



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00392/2013

THE IMMIGRATION ACTS

Heard at Field House
On 7 August 2013

Determination Sent
On 6 September 2013

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MR IBRAHIM MOHAMED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D O'Callaghan, Counsel
For the Respondent: Mr J Parkinson

DECISION ON ERROR OF LAW

1. The appellant is a citizen of Somalia born on 9 January 1984. He has been granted permission to appeal the decision of a panel consisting of First-tier Tribunal Judge Verity and Mrs S E Singer, dismissing his

appeal against the decision of the respondent made on 14 February 2013 seeking to deport him from the United Kingdom. The deportation order was signed on 11 February 2013 because the respondent took the view that the appellant was a foreign criminal whose removal was conducive to the public good. The appellant has a history of offending and criminal convictions dating from October 2000 to October 2010. On 7 October 2010 he was sentenced to a custodial sentence of 6 months for failing to comply with his community order; and was further sentenced to 32 months imprisonment for robbery. The decision to remove the appellant was made under Section 32(4) of the UK Borders Act 2007 in conjunction with section 3(5)(a) of the Immigration Act 1971.

2. The appellant was born on 9 January 1984 in Burao in Somaliland. The appellant left Somaliland when he was 4 and travelled to Ethiopia where he resided for seven years. He entered the UK on 20 January 1995 at the age of 11 to join his father, Mohamed Ali Abdi for a family reunion. He was accompanied by his two siblings Master Abdirisq Keyse Mohamed and Miss Hawo Keyse Mohamed. The second brother arrived in the UK later. The appellant was granted indefinite leave to remain in the UK on 28 March 1996 when he was 12 years old.
3. The appellant lived with his father and the family and attended school and college. He was then put into local authority care by his father from the age of 15 to 21.
4. The underlying cause of his criminal behaviour seems to be his addiction to drugs and alcohol. He was released from detention on 27 June 2013 and is now residing with his father.
5. Counsel accepted that his first ground could not succeed when I pointed out to him that paragraph 397 deals with a case where a deportation order is yet to be made. In this case however the deportation order has already been signed.
6. Counsel relied on his second ground in which he argued that the panel failed to lawfully consider the issue of proportionality in its consideration of Article 8 of the ECHR. Counsel relied on three issues; the first was that the Tribunal wholly and utterly failed to apply the factors set out in Maslov and emphasised by the Upper Tribunal President in Ogundimu [2013] UKUT 60 (IAC) and by the Court of Appeal in JO Uganda in their conclusions at paragraph 35.
7. The second issue was that the panel only quoted the first paragraph of the sentencing judge's remarks and not the remarks which were helpful to the appellant. Counsel argued that whilst that was not an error per se, it flowed into the consideration of further reoffending by the

appellant. It was put before the panel efforts made by the appellant to address his drugs and alcohol addiction and the fact that he had been drug tested in prison and found to be negative and the appellant's personal evidence that he wished to put drugs behind him. None of this evidence according to Counsel was considered by the panel.

8. The third issue was that the panel failed to consider that the appellant has been in the UK since the age of 11. He was granted indefinite leave at the age of 12. He is a person lawfully present in the United Kingdom for eighteen years. The panel's finding that the appellant is not integrated is concerning. It goes towards their failure to consider **Maslov**.
9. Mr Parkinson submitted that paragraph 74 of **Maslov** says that Article 8 provides no absolute protection against expulsion for any category of aliens, including those who are born in the host state or moved there in early childhood. At paragraph 75 the court considered that for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country very serious reasons are required to justify expulsion. He submitted that the facts of this appellant's case do not fall into the "very serious reasons" category.
10. Mr Parkinson submitted that the factors relied upon by the appellant are that he arrived in the UK at the age of 11. However, he spent the majority of his youth outside the UK and only seven years of his youth in the UK. The extract from **IO Uganda** relied on in the grounds does not refer to **Maslov** per se. If it refers to some of the appellant's past in the UK, then the Tribunal dealt with it at paragraph 34 where they found that the appellant had serious problems with his family. He spent barely three years with his father. Since the age of 14 he has lived separately from his father and his siblings. He said that **Maslov** is relied on because that there is a presumption that for people who are integrated and have become a part of this country, removal will have significant effect on their private life. At paragraph 30 the panel found that family life was exceptionally limited and this was conceded by Counsel. At paragraph 34 the panel listed little factual matters in respect of the appellant's private life. The panel's conclusion at paragraph 35 was appropriate because, following the consideration of the right factors, they found that the appellant was not a person who fell into **Maslov** as requiring very serious reasons for his expulsion.
11. With regard to the panel's failure to have proper regard to the sentencing remarks, Mr Parkinson submitted that the panel included two extracts from the sentencing remarks both of which were damaging to the appellant and assisted him at the same time. It was not incumbent on the Tribunal to put in every word of the sentencing remarks. This

would place an impossible burden on the panel. The panel took into account the appellant had previously failed to take advantage of the probation services. Basically the judge said it was up to the appellant to re-engage with the probation service. It was appropriate for the panel to conclude that there would be no disproportionate interference if the appellant were to be deported. Mr. Parkinson argued that the grounds amounted to a disagreement of the findings which were open to the Tribunal.

Findings

12. I find that the panel materially erred in law for the reason that they did not factor into their consideration a key requirement in Maslov, which is that the appellant is a person lawfully present in the United Kingdom, and has been since he was 11 years old. If Maslov did not apply because it was considered that the appellant had not spent all or a major part of his childhood in the UK, the panel should have said so and given reasons for their finding. Mr Parkinson sought to argue that because the appellant had spent seven years of his youth in the UK, he had not spent all or most of his childhood in the UK and therefore the panel were not required to give serious reasons why his expulsion was justified. This is a novel argument because it requires the panel to determine whether the time spent in the UK amounted to a major part of the appellant's childhood and youth in the UK. This point was not taken by the Court of Appeal in the cases of JO Uganda and JT Ivory Coast. JO had arrived in the UK when he was 4 years old and had been granted indefinite leave to remain when he was 13. JT had arrived in the UK when he was approximately 5 years old and was never granted leave to remain. In both JO and JT the Court of Appeal applied the principles in Uner and Maslov. In allowing JT's appeal the Court of Appeal held

“that although very serious reasons were not required to justify the expulsion of an alien who had spent his life in the UK unlawfully, the fact that he had been here since childhood would still be a weighty consideration in the Article 8 balancing exercise.”

It seems to me that the key issue in cases of this nature is not apportioning the time spent in the UK as a youth but giving due consideration to the fact that an applicant has been in the UK since childhood. In this appellant's case he has been lawfully present and lawfully settled in the United Kingdom since the age of seven when he was still a child. I find that the panel failed to give due weight to this factor in their consideration of Maslov and the proportionality of the appellant's removal. Their failure to consider this key element was a material error of law.

13. I do not find that there is any mileage in the argument that the panel failed to consider two paragraphs of the sentencing judge's remarks which were favourable to the appellant. I agree with Mr Parkinson that the Tribunal does not have to record every word of the sentencing judge's remarks as that would place an impossible burden on the panel. I do accept however that the panel were silent as to whether the appellant was taking steps to address his addiction to drugs and alcohol. As a consequence the panel failed to consider whether the appellant was at risk of reoffending.
14. I also agree with Counsel's submission that the panel's finding that "the appellant appears not to have integrated into the community and although he has a private life in this country has only undertaken limited integration" was rather concerning. The appellant is a lawfully settled migrant. I therefore agree with Counsel's argument that to find that the appellant has not integrated through his residence and schooling in the UK leads to a flawed consideration as to the appellant's private life.
15. For the above reasons I find that the panel made a material error of law and their decision cannot stand.
16. The appellant's appeal is remitted to be reheard by a differently constituted panel of the First-tier Tribunal.

Directions

17. The appellant's solicitors are required to inform the Tribunal how many witnesses the appellant intends to call at the next hearing.
18. Whether an interpreter is required and in what language.
19. The limited findings of fact at paragraph 34 are to stand with the exception of the finding that he has not integrated into the community and has only undertaken limited integration. The appellant's immigration history is not also disputed.
20. The appellant's appeal under Article 8 is to be reheard.

Signed

Date

Upper Tribunal Judge Eshun