Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/00006/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 14 January 2016	**On 25 January 2016**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MICHAEL COLARELLI
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms S. Sreeraman, Home Office Presenting Officer
For the Respondent: Mr. J. Plowright, counsel (Direct Access)

DECISION AND REASONS

History of Appeal

1. The Respondent, who was born on 6 August 1958, is a citizen of the United States of America. He was granted leave to enter the United Kingdom for the purpose of settlement with his mother, who was a British citizen, on 22 April 1963. He has lived here ever since and has only visited America on one occasion since his arrival.

2. He initially lived and attended school in Liverpool and then moved to Bournemouth in 1977 and has lived there ever since. He has four adult children and six grandchildren, who are all British citizens.

3. On 11 February 2012 the Respondent was arrested and subsequently charged with one count of producing a Class B drug, namely cannabis, and one count of abstracting electricity. He entered a guilty plea at his Plea and Case Management Hearing in 2013 and 10th June 2014 he was sentenced to 18 months imprisonment. In his sentencing remarks Mr. Recorder Lowe said that in his view the Respondent's co-defendant had been the prime mover in their criminal enterprise.

4. On 9 December 2014 the Respondent was served with a deportation order and the Appellant certified his claim on the basis that he would not face serious irreversible harm if he were to be deported from the United Kingdom before his appeal hearing took place. He challenged this certificate in a pre-action protocol letter, dated 19 January 2015, and on 24 February 2015 the Appellant granted him an in-country right of appeal.

5. The Respondent appealed on 9 March 2015 and his appeal was allowed by First-tier Tribunal Judge Youngerwood on 6 July 2015. The Appellant appealed against this decision on 30 July 2015 and on 28 October 2015 First-tier Tribunal Judge Heynes granted her permission to appeal.

Error of Law Hearing

6. Paragraph 398(b) of the Immigration Rules applied to the Respondent as he had been convicted of an offence for which he had been sentenced to less than four years but at least 12 months. Therefore, in his appeal he had relied on the exception in paragraph 399A which states that:

> "This paragraph applies ... if
>
> (a) the person has been lawfully resident in the UK for most of his life; and
>
> (b) he is socially and culturally integrated in the UK; and
>
> (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported".

7. There was no dispute between the parties that he had had indefinite leave to remain in the United Kingdom since 1963, when he arrived as a four year old and that this was more than fifty years ago. Therefore, it was agreed that he meet the requirements of sub-paragraph (a). First-tier Tribunal Judge Youngerwood also found at paragraph 33 of his decision that the Respondent had "fully established that he has been part of UK society since the age of 4, starting from his education here". He did so after considering a 544 page bundle submitted on behalf of the Respondent. This included witness statements from his children, ex-partners, siblings, other relatives and friends; all of which indicated that he was significantly socially and culturally integrated into their lives and the life of his community.

8. Between paragraphs 28 and 33 First-tier Tribunal Judge Youngerwood carefully considered this evidence. In her first ground of appeal the Appellant argues that the

Respondent's offence clearly demonstrates that the Respondent is not fully integrated socially and culturally in the UK. However, the First-tier Tribunal Judge specifically addressed this issue in detail in paragraphs 29 to 30 of his decision, taking into account the Appellant's own guidance on this issue. The conclusion he reached was in accordance with this guidance and I agree with First-tier Tribunal Judge Heynes, who stated when granting permission, that this ground amounted to a mere disagreement with the Judge's findings.

9. In paragraphs 34 to 39 First-tier Tribunal Judge Youngerwood also gave comprehensive and careful consideration to whether there were very significant obstacles to the Respondent being able to integrate into the United States of America after an absence of more than fifty years. His conclusion that there were was one that was clearly open to him on the evidence before him and I agree with First-tier Tribunal Judge Heynes that the Appellant's second ground of appeal was no more than a disagreement with the Judge's findings.

10. The Appellant's third ground of appeal was that First-tier Tribunal Judge Youngerwood had failed to consider three powerful public interest considerations, which were relevant in a deportation appeal. The first of these considerations was whether there was a risk that the Respondent would re-offend. However, the Judge did remind himself in paragraph 17 of his decision that the pre-sentence report prepared on the Respondent considered that the likelihood of his reoffending was low and in paragraph 33 he noted that his offending was restricted to one time period and there was no known history of any other offending. Therefore, I find that the Judge had taken this factor into account. It was also clearly open to the Judge on the evidence to find that the risk of the Respondent re-offending was low and the Appellant's assertion that he may re-offend in the future if he faced financial difficulties amounted to mere speculation.

11. The Appellant also submitted that First-tier Tribunal Judge had not considered the role of deportation as an expression of society's revulsion at serious crimes and in building public confidence in the treatment of foreign citizens who have committed serious crime and the need for deterrence. However, in paragraph 29 of his decision the Judge did look at the various factors capable of adding weight to the public interest in deportation and noted that none of these were present in the Respondent's case. In paragraph 32 he also correctly directed himself that cases are fact-sensitive and then proceeded to balance aspects of the Respondent's history against the fact that he had committed a serious crime.

12. Furthermore, paragraph 399A of the Immigration Rules is an exception to the presumption in paragraph 398(b) that deportation is conducive to the public good where a person has been sentenced to at least 12 months and less than four years imprisonment. In *MF (Nigeria) v Secretary of State for the Home Department* [2013] EWCA Civ 1192 the Court of Appeal held that the Immigration Rules now include a complete code for dealing with deportation cases involving Article 8 of the ECHR and that it is only where an applicant or appellant does not fall within that code that it is necessary to consider whether there are very compelling circumstances to consider his or her case outside the Rules.

13. At the error of law hearing the Appellant relied on *KMO (section 117 – unduly harsh) Nigeria* [2015] UKUT 00543 (IAC), in which the Upper Tribunal agreed that "the

Immigration Rules, when applied in the context of the deportation of a foreign criminal, are a complete code" but also found in relation to paragraph 399 that it is also necessary to have regard to the matters to which the Tribunal must have regard as a consequence of the provisions of section 117C of the Nationality, Immigration and Asylum Act 2002. .

14. Section 117C(1) states that the deportation of foreign criminals is in the public interest and section 117B(2) states that the more serious the offence committed by a foreign criminal, the greater is the public interest in the deportation of the criminal". First-tier Tribunal Judge Youngerwood explicitly referred to section 117C in the concluding paragraph of his decision, where he noted that sub-section 117C(4) replicates paragraph 399A of the Immigration Rules and also acts as an exception to the general presumption in favour of deportation where an individual has been sentenced to at least 12 months and less than four years imprisonment.

15. In my view, paragraph 399A of the Immigration Rules and section 117C(4) do not incorporate an additional public interest test. But even if they did I am satisfied that when considering the relevant factors in these provisions, First-tier Tribunal Judge Youngerwood did direct himself to the seriousness of the crime committed by the Respondent and the public interest and balanced it against other relevant factors. Therefore, I find that the Judge did not err in his approach to the public interest and that his findings were open to him on the evidence before him.

16. I dismiss the Appellant's appeal on all grounds and uphold the decision by First-tier Tribunal Judge Youngerwood, promulgated on 16 July 2015, to allow the Respondent's appeal against deportation.

Date: 15 January 2016

Nadine Finch

Upper Tribunal Judge Finch