/05804/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 07 November 2024

Before

UPPER TRIBUNAL JUDGE LOUGHRAN

Between

SHAVON LAMAR WALKER
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Rutherford of Counsel instructed by Cartwright King Limited
For the Respondent: Ms Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 2 October 2024

DECISION AND REASONS

Introduction

1. The Appellant is a citizen of Jamaica who was born on 10 October 2000. By a decision issued on 16 August 2024 (a copy of which is appended below), Upper Tribunal Judge Rintoul and I set aside the decision of the First-tier Tribunal. I now re-make the decision.

2. The Appellant appeals against the Respondent's decision dated 9 June 2022 refusing his human rights claim. The Respondent issued a deportation order in respect of the Appellant on the same date. The subsequent procedural background is outlined in the appended decision and is therefore not repeated, save for the correction that the parties agree that the Appellant arrived in the UK on 4 February 2002 when he was 15 months old and not on 4 February 2000 when he was 4 months old as recorded in the appended decision.

3. As outlined in the appended decision the following findings were preserved from an earlier appeal: (1) the Appellant would not face very significant obstacles reintegrating to life in Jamaica and (2) the Appellant had not been lawfully resident in the UK for most of his life. Accordingly, and as agreed by the parties the issues for me to determine are: (1) whether the Appellant was culturally and socially integrated into the UK and (2) whether there are very compelling circumstances over and above those in paragraph 399A of the Immigration Rules and the exceptions outlined in sections 117C of Nationality, Immigration and Asylum Act 2002, which would render his deportation disproportionate. The parties accept the Appellant is a foreign criminal.

Factual Background

Immigration and Criminal History

4. It is accepted that the Appellant arrived in the UK on 4 February 2022 when he was 15 months old as a dependent of his mother who had a visit visa valid until 4 August 2002. On 11 August 2008 and 23 July 2010, the Appellant's mother made applications for leave to remain with the Appellant as a dependent. Both of which were refused. On 11 February 2016, the Appellant's mother's application for leave to remain was granted until 11 August 2018 with the Appellant as a dependent. On 17 January 2019, Appellant's mother's application for leave to remain (made on 3 August 2018) was granted until 29 July 2021 with the Appellant as a dependent. Accordingly, the Appellant had lawful leave upon entry for 6 months and from 18 June 2013 until 29 July 2021, a total of 8 years and 1 month.

5. On 9 April 2015, when the Appellant was 14 years old, he was convicted at South London Juvenile Court of 'Affray', for which he was sentenced to a three-month referral order and victim surcharge £15.

6. On 29 November 2016, the Appellant was convicted at South London Magistrates Court of 'Use disorderly behaviour or threatening/abusive/insulting words likely to cause harassment alarm or distress', 'Resist or obstruct arrest' , 'Destroy or damage property,' and 'Possess controlled drug – Class B – Cannabis/ Cannabis resin' for which he was sentenced to a six month referral order, extended to nine months on 15 June 2016, which was varied on 29 June 2017 and 19 July 2017, to a youth rehabilitation order, supervision requirement, curfew

requirement, electronic tagging, £20 costs, compensation £40 and victim surcharge £20.

7. On 29 June 2017, the Appellant was convicted at South London Juvenile Court of 'Possess controlled drug – Class B – Cannabis/ Cannabis resin', 'Assault a constable' and 'Referred for revocation of referral order to youth offender panel in the interest of justice', for which he was sentenced to a three month youth rehabilitation order, supervision requirement, 10 day activity requirement, three months prohibited activity requirement, three months curfew requirement and electronic tagging.

8. On 13 July 2017 the Appellant was convicted at South London Juvenile Court of two counts of 'Assault a constable', for which he was sentenced to a youth rehabilitation order, unpaid work requirement, programme requirement, three-month curfew requirement and electronic tagging.

9. On 19 July 2017, the Appellant was convicted at South London Juvenile Court of 'Using threatening, abusive, insulting words or behaviour with intent to cause fear or provocation of violence', 'Theft – shoplifting' and 'Destroy or damage property,' for which he was sentence to a youth rehabilitation order, supervision requirement, activity requirement, prohibited activity requirement, curfew requirement, electronic tagging and compensation £36.80.

10. On 7 September 2017, the Appellant was convicted at South London Juvenile Court of 'Possess controlled drug – Class B – Cannabis/ Cannabis resin' and 'Possess controlled drug – Class A –Cocaine', for which he was sentenced to a youth rehabilitation order, unpaid work requirement, programme requirement, curfew requirement, electronic tagging and forfeiture and destruction.

11. On 21 December 2017 he was convicted at South London Juvenile Court of 'Theft from a motor vehicle' and 'Handling stolen goods' for which he was sentenced to a youth rehabilitation order, 6 day programme requirement, one month curfew requirement, electronic tagging, 40 hours unpaid work requirement, costs £40 and victim surcharge £20.

12. On 30 August 2019, the Appellant was convicted at South West London Magistrates Court of 'Possess controlled drug – Class B – Cannabis/ Cannabis resin' for which he was sentenced to fine £125, costs £85, victim surcharge £32 and forfeiture and destruction of Cannabis.

13. On 5 November 2019, the Appellant was convicted at South West London Magistrates Court of 'Possess controlled drug – Class B – Cannabis/ Cannabis resin' for which he was remanded on unconditional bail and forfeiture and destruction of Cannabis.

14. On 18 December 2019 the Appellant was convicted at South West London Magistrates Court of 'Aggravated vehicle taking (driving) accident occurs cause damage vehicle under £500', 'Using vehicle while uninsured', 'Driving otherwise than in accordance with licence' and 'Failing to give name and address after an accident' for which he was sentenced to community order, maximum 15 day rehabilitation activity, 22 day programme requirement, compensation £265, disqualified from driving obligatory 12 months and driving licence endorsed

15. On 1 February 2020 he was remanded into custody and on 28 October 2021, the Appellant was convicted of 'Conspiracy to Supply Class A drugs' and sentenced to 42 months' imprisonment. The Appellant pleaded guilty on a basis, which was uncontested by the Crown i.e. that he was involved in the conspiracy for 24 hours leading up to his arrest and "he was not in possession or either the drugs or the dirty phone." The sentencing judge agreed that the Appellant was "acting under instruction" and was in debt for buying drugs. However, the judge also found that the Appellant did not play a limited role and was controlling others, two 15-year-old boys. The sentencing judge considered the Appellant's age and found that although the Appellant was an adult at the time of the offence (19 years old) he was a young adult, so still immature.

16. On 2 November 2021, the Appellant was issued with a decision to make a deportation order. On 29 November 2021, the Appellant submitted a human rights claim. On 9 June 2022, a deportation order was made in respect of the Appellant and his human rights claim was refused.

17. On 1 November 2021, the Appellant's custodial sentence came to an end, and he was detained under immigration powers. On 14 June 2022, the Appellant was released on immigration bail.

18. On 20 June 2022, the Appellant lodged an appeal against the refusal of his human rights claim.

Legal Framework

19. The relevant legislative framework is set out in section 117C Nationality, Immigration and Asylum Act 2002 ("Section 117C"). It is unnecessary for me to refer to paragraphs 398-399A of the Immigration Rules, as they have no additional part to play in the analysis. [CI (Nigeria) v Secretary of State for the Home Department [2019] EWCA Civ 207 ("CI (Nigeria)") at [21]

20. I note that the section 117B(6) Nationality, Immigration and Asylum Act 2002 ("Section 117B(6)") also applies to a person liable to deportation.

21. In HA (Iraq), RA (Iraq), AA (Nigeria) v Secretary of State for the Home Department [2022] UKSC 22 ("HA (Iraq)") the Supreme Court

addressed the framework at [46] to [52] of the judgment. I set out a summary of the principles in the judgment so far as relevant to the consideration of the Appellant's appeal:

(1) An appellant who is a medium offender (as here) can succeed in an appeal if he meets either of two exceptions which are set out in Section 117C(4) ("Exception 1") and Section 117C(5) ("Exception 2"). Exceptions 1 and 2 are considered and determined without reference to any balance between interference and public interest. "The consideration of whether those Exceptions apply is a self-contained exercise governed by their particular terms" ([47]).
(2) If an appellant cannot meet either of the two exceptions, Section 117C(6) requires a balancing assessment weighing the interference with the Article 8 rights of the person intended to be deported and his family against the public interest in his deportation. Although that section is expressed as applying only to those offenders who are sentenced to more than four years in prison, it applies equally to an appellant sentenced to less than four years (as here) if the offender cannot meet the exceptions (cited NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662 "NA (Pakistan)" at [4])
(3) There is no exceptionality test under Section 117C (6) but "it inexorably follows from the statutory scheme that the cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare" (NA Pakistan cited at [50]).
(4) If the intended deportee could only show a "bare case of the kind described in Exceptions 1 and 2" that could not be described as very compelling circumstances over and above those exceptions. "On the other hand if he could point to factors identified in the descriptions of Exceptions 1 and 2 of an especially compelling kind …going well beyond what would be necessary to make out a bare case of the kind described in Exceptions 1 and 2, they could in principle constitute 'very compelling circumstances, over and above those described in Exceptions 1 and 2', whether taken by themselves or in conjunction with other factors relevant to application of article 8" (NA (Pakistan) cited at [50]).
(5) When applying Section 117C (6), all relevant circumstances are to be balanced against the "very strong public interest in deportation" (at [51]).
(6) Case-law of the European Court of Human Rights continues to be relevant to the factors which have to be considered (at [51]). The Supreme Court referred in particular to the cases of Unuane v United Kingdom (2021) 72 EHRR 24, Boultif v Switzerland (2001) 33 EHRR 50 and Üner v The Netherlands and summarised the relevant factors are as follows:
    (a) Nature and seriousness of the offence(s) committed by the intended deportee.

(b) Length of time that the intended deportee has remained in the UK.
(c) Time elapsed since the offending and conduct in that period.
(d) Nationalities of those affected by the decision.
(e) The family circumstances of the intended deportee.
(f) Whether a spousal relationship was formed at a time when the spouse was aware of the offending.
(g) Whether there are children of the marriage and their ages.
(h) Seriousness of the difficulties faced by the intended deportee in the country to which he/she would be expelled.
(i) Best interests and well-being of the children, in particular the seriousness of the difficulties which they would face in the country to which the intended deportee would be expelled.
(j) Extent of the intended deportee's social, cultural and family ties with the host country and country of destination.

(7) In a case where the evidence of rehabilitation is only the fact no further offences have been committed that is likely to be little or no material weight in the proportionality balance. However, evidence of positive rehabilitation which reduces the risk of further offending may have some weight as it bears on one element of the public interest in deportation, namely the protection of the public from further offending. (at [58])

(8) The seriousness of the offence is not solely reflected by the sentence imposed. [HA (Iraq) at [68]]

22. It follows from the legislative framework as interpreted by the courts including the Supreme Court that the decision maker is required to first decide whether Exceptions 1 and 2 are met. If they find that those are not met, they have to go on to assess whether there are very compelling circumstances taken as a whole over and above those exceptions which outweigh the public interest.

23. In this case it is accepted that the Appellant does not meet the private life exception, but it is submitted that he meets one of the three elements of Exception 1 i.e. that he is socially and culturally integrated in the UK.

24. "Socially and culturally integrated" means the acceptance and assumption of the culture, core values, customs and social behaviour of the UK. [Binbuga (Turkey) v Secretary of State for the Home Department [2019] EWCA Civ 551 at [57]] Whether a foreign criminal is socially and culturally integrated is to be determined by common sense. The question I am required to ask is "whether having regard to his upbringing, education, employment history, history of criminal offending and imprisonment, relationships with family and friends, lifestyle and any other relevant factors, the individual was at the of the hearing socially and culturally integrated in the UK." [SC (Jamaica) v Secretary of State for the Home Department [2022] UKSC 15 ("SC (Jamaica)") at [51]]

25. An individual's social and cultural integration can be broken by criminal offending. Whether it has is a fact-sensitive question. The relevant test is concerned solely with an appellant's social and cultural affiliations and identity, not whether through the nature and seriousness of his offending, an appellant has broken the social contract which entitles him to the protection of the state. ["CI (Nigeria)" at [77]-[80]]

26. When considering the assessment under Section 117C(6), I must have regard to the best interests of the children involved. In this case the Appellant has a 14-year-old sister. Section 55 Borders, Citizenship and Immigration Act 2009 requires the Secretary of State to have regard in the discharge of her immigration functions to the need to safeguard and promote the welfare of children in the UK. I also have regard to the observations made in the judgment of Lady Hale in ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4 and I acknowledge and recognise that the best interests of the children are a primary although not the primary or paramount consideration (ZH (Tanzania) at [25]).

27. When balancing the interference with the family and private lives of the Appellant and his family against the public interest, the burden of establishing the interference lies with the Appellant. Once the level and degree of interference is assessed on the evidence, it then falls to the Respondent to show that such interference is necessary and proportionate.

Evidence

28. I was provided with a consolidated bundle prepared for the error of law hearing on 2 August 2024. The bundle included the Appellant's and Respondent's bundles before the First tier Tribunal, the Respondent's review and the Appellant's Skeleton Argument prepared for the hearing in the First tier Tribunal.

29. Ms Rutherford confirmed that no application had been made under rule 15(2A) of the Upper Tribunal procedure rules to admit evidence that had not been before the First tier Tribunal and that the Appellant did not seek to rely on any additional or up to date evidence.

30. The evidence includes the following witness evidence:

a. Witness statements from the Appellant, his mother and his grandmother dated 23 August 2022;
b. Letters from the Appellant's mother dated 17 November 2021 and 9 October 2023;
c. Letters from the Appellant's sister, grandmother, a family friend, two aunties and a cousin dated 15 November 2021 (apart from one of the aunties, whose letter was undated).

31. The Appellant also relies on medical evidence in respect of the Appellant and his grandmother, his sister's school reports, a letter from the National Probation Service dated 10 November 2022 and letter from the Palace for Life Foundation dated 5 October 2023.

32. I heard evidence from the Appellant and his mother. I accept the contents of the statements and the oral evidence given by them. Both were credible witnesses. Neither sought to exaggerate the Appellant's case. I found the Appellant's mother, in particular, to be an impressive witness.

Findings

33. I have read the witness statements, letters and other evidence in full but refer only to the parts which are relevant to the issues I am required to determine.

34. This is a case that engages Article 8 ECHR. The Appellant arrived in the UK when he was 15 months old and has lived in the UK since, a period of over 20 years.

35. The Appellant currently lives at the family home with his mother, grandmother and younger sister and he lived there prior to being arrested and being taken into custody. The Appellant's sister was born on 1 January 2010 and is therefore 14 years old. Having grown up in his family unit the Appellant has very close relationships with his mother, grandmother and younger sister. I find that the family life between them all is one of one of effective, real or committed support and that family life exists for the purposes of Article 8 ECHR. Alternatively, the Appellant's relationships with his family members form part of his private life.

36. The Appellant is a foreign criminal as defined by section 117D of the Nationality, Immigration and Asylum Act 2002 and he is a 'medium offender.'

37. It is accepted that the Appellant cannot meet the exceptions. The Appellant accepts that he has not been lawfully resident in the UK for most of his life and the finding that there would not be very significant obstacles to his integration to Jamaica has been preserved. However, whether the Appellant is socially and culturally integrated in the UK is relevant to my consideration of assessment under Section 117C(6) and I address that first.

Socially and Culturally Integrated in the UK

38. I am not persuaded by the Respondent's submission that the Appellant has never been socially and culturally integrated in the UK. As outlined above, apart from the time spent in custody the Appellant has lived in a family unit with his mother, grandmother and sister. The

Appellant attended school and although he was excluded, I accept his evidence that he subsequently attended a specialist school and sat his GCSE's.

39. The Appellant has an unenviable criminal history, which he began when he was only 14 years old. However, I do not find that his criminal offending or his time spent in prison broke the Appellant's social and cultural integration in the UK. The Appellant remained living in his family home until he was arrested and taken into custody and remained in contact with his family members while he was in prison. I accept the Appellant and his mother's evidence that his family could not visit him regularly because he was in prison in West Yorkshire and because COVID restrictions were in place for some of the period. This is corroborated by the sentencing remarks. The sentencing judge notes that the Appellant has been *'remanded in custody a long way from home and this has impacted on your family'* and he took into account the COVID conditions the Appellant had encountered.

40. In addition to living with and socialising with his family the Appellant goes to the gym and plays football with his friends. I also accept that the Appellant is involved with his friend's charity Palace for Life Foundation and talks to young people about how to stay out of trouble.

41. For the reasons given above and having had regard to all the relevant factors including those identified in SC (Jamaica) I find the Appellant is socially and culturally integrated in the UK at the time of the hearing.

Section 117C(6)

42. It is accepted that the Appellant has lived in the UK since 4 February 2002, when he was 15 months old, a period of over 20 years. For most of that time he has been in the UK unlawfully. I consider that it is relevant that the Appellant was a child for most of this time. As a child the Appellant could not be expected to regularise his status or leave the UK in the same way one would expect of an adult. I therefore place significant weight on the length of time the Appellant has lived in the UK and his very young age on arrival. As outlined above I have found the Appellant is socially and culturally integrated in the UK.

43. It is plainly relevant to my assessment that there would not be very significant obstacles to his integration to Jamaica. However, I also note that the Appellant has not lived in Jamaica since he arrived in the UK in 2002, and I accept that his close family members are all in the UK.

44. I give significant weight to the Appellant's family life. Apart from the time spent in custody he has lived in the same family unit in the UK and has very close relationships with his grandmother, mother and sister.

The family unit is a strong and committed one. The Appellant's grandmother and sister are both British Citizens.

45. The Appellant's sister is a child. Her best interests are therefore a primary, but not the primary or paramount consideration. I accept the Appellant's mother's evidence that the Appellant's sister would be really badly affected by the Appellant's deportation and that she was very quiet when he was in custody. I note that although the Appellant lives with his sister he cannot be said to be a primary carer and if he was deported his sister would still have both her mother and grandmother. However, I find that it is in the Appellant's sister's best interests to stay living in the UK with the whole family unit, her mother, grandmother and her brother, the Appellant.

46. The Appellant's grandmother has lived with the Appellant since he was a baby. She currently has arthritis and difficulties with her memory. The Appellant helps her by making her tea and cooking her food. I accept the Appellant's mother's evidence that she would take the Appellant's deportation "really hard."

47. I am satisfied that the Appellant and his mother have a particularly close relationship. The Appellant's mother's evidence that her daughter was killed in Jamaica was not challenged. I accept her evidence that her daughter's death still affects her a lot and that she doesn't know how she would cope if the Appellant was deported to Jamaica.

48. Against the interference in the Appellant's private and family life I have to weigh the public interest. I have regard to Section 117C(1). The public interest in deporting all foreign criminals is very strong. That public interest involves the prevention of crime and disorder not simply due to the risk posed by the offender but also based on deterrence of others. The bar for outweighing that public interest for appellants who do not meet the exceptions is very high indeed. The weight of the public interest in deportation needs to be evaluated in each individual case.

49. I also have regard to Section 117C (2). The more serious the offence the greater the public interest. It follows that the less serious the offence the lesser is the public interest.

50. I have considered the Appellant's lengthy criminal history prior to the index offence of 23 offences across 10 convictions between 9 April 2015 and 18 December 2019. I note aggravating features of some of those offences i.e. six relate to possession of drugs and five relate to violence including against police officers. However, none resulted in a custodial sentence, and I consider that them to be at lower end of the spectrum of seriousness.

51. The Appellant's index offence is clearly very serious. The offence involved a county lines element and the exploitation of two 15-year-old boys. However, the Appellant was only involved in the conspiracy for 24

hours and the sentencing judge accepted that he was “acting under instruction.” I accept the Appellant’s expression of remorse and that he has subsequently considered how the two 15-year-old boys were affected.

52. The Respondent relies on an OASYS report in respect of the Appellant. I find I am not assisted by it. It simply records what the Appellant said during his screening on 5 February 2020. The author of the report concludes that *‘it has not been possible to assess risk.’*

53. I place significant weight on the fact that all his criminal offences were committed between the ages of 14-19 years old and even though he was a young adult at the time he committed the index offence the sentencing judge still considered a young adult was still immature.

54. The index offence was committed in January 2020. The Appellant was released on bail over 2 years ago. There is nothing to suggest that the Appellant has offended since his release. I accept the Appellant’s evidence that he stopped smoking cannabis the day he went into custody. I also accept the Appellant’s mother’s evidence that she has seen a lot of differences in the Appellant and that he has matured. I note that the sentencing judge concluded that the Appellant had put the time he spent in custody on remand “to good use.” The Appellant relies on a letter from the National Probation Service dated 10 November 2022 that records that the Appellant is compliant and engaged in the supervision process in order to refrain from further offending. The Appellant is also described as “polite and very respectful” in his supervision sessions. I also accept that the Appellant has been involved with his friend’s charity since his release.

55. I am satisfied that the risk the Appellant poses is very low indeed. However, I note that deterrence and public concern are also part of the public interest.

56. I place particular weight on the Appellant’s very young age when he arrived in the UK, his length of residence, very close relationships to his family members and the impact his deportation would have on those family members. I accept that the physical separation of the Appellant from his family unit in the UK would have a significant impact on all involved and in particular his mother who is still significantly impacted by the death of her daughter in Jamaica. I find that it is in the Appellant’s sister’s best interests for the Appellant to stay living with her in the UK.

57. The public interest in the deportation of offenders is not confined to the risk of reoffending which they pose and it is very weighty indeed. However, I find the following factors reduce the public interest in this Appellant’s deportation: his young age when he committed the offences, the length of time he was involved in his index offence (24 hours), that he was acting under the instruction of others and his reasons for his involvement i.e. that he owed them a debt.

58. This was very finely balanced decision however, taking all of the evidence into account and having had regard to Strasbourg case-law in relation to Article 8 ECHR I find that section 117C(6) is met and that this is a rare instance when the public interest in deporting the Appellant is outweighed by the very compelling circumstances in this case.

59. For those reasons, I allow the Appellant's appeal.

G.Loughran

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 November 2024

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

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Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Rutherford of Counsel instructed by Cartwright King Limited
For the Respondent: Ms Blackburn, Senior Presenting Officer

Heard at Field House on 2 August 2024

DECISION AND REASONS

1. The Appellant appeals with permission of First-tier Tribunal Judge Curtis against the decision of First-tier Tribunal Judge SJ Clarke ('FtTJ') dismissing the Appellant's appeal in a determination dated 12 March 2024. The Appellant appealed against the Respondent's decision dated 9 June 2022 refusing his human rights claim.

Background

2. The Appellant is a citizen of Jamaica who was born on 10 October 2000. The Appellant entered the UK on 4 February 2000 (when he was 4 months old) as a dependent of his mother who had a visit visa valid until 4 August 2000. On 11 August 2008 and 23 July 2010, the Appellant's mother made applications for leave to remain with the Appellant as a dependent. Both of which were refused.

On 11 February 2016, the Appellant's mother's application for leave to remain was granted until 11 August 2018 with the Appellant as a dependent. On 17 January 2019, Appellant's mother's application for leave to remain (made on 3 August 2018) was granted until 29 July 2021 with the Appellant as a dependent. Accordingly, the Appellant had lawful leave upon entry for 6 months and from 18 June 2013 until 29 July 2021, a total of 8 years and 1 month.

3. The Appellant has a lengthy criminal record of 24 offences across 11 convictions between 9 April 2015 (when the Appellant was 14 years old) and 18 December 2019. On 28 October 2021, the Appellant was convicted of 'Conspiracy to Supply Class A drugs' and sentenced to 42 months' imprisonment.

4. The Respondent issued the Appellant with a decision to make a deportation order. On 29 November 2021, the Appellant made a human rights claim which was refused on 9 June 2022. The Appellant appealed against that decision and in a decision dated 28 December 2022, FtTJ Hussain dismissed the appeal. The Appellant applied for permission to appeal, which was granted and in a decision dated 1 November 2023, the Upper Tribunal set aside the decision and remitted it to the First tier Tribunal with the following preserved findings of fact: (1) the Appellant would not face very significant obstacles reintegrating to life in Jamaica; and, (2) the Appellant had not been lawfully resident in the UK for most of his life.

5. The remitted appeal came before the FtTJ on 15 February 2024. Ms Rutherford represented the Appellant as she did before us and the Respondent was represented by a Presenting Officer. The parties agreed that the issues for the FtTJ to determine were: (1) whether the Appellant was culturally and socially integrated into the UK; and, (2) whether there are very compelling circumstances over and above those in paragraph 399A of the Immigration Rules which would render his deportation disproportionate. The FtTJ found that the Appellant's integration to the UK was broken by his six years of offending at paragraphs 17 and 30 and that it is proportionate to deport the Appellant at paragraph 30.

6. The Appellant sought permission to appeal to the Upper Tribunal on the ground that the FtTJ failed to properly apply the guidance in *CI (Nigeria) v Secretary of State for the Home Department* [2019] EWCA Civ 2027.

The Hearing

7. At the hearing Ms Blackburn confirmed that the Respondent did not rely on a Rule 24 response and we heard submissions from both Ms Rutherford and Ms Blackburn. Ms Rutherford relied on and expanded the grounds outlined in the application for permission to appeal and Skeleton Argument.

8. Ms Blackburn submitted that the FtTJ had properly applied *CI (Nigeria).* She noted that at paragraph 17 of the determination the FtTJ found that the Appellant's offending had broken his integration, but she submitted the FtTJ had not focussed on that issue. Ms Blackburn submitted that the FtTJ had not ignored the wider context. At paragraph 30 the FtTJ had conducted the balancing exercise. At paragraph 21 the FtTJ outlined the Appellant's voluntary work and the letter from the Targeted Intervention Office and at paragraph 28 the FtTJ noted that the Appellant was currently living with his mother. At paragraphs 18-20 the FtTJ considered the evidence of integration. Ms Blackburn submitted that

the Ms Rutherford was asking us to read the determination too strictly and that the FtTJ's decision was consistent with *CI (Nigeria).*

Discussion

9. The Court of Appeal at paragraph 75 of *CI (Nigeria*) stated:

> I am sure that the Upper Tribunal judge was right to say that social and cultural integration in the UK can be broken by criminal offending and imprisonment and that this is a fact-sensitive question. However, he gave no reasons for his conclusion that this was the effect of CI's offending and imprisonment in the present case. I appreciate that where a judgment is made on the basis of an overall evaluation of the circumstances of a case, the conclusion arrived at is not capable of logical demonstration and there is a limit to the reasoning that can be given to justify it. But in order to discharge the duty to give adequate reasons for its decision, a tribunal should at least identify the main facts and circumstances which have led to the conclusion and give some indication, where it is not self-evident, of what the significance of these facts is considered to be.

10. The FtTJ correctly identified at paragraph 13 of the determination that although *CI (Nigeria)* confirmed that integration can be broken by criminal offending and imprisonment, it does not automatically mean that a person is not "socially and culturally integrated" in the UK. We find that notwithstanding the FtTJ's reference to *CI (Nigeria)* the FtTJ failed to apply it to the Appellant's case. The FtTJ was obliged, but failed, to consider the evidence of the Appellant's integration prior to and during the course of his criminal offending and imprisonment. In particular the FtTJ failed to consider that the Appellant maintained relationships with his family throughout his criminal offending and imprisonment. The FtTJ gave no reasons for her conclusion at paragraph 17 that why in this particular case *'the Appellant's integration was broken by his criminal behaviour and his imprisonment.'*

11. We bear in mind that an appellate tribunal should be reluctant to interfere with a findings of the fact of the First-tier Tribunal. However, we find that in this case it is clear that the FtTJ did not conduct an overall evaluation of the circumstances of the Appellant's case as required by *CI (Nigeria)* and that given the circumstances of this case it could make a material difference to the outcome of the case.

12. We find that the FtTJ materially erred in finding that the Appellant's pattern of offending broke his integration.

Disposal

13. We are mindful of the Court of Appeal case of *AEB v Secretary of State for the Home Department* [2022] EWCA Civ 1512 and that we have not identified a procedural error. We indicated to the parties that if we did find an error of law we were minded to keep the matter in the Upper Tribunal. Neither of the parties objected. Accordingly, we find that it is appropriate to keep this case in the Upper Tribunal.

Notice of Decision & Directions

1. The FtTJ made a material error of law. Accordingly, the determination dated 12 March 2024 is set aside.

2. The decision will be remade in the Upper Tribunal on a date when Ms Rutherford is available, and in consultation with her clerk. The time estimate is 2 hours.

3. No interpreter is required

4. The findings of the First-tier Tribunal set out at [4] are preserved. The Upper Tribunal will make fresh findings as to whether the Appellant' is socially and culturally integrated into the United Kingdom and are very compelling circumstances over and above those in paragraph 399A of the Immigration Rules which would render his deportation disproportionate.

5. Any party wishing to rely on additional evidence must serve it on the Upper Tribunal and on the other party at least 14 days before the next hearing, accompanied by a statement pursuant to rule 15 (2A) explaining why it should be admitted.

Gemma Loughran
Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 August 2024