



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: DA/00674/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 November 2015**

**Decision & Reasons  
Promulgated  
On 18 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MASTER EMMANUEL OLUWASEYI OLAREWAJU  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Brocklesby-Weller (Home Office Presenting Officer)  
For the Respondent: Mr V Rwegasira (Solicitor)

**DECISION AND REASONS**

1. Although the Secretary of State is the appellant before the Upper Tribunal, I shall continue to refer to Mr Olarewaju as the appellant herein.
2. The Secretary of State has been granted permission to appeal the determination of First-tier Tribunal Judge Beach allowing the appeal of the appellant against the decision of the Secretary of State dated 27 March 2014 to make a deportation order by virtue of Section 5(1) of the Immigration Act 1971.

3. The appellant who is a citizen of Nigeria was born on 9 September 1996. He was issued with a family visit visa on 3 May 2005. He entered the UK on 9 September 2005 at the age of 9.
4. On 15 March 2010 he was convicted of robbery at Camberwell Green Juvenile Court and was sentenced to a referral order for four months. On 18 May 2011, he was convicted at Camberwell Green Juvenile Court of possession of a knife blade/sharp pointed article in a public place, possession of a controlled drug – Class B and handling stolen goods. He was sentenced to twelve months, youth rehabilitation order, a supervision requirement and curfew order. On 26 June 2012, he was convicted at Taunton Juvenile Court of two counts of possessing a controlled drug with intent to supply – Class A. On 10 July 2012, he was sentenced to eighteen months' detention and training order to run concurrently.
5. On 13 March 2013, a notice of liability to deportation questionnaire was sent to the appellant. On 10 April 2013, the appellant was released at the end of his custodial sentence. On 27 March 2014, a decision was made to deport him. He gave notice of appeal against the decision on 15 April 2014.
6. The Judge recorded that the appellant was not in the UK lawfully after the expiry of his visit visa and that the respondent had granted all the family, including the appellant, discretionary leave to remain in the UK. The respondent stated within the grant that the appellant's criminal history would be reviewed and he remained subject to deportation. I was informed at the hearing that the appellant was granted discretionary leave along with his mother and siblings in July 2013 and that his discretionary leave expired on 9 September 2014 when he was 18. Prior to the grant of discretionary leave the appellant was here unlawfully. He has not had further leave to remain since the expiry of the discretionary leave.
7. The Judge heard evidence from the appellant, various members of his family, his key worker, Ms Janina Hibble, and his social worker, Ms Henrietta Trevor.
8. The Judge noted that the appellant has been convicted of a number of offences in the UK. The most recent was in 2013 for assault and the conviction prior to that was for possession with intent to supply Class A drugs. She noted that all the offences occurred when the appellant was under 18 and that this was a relevant factor. She noted that he still committed yet another offence in 2013 by assaulting an inmate in the young offenders' institution. Whilst he may have found the young offenders' institute an extremely daunting experience, the appellant said he was being bullied but nevertheless clearly accepted that he had assaulted a fellow inmate and was not found to have a defence against his actions. She had also noted that in giving evidence the appellant did not show any particular remorse for this offence and instead sought to justify it by suggesting that he had no option but to commit the assault.

9. The Judge then went on to say that at the time the appellant committed the Class A drugs offence, he was only 15 years old and had left home. He was in the care of social services at that time under a care order but chose to leave the security of social services care and become involved in criminal activities. She said the appellant's family had effectively glossed over the appellant's estrangement from the family and the fact that he had left home. The Judge said that a deeper understanding of how the appellant came to be in this situation would have been helpful and she was left with the impression that there were still some fractures in the family relationship as a whole with the appellant choosing to live away from home.
10. The Judge considered the positive factors in the appellant's circumstances. She found that he had obviously affected professionals in a significant way, that both his key worker and his social worker had attended the hearing to give evidence on his behalf. She found that the appellant now lives away from the areas in which he became involved in criminal activities. It appears that he had a difficult time on his arrival in the UK given that he was hospitalised for stab wounds on two occasions, although again the circumstances surrounding these incidents were vague.
11. The Judge considered that the appellant arrived in the UK in 2005 at the age of 9. He was not in the UK lawfully after the expiry of his visit visa but equally he was a minor and was not the one making decisions regarding the family status in the UK. She noted that the Secretary of State had seen fit to grant all the family including the appellant discretionary leave to remain in the UK. The respondent did state within the grant that the appellant's criminal history would be reviewed and he remained subject to deportation but even so she did not choose to exclude the appellant from the grant of discretionary leave as she could have done. Furthermore, the automatic deportation provisions contain an exemption for foreign offenders who are sentenced when they were still under the age of 18. This was of relevance given that the respondent could not therefore deport the appellant under those provisions and instead relied on deportation being conducive. The Judge noted that the appellant has not been convicted of any further offences since 2013 and the evidence of the professionals was that the appellant had turned his life around and now acknowledged his past mistakes and had an understanding of how his offences had adversely affected society. The Judge said this was not simply a case of family members assuring the Tribunal of changes in the appellant, but was a case where experienced professionals have expressed a firm opinion that the appellant has changed. This view was echoed by the witness statement from the senior youth offending service officer to whom the appellant was allocated. She remains in contact with the appellant on a voluntary basis and has confirmed that she will continue to provide support to the appellant.
12. The Judge then considered the appellant's circumstances in the UK. She found that he has lived in the UK for more than half his life and even now was only 18 years old at the time of the hearing. He accepted that he had been unlawful in the UK but that was not of his own choosing.

13. The Judge considered the evidence of the appellant and his family that the appellant's father was a violent and abusive man. Nevertheless she found on the evidence that there was some level of domestic abuse within the family but that it was not as violent as the appellant's mother, in particular, sought to portray. She also found on the evidence that the appellant had contact with his father more recently than he was prepared to say. She found that his father continued to play some role in his life although this role is likely to have diminished given the time the appellant spent in custody and given that he is now living independently. The Judge found that given the appellant's apparent dislike of his father, it seems unlikely that he would have sought to maintain much contact with his father and also found that his father was unlikely to provide much support for him if he returned to Nigeria given that he seemed to provide very little support for the appellant or his family whilst in the UK. The Judge did not find however that there was sufficient evidence to suggest that the appellant would be at risk from his father in Nigeria.
14. On the evidence the Judge found that there would be extremely limited family support if the appellant were deported to Nigeria. She found that this is an appellant who has spent the formative years of his life in the UK and would, to all intents and purposes, have considered himself to be British albeit that he was in fact unlawfully here for most of the time he was present in the UK. She found that the appellant would be returning to a country with which he is no longer familiar and with little, if any support. His mother has visited Nigeria twice recently and would no doubt do what she could to assist the appellant in reintegrating but this would be with minimal family support in Nigeria.
15. The Judge then considered the public interest. She found that the appellant was now 18 years old and he has had a difficult life. He has been convicted of serious offences and it is in the public interest to deport foreign criminals particularly when they have been convicted of serious offences involving drugs. Deportation can also act as a deterrent to other foreign nationals.
16. The Judge found that the appellant is living independently in the UK and this is only with a significant level of outside professional support. It does not automatically mean that he would be able to find accommodation and employment in Nigeria. He has not lived there for many years and has no support structures he could turn to. Although the appellant raised issues with regard to the security situation in Nigeria, following consideration of the background evidence, the Judge did not find that the situation was so serious that the appellant would be at risk of a breach of Article 3 in Nigeria.
17. The Judge ended by repeating that the appellant arrived in the UK at a young age, his offences were all committed under the age of 18. He has not committed any further offences for two years and has professional support in the UK, support which would continue and which would mean that the appellant would be extremely unlikely to reoffend in the future.

He has turned his life around from a very difficult and turbulent teenage time. The public interest argument and the deterrence argument are both strong arguments in favour of deporting the appellant but, she found, that in the particular circumstances of this case for the reasons she has given, there are very compelling circumstances over and above the exceptions set out in paragraph 399 and 399A of the Immigration Rules and Section 117C of the Nationality, Immigration and Asylum Act 2002 which mean that the appellant should not be deported from the UK.

18. The grounds on which the Secretary of State was granted permission argued that the Judge failed to assess whether the appellant's case as to "very compelling circumstances" should succeed when "viewed through the lens" of the Immigration Rules; and that the Judge failed to properly factor in the public interest in the deportation of foreign criminals. Ms Brocklesby-Weller relied on those grounds.
19. I find that the Judge from the outset accepted that the appellant could not fit within either paragraph 399 or 399A of the Immigration Rules and properly directed herself that he must therefore show that there are compelling circumstances over and above these paragraphs. She also properly factored into her consideration the public interest in the deportation of foreign criminals.
20. In line with Section 117C, the Judge found that the public interest argument and the deterrence argument were both strong arguments in favour of deporting the appellant. Again in paragraph 83 she found that the appellant had been convicted of serious offences and it is in the public interest to deport foreign criminals particularly when they have been convicted of serious offences involving drugs.
21. The Judge considered the appellant's circumstances here in the UK and if he were to be deported to Nigeria and came to the conclusion that those circumstances were compelling over and above those in paragraph 399 and 399A and that his deportation would not conducive to the public good.
22. I find that the Judge did not err in her decision. The respondent's grounds of appeal amount to no more than a disagreement with the judge's findings. The Judge's decision allowing the appellant's appeal shall stand.
23. The respondent's appeal is dismissed.

Signed

Date

Upper Tribunal Judge Eshun