Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: DA/00386/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 22 June 2015	**On 14 July 2015**

Before

UPPER TRIBUNAL JUDGE PITT
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

A L-O
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jesuram, instructed by R.O.C.K Solicitors
For the Respondent: Mr Clarke, Senior Presenting Officer

DECISION AND REASONS

The Appeal

1. This is an appeal against the decision promulgated on 23 April 2015 of First-tier Tribunal Judges Ross and Lobo which refused the appellant's appeal against deportation.

2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a

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Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a likelihood of serious harm arising to the appellant's minor child.

3. The background to this matter is that the appellant, born on 29 January 1994, came to the UK in 2000 at the age of 6. His case is that he was trafficked here by a man posing as his father who was later convicted of immigration offences and deported. The appellant was taken into care by Social Services and granted settlement with their support on 24 August 2010.

4. The appellant has a child from a previous relationship. The relationship broke down, part of the history being that the appellant assaulted his ex-partner. The child was adopted. Nothing arises before us as regards that relationship or that child.

5. The appellant has another child, born on 13 September 2013, from his relationship with JD. Both the appellant's second child and JD are British citizens. The appellant has never lived with Ms D and had limited contact with his daughter as her family initially had concerns about his conduct and because he has been in criminal or immigration detention since 22 May 2014, most of the child's life.

6. The appellant has 7 convictions for 11 different offences, the first being in April 2008. They include robbery, handling stolen goods, common assault and possession of a Class A drug (MDMA).

7. The appellant was also involved with the police in a number of other matters which did not lead to convictions. We refer to these as the "non-convictions". A witness statement dated 12 December 2013 from DC Smith listed those matters which included rape and a robbery for which the appellant was tried but acquitted and possession of a bladed article.

8. On 19 February 2014 as a result of the appellant's convictions and non-convictions the respondent decided to deport him as his deportation was deemed to be conducive to the public good under s. (5) of the Immigration Act 1971.

9. Following that decision the appellant was convicted on 22 February 2014 of a further offence of burglary and theft and received a sentence of 2 years' imprisonment.

Ground 1

10. The written grounds stated that the first challenge to the decision arose from the 4 month delay in the promulgation of the First-tier Tribunal decision and argued that material factual errors arose from this delay.

11. We did not find that the determination here showed that there was a nexus between the delay and the safety of the decision; Arusha and Demushi (deprivation of citizenship – delay) [2013 UKUT 80 (IAC) applied. Nothing that we were taken to went to such a nexus rather than merely being challenges as to material errors of fact, in essence the case that Mr Jesuram took forward on this ground at the hearing.

12. The challenge on error of fact referred to five aspects of the findings of the First-tier Tribunal. We did not find any of them amounted to errors on points of law which required the decision to be set aside.

Ground 1(a)

13. The first factual error referred to at paragraph 14(a) of the grounds concerns the comment of the Tribunal at [23] that the appellant did not "dispute his offences nor his associations with the persons identified in DC Smith's report".

14. Mr Jesurum also pointed out that at [16] the panel stated that "[n]one of the evidence concerning the appellant's offending history, the other matters which did not result in convictions or his associations was disputed by him."

15. It was argued for the appellant that both his associates and the non-convictions were disputed in his witness statement dated 17 December 2014 and that the First-tier Tribunal erred in stating otherwise.

16. We accepted that at [7], [8], [10], [12] and [14] of his witness statement the appellant does not deny his involvement with the authorities at the times of the non-convictions but does deny any misconduct in that regard, hence he was not convicted. To that extent we accept that the comment of the First-tier Tribunal at [16] that he did not dispute any of the evidence against him was a misstatement.

17. Reading that passage in context, however, it appeared to us be no more than that and not a material matter. It is contained in a part of the decision that is overtly stated to be a summary of the appellant's case rather than being a finding that the police version of the non-convictions was correct. When the panel do make findings at [23] onwards, the non-convictions do not feature at all. It is the appellant's convictions, considered at [23], which concerned the panel which stated:

> "We find that the appellant has an appalling record of criminal convictions including robbery, possession of a bladed article in a public place and assaults. These are not "petty offences". We note that the appellant's most recent offence of burglary was committed as recently as February 2013 and was a matter not even taken into account when the notice of liability to deportation was served in October 2013. We note that the appellant does not dispute his offences nor his associations with the persons identified in DC Smith's report."

18. The final sentence refers to there being no dispute as to the appellant's associates as set out in the witness statement of D C Smith. It was not our view that it was accurate to characterise this as a misstatement or mistake of fact. At [18] of his witness statement the appellant indicated:

> "The Home Office bundle sates (sic) a lot of associates that I had over the last 9 years, I can confirm that most of the people listed I have not seen since the rape trail (sic) and the others I have not seen since I left Peckham and secondary school."

19. There is no dispute there between the appellant's evidence and that of the police as to his past associates. The Tribunal does not indicate anywhere that concern about continuing associations played a part in its consideration.

Ground 1(b)

20. The grounds also refer to the First-tier Tribunal failing to mention anywhere in the determination that the appellant had been trafficked to the UK. It was submitted that was a matter not provided for by the Immigration Rules and which was material to the assessment of the appellant's private life and "compelling circumstances" outside the specific provisions of the Rules.

21. However, the panel did take into account the appellant's evidence as to his entry into the UK at [31] where it states that:

> "We do not find the appellant's 14 years length of residence in the UK *nor the circumstances in which he may have been brought to the UK* as being very compelling reasons why he should not be deported (our emphasis)."

22. The panel therefore found that at its highest his evidence as to being trafficked could not assist him. That was additionally so where, as at [28], little weight attracted to the appellant's private life as, following s.117C (5) of the Nationality, Immigration and Asylum Act 2002, it was established whilst his immigration status was precarious. If authority were needed to support the finding at [28], it is on all fours with paragraph 5 of the head note of AM (S 117B) Malawi [2015] UKUT 0260 (IAC) which states:

> "In some circumstances it may also be that even a person with indefinite leave to remain, or a person who has enjoyed citizenship, enjoys a status that is "precarious" either because that status is revocable by the Secretary of State as a result of their deception, or because of their criminal conduct In such cases a person will be well aware that he has imperilled his status and cannot viably claim thereafter that his status is other than precarious."

23. For the same reasons, where Ground 4 concerns to the panel's finding on the appellant's precarious immigration status, it has no merit.

Ground 1(c)

24. The first ground also objects to the First-tier Tribunal's finding at [27] that:

> "In relation to the appellant's second daughter with his current girlfriend, we find that the appellant does not have a subsisting parental relationship with her, given that he has never lived with her and has been in custody since she was 8 months old, prior to which he only saw her occasionally."

25. As we understood it, Mr Jesuram's objection to that finding was that it went behind a concession made at [44] of the respondent's refusal letter to the effect that the appellant did have a genuine and subsisting family life with his daughter. There had been no application from the respondent to resile from that concession and no reason for going behind it was given by the First-tier Tribunal. An error of procedural fairness arose, therefore.

26. We did not accept those arguments for a number of reasons. Firstly, the refusal letter was prepared in line with the version of the Immigration Rules in force prior to 28 July 2014 which referred only to whether someone had a genuine and subsisting relationship with a child. It was common ground that the next iteration of the Immigration Rule as introduced on 28 July 2014 had to be applied by the First-tier Tribunal here. The correct wording of paragraph 399(a) to be considered was whether the appellant had a "a genuine and subsisting *parental relationship*" with his daughter. It did not appear to us that the respondent could have made a concession in the refusal letter regarding a requirement that did not exist at the time that the refusal letter was written.

27. It was clearly open to the First-tier Tribunal to find that the appellant did not have a parental relationship for the reasons given at [27]. He had never lived with his second child and had seen her only occasionally prior to detention from May 2014 onwards.

28. For these reasons, we also saw no merit in the arguments put forward in <u>Ground 2</u> as to the appellant's relationship with his child.

<u>Ground 1(d)</u>

29. The first ground also objected to the panel referring only in brief terms at [21] to the appellant's evidence of his private life which he had established over a 14 year period from the age of 6 onwards. The submission for the appellant ignores the clear statement in [21] that all of the appellant's evidence was "carefully considered" and that the paragraph goes on to note specifically that he had provided evidence of his work, training and rehabilatitive work in prison including his involvement with Samaritans." The panel was clearly aware of the length of residence as a minor, see for example [2] and [20].

30. It did not appear to us that the First-tier Tribunal was required to do more by way of indicating that the relevant material on private life was taken into account. As above, the appellant's private life claim was always going to be very difficult to make out where his immigration status was

precarious from when he began to offend and given the seriousness of his criminal offences.

Ground 1(e)

31. The final point made in the first ground is that the appellant's evidence and that of his foster-carer was that he had heard that the man who trafficked and who was subsequently deported had died in Nigeria. The panel refer at [31] to his alleged father having been deported to Nigeria.

32. We could not see anything material arising from this misstatement of the evidence. The appellant could not qualify under paragraph 399A of the Immigration Rules where sub-paragraphs (a) on the extent of his lawful residence and (b) on his social and cultural integration were correctly found not be met by the panel at [29]. It is simply not something when considered against the weight against the appellant here that could amount to a compelling circumstance that was sufficiently "powerful and irresistible", over and above the matters provided for in paragraphs 399 and 399A; see the head note of Chege (section 117D – Article 8 – approach) [2015] UKUT 00165 (IAC).

Ground 3

33. The only remaining ground argues that the First-tier Tribunal failed to take into account that "very serious reasons justifying deportation" were required given the appellant had spent most of his childhood in the UK and had offended whilst a minor. In essence, the submission was that the panel had failed to apply the ratio of Maslov v Austria [2008] GC ECHR 1638/03.

34. As set out at [30] and [31] of R (Akpinar) v Upper Tribunal (Immigration and Asylum Chamber) [2014] EWCA Civ 937 it is not correct to read Maslov as importing a "very serious reasons" threshold. It cannot be argued here that the panel failed to take into account the appellant's age when he came to the UK, his length of residence whilst a minor and his age at the time of his various offences. It was open to them to find that those and any other matters could not amount to compelling circumstances such that deportation was not justified.

Decision

5. The decision of the First-tier Tribunal does not disclose an error on a point of law such that it should be set aside.

Signed: Date: 23 June 2015

Upper Tribunal Judge Pitt