Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/02178/2013

THE IMMIGRATION ACTS

Heard in Manchester	**Determination Promulgated**
On 6th March, 2014	**On 03rd April 2014**
(Given extempore)	

Before

Upper Tribunal Judge Chalkley

Between

JABER MAHMOUD

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Rawlinson of counsel instructed by Mohammed & Co. solicitors.
For the Respondent: Mr G Harrison, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Background

1. The appellant is a citizen of Palestine, who was born on 19th March, 1983. He was first admitted to the United Kingdom on 26th May, 1988, for six months as a visitor with his siblings and mother, travelling on his mother's passport. He was last admitted to the United Kingdom on 4th

February 1992, together with his mother and three siblings until 25th June 1994 in line with is father's leave to remain. He has been in the United Kingdom since he was 8 years of age.

2. His immigration history is lengthy. The appellant's father was admitted to the United Kingdom in 1987. His application for leave to remain as a student and an application for asylum were refused on 22nd June, 1990, when he was granted leave to remain exceptionally outside the Immigration Rules until 22nd June, 1991. He was then granted further leave to remain until 22nd June, 1994. The appellant was granted periods of leave to remain in line with his father until 22nd June, 1997, and on 12th January, 1998, he was granted indefinite leave to remain in line. He subsequently applied for British nationality but that application was refused for reasons which will become apparent.

Previous Criminal Convictions

3. On 5th February, 2003, the appellant was sentenced by Hyndburn Magistrates Court for resisting or obstructing a police constable and using a vehicle with no test certificate and ordered to pay fines totalling £100 and costs of £55.

4. On 1st May of that year he was sentenced by the same magistrates for possessing Class A controlled drugs and was ordered to pay a fine of £100 and costs of £100.

5. On 24th March, 2004, he was sentenced at the same magistrate's court of possession of Class B controlled drugs and ordered to pay a fine of £100 and costs of £65.

6. On 1st May that year at Burnley Crown Court, he was convicted of possessing Class A controlled drugs with intent to supply. The drugs in question were crack and heroin.

7. On 16th September, 2004, he was sentenced to four years' imprisonment on each of those offences to run concurrently. He did not appeal his sentence or conviction. His earlier application for British citizenship was subsequently refused.

Liability to Deportation

8. In the light of his conviction, he was notified of his liability to deportation on 26th April, 2006. On 11th May, 2007, a decision to make a deportation order was served on him and he was advised that he was liable for deportation to Jordan, because at that time he was identified as a Jordanian national, given the documentary evidence provided.

First Deportation Appeal

9. On 17th May, 2007, he lodged an appeal against deportation which was heard on 5th September that year and his appeal was allowed on Article 8 grounds. As a result of this, on 28th January, 2008, the respondent sent a warning letter to him advising him that were he to come to adverse notice in the future she would be obligated to consider deportation again.

Subsequent Criminal Convictions

10. On 17th December, 2008, he was convicted by Blackburn, Darwin and Ribble Valley Magistrates of possessing a Class C controlled drug, cannabis, and sentenced to a conditional discharge for twelve months and ordered to pay costs of 360.

11. On 19th December that year he was again convicted by the same magistrates for breach of conditional discharge and given a community order with a curfew requirement and four weeks electronic tagging. On the same date he was also sentenced by Hyndburn Magistrates Court for possessing a Class A controlled drug, cocaine, and given a community order with a four week curfew requirement and costs of £60.

12. On 20th October, 2010, at Burnley Crown Court he was convicted of three counts of possession of a Class A controlled drug with intent to supply heroin and crack cocaine and one count of being concerned in producing a Class A drug, namely crack, and sentenced on 19th November that year to six years' imprisonment on each count to be served concurrently. He did not appeal either the conviction or sentence.

Liability to Deportation

13. On 17th January, 2011, the respondent again notified the appellant of his liability for deportation and he responded indicating that his deportation would result in a breach of his human rights.

14. On 13th September, 2012, he was convicted at Preston Crown Court of two counts of concealing, disguising, converting or transferring, remove criminal property, and sentenced on 14th January, 2013 to 21 months' imprisonment consecutive to the sentence he was already serving.

15. On 5th June, 2013 at Preston Crown Court a confiscation order was made requiring him to pay the sum of £37,147. 06 within six months of the order being made. He was liable for a further twelve months' imprisonment consecutive in the event of failure to pay the confiscation order.

Second Deportation Appeal

16. The appellant appealed against the decision of the respondent taken on 11th October, 2013, to make a deportation order by virtue of Section 32(5) of the UK Borders Act 2007 and to refuse the appellant's Article 8 claim under paragraph 398 of Statement of Changes in Immigration Rules HC 395 as amended. The appellant's appeal was heard at Bradford Magistrates Court by a panel of the Tribunal comprising First-tier Tribunal Judge Birkby and Mr G H Getlevog, a non-legal member. The panel concluded that removal of the appellant would not be disproportionate and dismissed the appellant's appeal.

The challenge to the First Tier Tribunal's decision

17. Grounds of appeal were subsequently submitted, challenging the decision of the panel under three separate heads. The first challenge asserted that the panel failed to give proper reasons in relation to its assessment of his reoffending. The second challenge suggested that the panel had failed to consider whether it was even possible to return the appellant to Palestine, or whether he would be at risk of harm on return and the last challenge suggested that the panel failed to have sufficient regard to case law and in particular to *Ogundimu (Article 8 new Rules) (Nigeria)* [2013] UKUT 00060 (IAC), given that the appellant had been in the United Kingdom since the age of 8.

18. Miss Rawlinson addressed me in respect of the second challenge only, possibly because in granting permission, First-tier Tribunal Judge Blandy suggested that the first and second grounds were not arguable. She suggested that the panel had erred by failing to consider the objective evidence as to the risk the appellant would be subjected to on his return to Palestine. given that he would have to pass through an Israeli checkpoint and the checkpoints into Palestine are controlled by the Israeli occupying forces. At best, she submitted, he would be turned away by

the Israelis and at worst he would be at risk of harm because of his history and the history of his uncle, who was killed by the Israeli forces in 1989 during militia insurgency. She further submitted, that the length of time the appellant has been away from Palestine in itself, would cause him to be at risk of enquiry by the Israeli authorities, who would want to know why he had been out of Palestine for twenty years.

My consideration of the grounds of appeal

19. Dealing first with the first of the three challenges in the appellant's application, it is suggested that the panel erred by suggesting that they were not satisfied that they could rely on the NOMS report, bearing in mind the appellant's history. It is suggested that the panel erred by failing to attach weight to the NOMS document or, in the terminative, by failing to grant an adjournment so that the panel could have further information regarding the risk. I will deal with that first.

20. At paragraphs 69, 70 and 71 the panel considered the question of risk of reoffending at some length. They noted that the appellant had not denied his history of escalating drug offending and being involved and associated offences. They noted the remarks of the sentencing judge at the hearing on 19th November, 2010, described him as being

> "*a professional and commercial drug dealer in heroin and crack cocaine*".

They noted that his offending was not simply related to possession and supply of drugs, but also included the manufacture of illegal drugs. They noted that he had previously been the subject of a deportation order, against which he had successfully appealed and that he was clearly warned that any further offending would lead to a further deportation order.

21. The assessment made on 8th August, 2013, was risk serious harm described as being "low risk." There was no OASys Report available and the NOMS report was therefore asked to provide what information could be supplied with regard to "risk of serious harm". The report, the panel noted, said "*Mr Jaber is serving a prison sentence in relation to drugs supply. He has seven previous convictions and they demonstrate a pattern in relation to drugs.*"

22. Section 3 of the report, which dealt with the risk of reconviction, the source of the information and additional comments, is stated to be from OASys Report. The risk of reconviction predictor indicated that the OGRS (Offender Group Reconviction Scale) states that the appellant is OVP. In other words, his violent predictor is shown as L, presumably low, for one year and L for two years. His OGP (General reoffending Predicator) is shown as medium for one year and medium for two years. His OGRS (Offender Group Reconviction Scale) which estimates the possibility that offenders with a given history of offending would be reconvicted for any recordable offence within two years of sentence, which is a predictor of reoffending within one and two years, showed 37% for one year and 54% for another year. The Panel of the Tribunal noted that there were only limited explanations given as to how the figures had been arrived at.

23. The Tribunal went on to consider the assertions made by the appellant that he would not reoffend, that he had effectively learned his lesson and wished to lead a normal life as soon as he was released. They noted the assertions made by family members who indicated that they would support him. They also took account of the various courses and education opportunities that the appellant had taken advantage of during his recent period in custody and bearing in mind his history, concluded that they could not simply rely on the NOMS document. They noted that his history was one of escalating serious offending, which they quite properly pointed out had an incalculable effect on the lives of others which had no doubt been blighted by his drug offending.

They noted the many opportunities the appellant had to mend his ways and the promises he had made in the past but his offending simply escalated. They found that the offending was so serious that they could take into account the deterrent effect when it comes not only to considering the punishment he has already been receiving, but also when deciding whether deportation is appropriate and indeed the public interest. Indeed, in paragraph 74 of their determination, the panel refer to his:

> "…*horrendous history of breaking the law and breaking his commitments with regard to non-offending*."

I am satisfied, given this appellant's appalling history that the first ground of appeal fails to identify any error on the part of the panel.

24. The third ground suggested that the panel had failed to have sufficient regard to case law, bearing in mind that the appellant had been in the United Kingdom since he was 8 years of age.

25. However, a careful reading of the determinations demonstrates that the panel did into account the length of time the appellant had spent in the United Kingdom and the fact that he arrived as an 8 year old child (*see paragraph 72 of determination*). They noted at paragraphs 74 that his family had not been in a position to prevent him from reoffending. They further noted that the appellant had not been in Palestine for some 22 years, but concluded that his offending was simply too serious to outweigh his claims to remain in the United Kingdom because of his history. His length of time in the United Kingdom and the fact that he has been here since he was a boy was, in their judgment, outweighed by the public interest in keeping society safe from a perennial offender who they believed in all likelihood would be a serious threat to individuals living in the United Kingdom, were he to be allowed to remain in the United Kingdom on his release from prison.

26. Those were findings which, given the appellant's appalling history, were open to the panel to make.

27. The last challenge seems to suggest that there was a requirement on the panel to consider the means by which the appellant was to be returned to his own country, but there is no such requirement in deportation appeals. How the Secretary of State achieves her objective is a matter entirely for her. The appellant has not raised an asylum claim. He had not raised an Article 3 claim and given that he was represented throughout, if there was a serious possibility that on his return he would be at risk, then I have no doubt whatsoever that it would have been raised as an asylum claim or an Article 3 claim.

Conclusion9

28. I find that there are no errs of law in this determination, which I uphold.

Upper Tribunal Judge Chalkley