



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00573/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 1 December 2014**

**Determination Promulgated
On 22 December 2014**

Before

**UPPER TRIBUNAL JUDGE ESHUN
DEPUTY UPPER TRIBUNAL JUDGE MAILER**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR CIRHESNA HIBBERT

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: Mr R Singer, Counsel instructed by Bhattarai & Co
Immigration Practice

DECISION ON ERROR OF LAW

1. The appellant before the Upper Tribunal is the Secretary of State for the Home Department. Mr. Hibbert shall be referred to herein as the claimant.
2. The Secretary has been granted permission to appeal the decision of First-tier Tribunal Judge Elson allowing the appeal of the claimant against the decision of the Secretary of State to make a deportation order against him pursuant to Section 32(5) of the UK Borders Act 2007.

3. The claimant arrived in the UK from Jamaica on limited leave to enter valid until 1 January 2003. He was nine years old and joined his mother who was already residing in the UK. On 10 April 2006 he was granted indefinite leave to remain in the UK as the dependant of his mother.
4. On 11 November 2011 the claimant's daughter was born.
5. On 10 August 2011 the claimant was convicted at Wood Green Crown Court of burglary and theft and was sentenced to 18 months detention and 6 months detention to be served consecutively, a total sentence of two years in a Young Offender's Institute.
6. On 13 October 2011 the claimant was served with a notice of liability of automatic deportation. His representatives made representations on his behalf to the Home Office but a deportation order was obtained against him on 6 November 2012. The claimant's appeal the decision but before the hearing at the First-tier Tribunal, the Secretary of State withdrew her decision in view of the claimant's length of residence in the UK. After consideration of further representations the Secretary of State made a deportation order against the claimant on 17 March 2014.
7. The appeal came before First-tier Judge Elson MBE on 12 September 2014, by which time section 19 of the Immigration Act 2014 had been in force since 28 July 2014. It amended the 2002 Act by introducing a new Part 5A containing s.117 A-D. Those provisions apply to all appeals heard on or after 28 July 2014 irrespective of when the notice of intention to deport or the deportation order, as appropriate, was served (para A362) where Article 8 is raised in the context of deportation.
8. It is apparent from the determination that the judge failed to consider Section 117 of the 2002 Immigration and Asylum Act. Section 117A, B and C refer to the "public interest" in the deportation of foreign criminals. The only consideration by the judge of the public interest was at paras 60 and 61 but that was with reference to the case of **Masih (deportation - public interest - basic principles) Pakistan [2012] UKUT 46 (IAC)**. There was no consideration of the public interest question by reference to Section 117 A-C. This was an error of law.
9. I find that the judge committed further errors. In her consideration of paras 398, 399(a) and 399A, the judge applied the old rules. Changes were made to these rules on 28 July 2014 (HC532). Paragraph 399A(c) requires the claimant to demonstrate that there would be very significant obstacles to his integration into Jamaica. The judge failed to address this issue.
10. The errors made by the judge were material errors. Consequently the judge's decision cannot stand. It is set aside in order to be re-made.

11. Given that the Article 8 test in respect of foreign criminals is now very different under Section 117C, and the judge did not consider that at all, we find that it is appropriate to remit this case for re-hearing by a different First-tier Tribunal Judge.

Signed

Date **1 December 2014**

Upper Tribunal Judge Eshun