



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/04014/2018

THE IMMIGRATION ACTS

Heard at Field House
On 7 June 2018

Decision & Reasons Promulgated
On 26 June 2018

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

SHOWAYNE DEMARIO THOMPSON
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Jamaica who was born on 21 August 1996. He arrived in this country lawfully on 8 December 2002 as a visitor and prior to the expiry of his leave he applied for indefinite leave to remain. That application was refused but he was granted discretionary leave which eventually expired on 18 March 2013. An application for further leave to remain was refused and his appeal rights were exhausted some time in April 2013, so the position is that by the time with which this Tribunal is now concerned this appellant had been in this country for a little under half of his life.

2. Regrettably from 2014 onwards the appellant has been engaged in persistent criminal offending. He was first convicted in July 2014 for possessing cocaine and thereafter for mainly drugs convictions, but also for various driving offences and culminating in a conviction in September 2017 at Blackfriars Crown Court of possessing an offensive weapon in a public place and failing to surrender to custody at an appointed time. He was sentenced to twelve months' imprisonment on the first count and seven days' imprisonment with regard to failing to surrender to custody. By 2 February 2017 the applicant had some twelve convictions for 29 offences, mainly for drug offences, although there were also some driving offences and also he failed to attend on some occasions and had not complied with community orders. As a result of these convictions the respondent wrote to the appellant on 10 February 2017 notifying him that because of these convictions the respondent had decided to make a deportation order against him under Section 5(1) of the Immigration Act 1971 on the basis that the respondent deemed his deportation to be conducive to the public good. This Tribunal is in no doubt at all that as at that date this appellant was clearly a "persistent offender" for the purpose of the Immigration Rules and also as defined in Section 117D of the Nationality, Immigration and Asylum Act 2002.
3. Following on from this letter, on 29 January 2018 the respondent made a deportation decision in respect of the appellant. By this time he had acquired more convictions but in particular on 6 September 2017 he was convicted at Blackfriars Crown Court of possessing an offensive weapon in a public place, together with the offence of failing to surrender to custody at the appointed time for which he was sentenced to twelve months' imprisonment on the first count plus another seven days imprisonment on the failure to surrender. That conviction would on its own mean that he is a foreign criminal for the purposes of both Section 117D and also under the Immigration Rules.
4. As at the date of decision the appellant was over 21 years of age but had been lawfully in this country only for just under half that period. This was a factor which was referred to in the respondent's decision because when considering whether or not the private life exception to deportation set out within paragraph 399A of the Rules applied, which the respondent doubted, "It is not accepted that you have been lawfully resident in the UK for most of your life". The periods in which the appellant had been lawfully present in the UK are then set out and when they are added up they equate to just under half the life "not most of your life". As is noted within the decision letter, for the paragraph 399A(2) exception to apply, all three limbs of the exception must be met and these are that:-
 - (a) the foreign criminal has been lawfully resident in the UK for most of his life,
 - (b) he is socially and culturally integrated in the UK, and
 - (c) there would be very significant obstacles in his integration into a country to which he is proposed to be deported.
5. In the event that this exception is not made out (and the other exception which is related to a child or a partner does not apply in this case) the only basis upon which a deportation could be said not to be proportionate under both the Immigration Rules and the new Part VA of the 2002 Act is that there are very compelling circumstances

over and above those described in the exceptions (see Section 117C(6) of the 2002 Act) and also paragraph 398 of the Immigration Rules.

6. The appellant appealed against the decision and his appeal was heard before First-tier Tribunal Judge N M K Lawrence who, following a hearing at Harmondsworth on 1 March 2018, in a Decision and Reasons promulgated on 7 March 2018 dismissed the appellant's appeal.
7. The appellant had represented himself and also settled grounds of appeal himself which do not in themselves make out any error of law in the judge's decision; they essentially set out submissions as to why he should not be deported and make assertions including that his mother was in America which had been rejected by the judge. However, permission was granted by Designated Immigration Judge Shaerf on 26 March 2018 and it is the reasons given by Judge Shaerf for granting permission which in the judgment of this Tribunal (and also Mr Wilding, representing the respondent at the hearing today) need to be considered.
8. At the hearing before this Tribunal the appellant was not only represented, but chose not to attend, even though notice of the hearing had been given to him. Nonetheless, I have given careful scrutiny to all the papers contained in the file, and have considered also the representations made by Mr Wilding on behalf of the respondent. Although I will not set out below everything which was said, I have had regard to all this material and the submissions, whether or not the same is specifically referred to below.
9. Judge Shaerf's main reason for granting permission is that the judge had not "expressly" addressed "the extent or otherwise of the appellant's private and family life in the United Kingdom" and in particular that he did not "adopt the recommended five step structured approach to Article 8 claims" (as set out in *Razgar*) and also had not conducted "the relevant balancing exercise recommended by the Supreme Court in its judgment in *Hesham Ali* [2016] UKSC 59". Judge Shaerf considered that "this was particularly important in this appeal which is effectively an appeal against deportation on conducive grounds".

Discussion

10. I have considered very carefully the possible criticism of Judge Lawrence's decision as set out in the grant of permission, but I am not persuaded that this gives rise to any arguable error of law in Judge Lawrence's decision. In the first place the requirements set out both in paragraph 399A of the Rules but also in Section 117C(4) (exception 1) do not apply because the appellant has not been lawfully resident in this country for most of his life and had not been at the date of decision. For this reason, as a matter of law, he would need to establish there were very compelling reasons over and above those set out within exception 1 before it could be said that deportation was not proportionate. Moreover, even if he had been lawfully resident in the United Kingdom for most of his life, the judge had nonetheless given sustainable reasons for his finding that there would not be very significant obstacles to his integration into Jamaica on return. It is notable that Judge Shaerf when giving his reasons had considered that the judge had given "sustainable reasons for making an extensive

adverse credibility finding against the appellant” and that he had also “addressed the issue of any potential claim based on destitution on return to Jamaica”. The criticism that he makes is that the judge had not addressed the “extent or otherwise of the appellant’s family and private life in the United Kingdom” and that he had not conducted a balancing exercise. However, that will only arise where there are very significant obstacles to an applicant’s integration back into his home country because if there are not such obstacles first, exception 1 could not apply anyway, and secondly, it could not conceivably be said that there are compelling reasons over and above such obstacles. In this case this appellant has on any view failed to provide any evidence of such private life as he has in the United Kingdom because none of his witnesses attended and the judge made adverse credibility findings in respect of the reasons why none of those witnesses appeared. The judge also did not accept that he did not have any parent able to give him support within Jamaica and as Judge Shaerf has noted, the judge’s reasons for making the adverse credibility findings which he did were sustainable.

11. In these circumstances, this appellant’s appeal simply could not succeed. Exception 1 clearly does not apply, both because he has not been lawfully resident in the UK for most of his life, but even more importantly because he has not shown that there would be very significant obstacles to reintegration into Jamaica. Furthermore, on the facts of this case he clearly has not established that there would be very compelling reasons over and above the reasons set out in exception 1 why he should not be deported (as required in both Section 117C(6) of the 2002 Act and also in paragraph 398 of the Rules). As Mr Wilding correctly noted during the course of his arguments, the proportionality exercise which pre 2014 would usually be conducted on *Razgar* principles is properly conducted by reference to the factors now set out within the new Part BA of the 2002 Act (from paragraphs 117A to 117D).
12. It follows that there being no material error of law in Judge Lawrence’s decision, this appeal must be dismissed and I accordingly make the following decision:

Decision

There being no material error of law in the decision of First-tier Tribunal Judge N M K Lawrence, the appellant’s appeal is dismissed and Judge Lawrence’s decision, dismissing the appellant’s appeal against the decision of the respondent to deport him, is affirmed.

Signed:



Upper Tribunal Judge Craig

Date: 25 June 2018