



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: HU/07828/2018**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons Promulgated**

**On 30 July 2018**

**On 3 August 2018**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**OCSEAN ANDRE ECCLES**

**Appellant**

**-and-**

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

**Respondent**

**Representation:**

For the Appellant: Mr. M. Aslam, of counsel, instructed by Greenland Lawyers LLP (London)

For the Respondents: Mr. S. Kotas, Home Office Presenting Officer

**DECISION AND REASONS**

**BACKGROUND TO THE APPEAL**

1. The Respondent is a national of Jamaica. Pakistan. He entered the United Kingdom, as a visitor, on 29 July 2001, as a child of 4. On 4 April 2011 his mother applied for leave to remain, including him as her dependent. On 23 May 2011 he was granted discretionary leave to remain until 23 May 2014. He applied for further leave to remain on 26 June 2014.

2. On 18 December 2015 the Appellant was convicted of one count of violent disorder and one count of having a bladed instrument in a public place and on 8 February 2016 sentenced to one year and four months imprisonment. He was served with a decision to deport on 3 March 2006 and on 19 May 2016 his application for further leave to remain was refused. On 15 July 2016 he was also convicted on one count of assault occasioning actual bodily harm upon a prison officer, whilst on remand prior to his earlier conviction and sentenced to 32 months imprisonment.
3. On 29 September 2016 he was served with a deportation order and on 15 August 2017 his legal representatives made further representations on his behalf in the form of a pre-action protocol letter. As a consequence, the Respondent made a decision to refuse his human rights claim on 4 January 2018. He appealed against this decision and in a decision, promulgated on 18 May 2018, First-tier Tribunal Judge Housego dismissed his appeal. The Appellant sought permission to appeal against this decision and First-tier Tribunal Judge Keane granted him permission to appeal on 11 June 2018.

#### **ERROR OF LAW HEARING**

4. Counsel for the Appellant said that previous counsel's advice had taken the place of grounds of appeal and accepted that such an advice should not have been file and served as it was legally privileged. Counsel and the Home Office Presenting Office both made helpful oral submissions and I have referred to the content of these submissions, where relevant, in my decision below.

#### **ERROR OF LAW DECISION**

5. The Respondent was sentenced to 1 year and 4 months imprisonment and was later sentenced to 32 months imprisonment. Therefore, he was subject to automatic deportation under section 32 of the UK Borders Act 2007, as a result of either conviction.
6. Paragraph 398 of the Immigration Rules states that:

“Where a person claims that their deportation would be contrary to the UK’s obligations under Article 8 of the Human Rights Convention, and

(a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;

(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 18 months”;

...

the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A”.

7. Paragraph 399A of the Immigration Rules states that:

“This paragraph applies where paragraph (b) or (c) 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”.

8. Section 117C of the Nationality, Immigration and Asylum Act 2002 states that:

- (1) The deportation of foreign criminals is in the public interest.
- (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
- (3) In the case of a foreign criminal (“C”) who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C’s deportation unless Exception 1 or Exception 2 applies.
- (4) Exception 1 applies where-
  - (a) C has been lawfully resident in the UK for most of his life; and
  - (b) C is socially and culturally integrated in the UK; and

(c) there would be very significant obstacles to his integration into the country to which C is proposed to be deported”.

9. At the First-tier Tribunal hearing the Respondent submitted, and First-tier Tribunal Judge Housego accepted, that the Appellant had been sentenced to more than four years imprisonment and that, therefore, paragraph 399A of the Immigration Rules and section 117C(4) did not apply to him. In particular, in paragraph 35 of his decision, the First-tier Tribunal Judge found that “on the first sentencing occasion there had been a 12-month sentence and a four-month sentence consecutive to it. The next conviction had been for an offence committed, tried and sentenced while the appellant was serving that sentence and was for 32 months consecutive to the other sentences”.
10. However, the sentencing remarks made at the Inner London Crown Court on 15 July 2016 clearly state on page 5:  
  
“Eccles, giving you credit, full credit for your plea of guilty, the sentence is 32 months. In your case that will run concurrent to the present sentence that you are serving because it is an offence which pre-dates the offence for which your received that sentence and you are certainly not in breach or any suspended sentence of imprisonment”.
11. This statement is not completely clear but it is correct that the offence of assault pre-dated his conviction for violent disorder and having a bladed instrument in a public place, as it occurred when he was on remand. In addition, the sentences were to run concurrently not consecutively and, therefore, the total time he had to serve could not have been in excess of four years.
12. Furthermore, I find that the proper construction of the phrase “sentenced to a period of imprisonment of four years or more” indicates that it is a reference to being sentenced on one occasion to a period of imprisonment of more than four years, as the singular “a” is used.
13. The Home Office Presenting Officer accepted that that First-tier Tribunal Judge Housego had erred in law when finding that the Appellant had been sentenced to “a” period of imprisonment in excess of four years. In particular, he relied on section 117D(4)(b) of the Nationality, Immigration and Asylum Act 2002 which stated that:

“In this part, references to a person who has been sentenced to a period of imprisonment of a certain length of time-

(b) do not include a person who has been sentenced to a period of imprisonment of that length of time only by virtue of being sentenced to consecutive sentences amounting to that length of time only by virtue of being sentenced to consecutive sentences amounting in aggregate to that length of time”.

14. However, he submitted that the error made by the First-tier Tribunal Judge was not material to his decision, as the Appellant could not have succeeded on the evidence even if the Judge had accepted that he had been sentenced to a period of time which was more than 12 months but less than four years. In particular, he noted that the Appellant did not have a partner or child in the United Kingdom and was not integrated into society here because of his offending behaviour.
15. He also relied on the finding by the First-tier Tribunal Judge in paragraph 44 of his decision that the Appellant did not enjoy a family life with his mother. Counsel for the Appellant submitted that the Judge had failed to give sufficient reasons for his findings in this paragraph given that the Appellant had continued to live with his mother once he became an adult and had been dependent upon her since his arrival here. It is my view that the Judge did fail to give sufficient reasons in relation to the existence of a family life.
16. I also agree with counsel for the Appellant that the failure to correctly categorise the Appellant for the purposes of section 117A-D of the Nationality, Immigration and Asylum Act 2002 and the corresponding provisions in the Immigration Rules will have undermined the First-tier Tribunal Judge’s ability to give sufficient scrutiny to the evidence before him in the context of paragraph 399A of the Immigration Rules and section 117C(4) of the Nationality, Immigration and Asylum Act 2002.
17. In paragraph 52 of his decision, the First-tier Tribunal Judge dealt very briefly with what would have been the outcome if he had not been sentenced to a term of imprisonment of more than four years. However, no reasons were given for finding that he would not be able to meet the test contained in Exception 1 and no weight was given to the length of time he had been here without leave on account of being a child dependent upon applications made by his mother.

18. In addition, although the First-tier Tribunal Judge accepted in paragraph 47 of his decision, that the Appellant was entitled to leave to remain under paragraph 276ADE(1)(v), he failed to give any weight this factor or the fact that this would have been relevant to any consideration of the Appellant's period of lawful residence here.
19. It is also the case that the outcome of the appeal may have been different if the First-tier Tribunal Judges had applied the very significant obstacles test to his removal, in contrast to the very compelling circumstances test.
20. As a consequence, there were errors of law in First-tier Tribunal Judge Housego's decision.

## DECISION

- (1) The Appellant's appeal is allowed.
- (2) First-tier Tribunal Judge Housego's decision is set aside.
- (2) The appeal is remitted to the First-tier Tribunal to be heard *de novo* before a First-tier Tribunal Judge at Taylor House other than First-tier Tribunal Judge Housego.

*Nadine Finch*

Signed

Date 30 July 2018

Upper Tribunal Judge Finch