



IAC-FH-NL-V1

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

Appeal Number: DA/00017/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 23 July 2015**

**Decision & Reasons Promulgated
On 24 August 2015**

Before

**THE HON. MR JUSTICE KNOWLES
UPPER TRIBUNAL JUDGE LESLEY SMITH**

Between

**AJ (GAMBIA)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Lams, Counsel

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. This matter has a reasonably substantial history which has included a hearing before the Court of Appeal with a decision under neutral citation **[2014] EWCA Civ 1636**. There the Court of Appeal concluded in relation to the present case that at an earlier hearing the Upper Tribunal had not applied the new Rules correctly and had thus fallen into a material error of law. The Court of Appeal recorded that there was a desire on the part of AJ to adduce further evidence that would be relevant to the assessment required under Article 8 in light of the

decision of the Court of Appeal and on the footing that the Court of Appeal came to the conclusion, as it did, that there had been a material error of law. The parties were, the Court of Appeal recorded, agreed that the case should be remitted to the Upper Tribunal for a new decision to be made. In those circumstances the matter comes before us today.

2. It is valuable to set out paragraph 46 of the decision of the Court of Appeal which is in these terms and in the judgment Lord Justice Sales (with which Sullivan LJ and Newey J agreed):

“In my view the Upper Tribunal should have approached the assessment of the claim under Article 8 by application of the new rules and in particular (since the appellant could not bring himself within paragraphs 399 and 399A of the new rules) by asking itself whether there were very compelling reasons within the ‘exceptional circumstances’ rubric in paragraph 398, to outweigh the strong public interest in deportation in the appellant’s case.

In addressing that question, the Upper Tribunal should, of course, have given due respect to the guidance from the Grand Chamber in **Maslov** at paragraph [75] of the judgment (reading it in the context of the general guidance given by the Grand Chamber at paragraphs [68] to [76] of the judgment), but as a matter to be brought into the overall assessment and balanced against the strong public interest in deportation to which the UK Borders Act 2007 and the new rules give expression. On a proper approach under the new rules, in relation to a person assessed to have active ties to his country of citizenship, without a relevant family life in the United Kingdom and whose serious offending had occurred when he was an adult, I think the more natural conclusion would be that deportation would be found to be justified in a case like this.”

Towards the end of that citation are the subject areas with which today’s hearing and the submissions and evidence provided to us have been most engaged.

3. The starting point is the presence of serious offending on the part of AJ when he was an adult. He is now 24. The point is made that the offending was now some six years ago. We bear that, as with all other considerations, in mind but the offending was serious and the offence was not a single isolated offence.
4. The areas of active ties to country of citizenship and relevant family life in the United Kingdom are areas to which, in undertaking the exercise that we are bound to undertake with its components of balance and proportionality, that we turn. So far as relevant family life in the United Kingdom is concerned we have had further written evidence including from AJ and from his mother. We have seen them give oral evidence briefly under cross-examination conducted on behalf of the Secretary of State. We have also been shown some documentation.
5. A central aspect concerns the health and especially the mental health of AJ’s mother. The submission is made that the mother suffers from

serious depression and that that has caused suicidal thinking and on an occasion the context has been one in which premises were set on fire. There is evidence of the medication that AJ's mother takes and of the support from professionals that she now receives. That support is received by her on a weekly basis now but in the past it has been more frequent and at one point there was some in-patient treatment of her in relation to her mental health.

6. The documentation is regrettably sparse in terms of an evidential contribution from the health professionals rather than the account that AJ and his mother between them can give. We do have a letter of 27 October 2014 from Barnet, Enfield and Haringey NHS Trust that we have considered in all of its terms. It does not in terms reference serious depression although it does reference depressive or mood-related conditions. It does not in terms reference suicide although it does reference risk of self-harm and related matters. We have had little explanation from AJ's mother and indeed from AJ himself as to why the letter which apparently was written after the fire-related episode does not contain more information than it does and AJ himself has told us that he sought further material from the health professionals but it has not been forthcoming. We are in a position in which we must do the best we can with the material we have got, thus having regard to what the letter does say, and having regard also to what we have been told about it by both AJ and his mother.
7. The overall assessment we make in relation to this aspect, the aspect of his mother's health and the contribution that he makes in relation to her and the support that she needs and he would wish to provide, is that there is, no doubt, a contribution that he could make but the most important contribution to be made is that of the health professionals given her condition. We do not consider that, taken overall, the mother's condition and the role and involvement he has in supporting that condition is at the level of a powerful or very compelling reason. That said these are factors that we continue to have regard to in the overall assessment required.
8. Emphasis is also placed by Counsel for AJ on the fact, focusing on AJ himself as an individual, that he arrived in this country at the age of 9 and so has been here for fifteen years now. We are asked to have particular regard to the fact that his life here in the UK commenced at an early age and has continued for some time. It is one of those cases where the person has been here since childhood and rightly that is a material factor in the overall balancing exercise.
9. A further dimension of course expressly referenced by the Court of Appeal is the dimension of active ties to the country of citizenship, in the present case Gambia. It is the evidence of AJ that he has, to use his language of his most recent witness statement:

"... no-one to return to in Gambia, a country I only lived there from the age of two years to nine years old. I am not in contact with anyone in

Gambia. I have no family in Gambia to whom I can turn. I have no contact with my father and half siblings. I have not had any contact with my father since I was a child. ... I cannot remember the Gambia. I will be destitute there with no prospects of life. I will be very depressed and not know where to commence living in a country that is alien to me."

10. After the passage that I have just quoted AJ rightly acknowledges that what he himself terms 'a connection" with Gambia exists in the form of his uncle and two aunts. There is evidence before us, more evidence now than at previous stages in the proceedings, that the uncle is in poor health and a pensioner and that one of the aunts is undergoing treatment for her mental health, the other aunt is elderly and in poor health. A written contribution was apparently in materials that were prepared in advance of the hearing before the Court of Appeal, from the uncle and dated 9 July 2014, where the uncle indicates that he and the two aunts live in a two bedroom house with the two sisters sharing a bedroom. The uncle adds that their health and situation means that they would not be able to "take responsibility" for AJ in the Gambia nor would their income extend beyond their current financial commitments.
11. That material, and looking at all the material available to us in this connection, shows that of course this is not a case where by any stretch AJ would be able in Gambia to take up immediate residence in an existing family household and be supported there for whatever period of time it takes before he, as a young and apparently fit 24 year old, can find useful employment and perhaps even make a contribution to those elderly relatives that he has in Gambia in the form of his uncle and two aunts. We cannot reach a conclusion that there is no active tie to the country of citizenship. Indeed we take the view that there is the presence of an active tie. In some cases the ties would be much stronger, in other cases perhaps they will be weaker. The overall situation whilst not straightforward does not in our assessment come near the mark of being one of powerful difficulty or challenge as opposed to a situation of more moderate compass.
12. With the assistance of the submissions we have had, which have directed us to various passages in previous decisions made in the course of this case and various materials from which I have referenced but a few of the more relevant, more recent examples, we do feel able to undertake the exercise that the Court of Appeal required the Upper Tribunal to undertake. We have taken close account of the written and oral submissions that have been very usefully provided by Mr Lams on behalf of AJ and we have considered the authorities and the emphasis that he would draw to our attention within the authorities and within the Rules in the course of those submissions. The summary given by Mr Lams, after his examination in submissions of the matters I have referred to, is that "the appellant AJ is socially and culturally integrated in the UK and there would be very significant obstacles to his integration into the country to which it is proposed he is deported".

13. Our own assessment is that, with great respect and with understanding of the submission, that submission overstates the position and in particular the degree to which AJ is truly integrated in the UK and to which he would face obstacles in Gambia in terms of making his life forward from the age of 24 years. We do not find that the link, as was urged by Mr Lam in oral submissions, with Gambia is “tenuous” or “without meaning” to use the two words or phrases that we were invited to consider in the course of oral submissions. In all the circumstances we have concluded that against the fundamental backdrop of the public interest in deportation and after examination to see whether there are very compelling reasons within the exceptional circumstances rubric, and having given all due regard to the guidance in **Maslov**, the present case is one that must see the appeal of the Secretary of State allowed and the challenge on the part of AJ refused.

Notice of Decision

The appeal is dismissed under the Immigration Rules and human rights grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Mr Justice Knowles