



IAC-AH-PC-V1

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

Appeal Number: DA/00445/2014

**THE IMMIGRATION ACTS**

**Heard at Bradford Magistrates' Court  
On 26 October 2015**

**Decision & Reasons Promulgated**

**On 6 November 2015**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**JULIAN FABIAN MAYLOR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms U R Sood, instructed by Trent Centre for Human Rights

For the Respondent: Mr M Diwnycz, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Julian Fabian Maylor, was born on 18 June 1990 and is a male citizen of Jamaica. He appealed against a decision of the respondent dated 28 February 2014 to deport him from the United Kingdom. The First-tier Tribunal (Judge Kelly; Mrs S A Hussain JP) in a determination promulgated on 20 October 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Attempts were made on the morning of 26 October 2015 to produce the appellant at court in Bradford. However, the prison authorities (HMP Armley) notified the Tribunal by telephone that the appellant's violent conduct that morning was such that the officers were not prepared to convey him to court. Ms Sood, for the appellant, agreed that the error of law hearing should proceed in the appellant's absence.
3. First, the appellant asserts that the First-tier Tribunal perpetrated a procedural irregularity. Ms Sood submitted that, at the outset of the First-tier Tribunal hearing, the Presenting Officer (Mr Archibald) had attempted to address the court in order to amend (more particularly, to delete) certain passages in the decision letter of the respondent which is dated 28 February 2014. At [43], the author of the refusal letter noted that the appellant had "no known medical conditions and you are not on medication." It is accepted by the parties that the appellant suffers from mild autism. More seriously, although the decision letter noted that the appellant had been charged with a further crime whilst in prison (murder) and was awaiting trial for that offence at the date of writing of the decision letter, at [132] the respondent wrote,

"As noted above you were charged with a murder offence on 25 February 2014 for which you are currently awaiting trial. The fact you have reoffended without being deterred by your previous conviction or sentence indicates you have a lack of regard for the law, a lack of remorse for your offending behaviour and a lack of understanding of the negative impact your offending behaviour has on others. The fact that this offence was committed in the highly-controlled prison environment indicates a disregard for authority and failure to engage with the rehabilitation process."

That statement is outrageous by any standard. The author of the letter has conflated the fact that the appellant had been *charged* with the offence of murder with his *conviction* for that offence which was entirely uncertain (as the letter acknowledges) in February 2014; indeed, by the date of the First-tier Tribunal hearing, the appellant had been acquitted of murder, a fact known to all present at the Tribunal hearing.

4. However, notwithstanding that egregious statement in the decision letter, the question remains whether the First-tier Tribunal has erred in law. First, the Tribunal has not repeated in any way the misunderstanding of the criminal judicial process indicated in the decision letter. Secondly, the appellant had committed an extremely serious sexual offence for which he had received a sentence in excess of six years' imprisonment. Obviously, what the decision letter states in the passage which I have quoted above must be disregarded whilst the question of the appellant's mild autism (although omitted from mention in the decision letter) was considered by the First-tier Tribunal. Ms Sood complained that, because the judge did not allow the Presenting Officer to finish making his submissions regarding the decision letter, her client did not know the true nature of the case against which he had to argue. I do not agree. As I have said, the fact

that the appellant had been acquitted of murder was known to everyone at the Tribunal hearing and the Tribunal itself properly considered all the relevant evidence and reached a conclusion which was plainly available to it on that evidence. To that extent, the errors of approach and reasoning in the decision letter have not infected the First-tier Tribunal's decision in any way. I cannot see that, for the reasons asserted, the appellant or Ms Sood were at any disadvantage in the presentation of the appellant's case. In particular, I reject Ms Sood's submission that justice was denied because she was unable to take instructions from her client after the Presenting Officer had attempted to withdraw the offending passages of the decision letter. I cannot accept that the appellant's case would have been in any way different from that presented by Ms Sood had such instructions been taken. Notwithstanding the obvious error in the decision letter, the First-tier Tribunal, by contrast, reached a decision on the basis of a consideration of the relevant evidence before it.

5. The grounds also assert that the First-tier Tribunal was wrong to conclude that the fact of the appellant's conviction for the sexual offence in the United Kingdom would not cause him significant difficulties upon return to Jamaica. The grounds [10] refer to the ability of the Ministry of National Security in Jamaica (under the provisions of the Criminal Justice (Administration) Act 1960) to declare deported migrants returning to the country as "restricted persons" if he/she reasonably believes that such individuals may be considered a threat to the nation. The designation of an individual as a "restricted person" appears to involve registration with a government office in order to track the whereabouts of the individual. It is not clear to me that this background material was ever put before the First-tier Tribunal or, indeed, that the grounds show that the Tribunal had made any error. It is not clear at all that a requirement to register with the Jamaican authorities on return would expose the appellant to risk or otherwise render his return not in accordance with the law. The Tribunal was not satisfied [33] that there would be "very significant obstacles" to the appellant's integration into Jamaican society. The Tribunal was also right to note that, even if such obstacles did exist, the appeal should still be dismissed. The Tribunal noted that the,

"... sentence of imprisonment exceeded the four year threshold by some considerable margin, and there would thus need to be 'very compelling circumstances' that are 'over and above' those that we have just considered if the public interest in deportation is to be outweighed by other factors ..."

I am satisfied that (i) the material regarding registration was before the First-tier Tribunal which reached a legally sound decision in the light of the material (ii) alternatively, the material was not before the First-tier Tribunal. In consequence, the First-tier Tribunal did not err by failing to consider it or (iii) the First-tier Tribunal failed to have regard to the material in which case and for the reasons I have given the Tribunal did not perpetrate an error of law such that its decision falls to be set aside.

I am also satisfied that it was entirely open to the Tribunal to reject the personal circumstances of the appellant submitted by Ms Sood (in

particular, the appellant's relationship with his father in the United Kingdom) as not constituting "a very compelling circumstance" justifying a grant of leave to remain outside the Immigration Rules.

6. The Tribunal also dealt at length with the argument that the appellant's deportation was voided by reason of the Secretary of State's failure to ensure the presence of an "appropriate adult" at the appellant's asylum interview. The Tribunal noted [36] that no issues as to the credibility of evidence given by the appellant at that interview had been engaged in the deportation appeal (the Tribunal records that the interview was not even referred to at the hearing). Likewise, I consider that the Tribunal has dealt correctly and adequately at [37] with the alleged failure of the public authorities to abide by Section 149 of the Equality Act 2010. It appears that the appellant's argument was that this duty required the respondent to obtain an up-to-date report concerning the appellant's autistic condition. As the Tribunal noted, there was nothing to indicate that that condition is progressive [37]. I entirely agree with the Tribunal that the Equality Act (or, indeed, any other provision) should necessarily compel the respondent in an appeal of this sort to obtain evidence as to the appellant's medical condition which the appellant himself might adduce, especially when any medical condition is not progressive.
7. Further, the appellant asserts that the Tribunal failed to have proper regard to the evidence of the expert (Mr Sobers) who considered there was a significant risk that the appellant would be destitute upon return to Jamaica. This ground is nothing more than a disagreement with the findings of the Tribunal. The appellant asserts in the grounds of appeal that there was "credible evidence" that he would not obtain family or other support upon return to Jamaica. The Tribunal dealt with the question of destitution at [32]. The Tribunal was entitled to find that the appellant would have continued to receive financial support from his father in the United Kingdom whilst other family members could also offer support. The Jamaican Government would also assist in helping the appellant to find family and friends as well as in providing training and advice to the appellant as a returning deportee.
8. Finally, there was a general allegation regarding the conduct of the Tribunal at the hearing. There was a witness statement from Mr Ali Zaki a solicitor who attended the First-tier Tribunal hearing with Ms Sood. Mr Zaki states that Judge Kelly was "just as abrasive [as] some of the more difficult criminal judges" before whom he had appeared. However, nothing in the statement indicates that the Tribunal (and in particular Judge Kelly who chaired it) prevented Ms Sood from putting the appellant's case nor did the Tribunal prevent evidence being given on the appellant's behalf. To suggest that the judge was "abrasive" or "difficult" does not provide any basis for this Tribunal to conclude that the proceedings were vitiated by misconduct on the Tribunal's part. The proceedings before the First-tier Tribunal are a matter for the Tribunal itself and, in this instance, I cannot find that, even if I were to accept that Judge Kelly interrupted the representatives during their submissions, that the Tribunal was acting

other than in a robust but entirely fair manner. I was also concerned that there is attached to Mr Zaki's statement a letter apparently from the appellant's father which is addressed "Dear sirs" but which contains no address to which it may have been sent nor is it dated or signed by the author. The letter (which is headed "Complaint about the judge of the Immigration Tribunal") gives every indication of having been written to an authority (for example, the Office for Judicial Complaints). However, Ms Sood told me that no such complaint had ever been made and that the letter was, in effect, a form of statement by the appellant's father. I have to say that anyone reading the letter would reasonably conclude that a complaint had been made and I find the presentation of evidence in this manner to be highly misleading.

9. In conclusion, I find that the appellant was given an entirely fair and even-handed hearing before the Tribunal in Bradford on 1 October 2014 and that that Tribunal has produced a decision, supported by clear and cogent reasons, which was plainly available to it on the evidence. There was no suggestion at all that the Tribunal has accepted erroneous statements made in the decision letter or that the appellant was in any way disadvantaged if, as may have been the case, the Presenting Officer did not withdraw passages from the letter. Accordingly, the appeal is dismissed.

### **Notice of Decision**

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 4 November 2015

Upper Tribunal Judge Clive Lane