Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/24186 /2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 November 2017	**On 24 January 2018**

Before

THE HONOURABLE LORD MATTHEWS
SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[A B]
(anonymity direction not made)

Respondent

Representation:
For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondent: Mr D Ball, Counsel instructed by JCWI

DECISION AND REASONS

1. We see no need for, and do not make, any order restricting publication of the details of this appeal.

2. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter "the claimant", against the decision of the Secretary of State on 3 October

2016 refusing him international protection and leave to remain on human rights grounds and maintaining a decision to deport him.

3. We begin by considering exactly what the First-tier Tribunal decided.

4. The claimant is a citizen of Nigeria. He was born in 1987 but he has lived in the United Kingdom since 1995 when the claimant was 7 years old. With his mother and four siblings he was given indefinite leave to remain on 11 February 2004.

5. However the claimant is a criminal. He has been in trouble on many occasions. He has been warned on two occasions by the Secretary of State that the likely consequence of persistent bad behaviour would be his deportation. Letters were sent in October 2009 and February 2010.

6. On 5 November 2010 he was sentenced to twelve months' imprisonment on an indictment containing six counts alleging that he took property by deception. As a consequence of that decision he was made the subject of a deportation order but he appealed. The First-tier Tribunal allowed his appeal and the Upper Tribunal found the decision to allow the appeal was wrong in law. The Upper Tribunal re-determined the appeal but it too allowed the appeal. The appeal was allowed under Article 8 of the European Convention on Human Rights.

7. At paragraph 5 of its decision in the instant appeal the First-tier Tribunal said:

> "The Upper Tribunal on rehearing the appeal allowed the [claimant's] appeal against deportation in a decision that was promulgated on 30 April 2012. The appeal was allowed under Article 8 of the European Convention on Human Rights (ECHR). The Upper Tribunal made positive findings in favour of the [claimant] and they found that he had been assessed as a medium risk of reoffending but considered himself to be a low risk; he had shown remorse for his offending behaviour which was genuine and sincere; he had established a private life in this country in which he had lived since the age of 7 and was educated here and has friendship groups; deportation would interfere with his private life and the interference would lead to grave consequences and that it would be disproportionate to deport him."

8. It is a depressing indication of the claimant's sense of responsibility that having succeeded in that appeal against deportation he committed further offences. On 29 January 2015 he was convicted of burglary and two counts of dishonestly making false representations for gain and in February 2015 he was sentenced to 30 months' imprisonment.

9. He was served with a decision to deport letter and on 25 March 2015 he made representations contending that he should not be deported because (essentially) of his strong links with the United Kingdom and his not having links with Nigeria. On 13 May 2015 a claim for leave to remain on human rights grounds was refused and a further deportation order was made.

10. The judge noted that the claimant was given indefinite leave to remain in February 2004 but the application had been made in 1999 and it was not the claimant's fault that it had taken about five years to process the application.

11. It was the Secretary of State's case that the claimant could "re-adapt" to life in Nigeria, that there would be no language barriers and there would not be "very significant obstacles" to his integration back into Nigerian culture in the event of his deportation.

12. The claimant applied to revoke that deportation order based on his long residence

13. The claimant was initially placed on immigration detention but then released on bail and was found on Tower Bridge apparently attempting to take his life.

14. The judge said at paragraph 10:

> "The central issues therefore concern firstly **Devaseelan** principles; secondly, application of paragraph 339A of the Immigration Rules because of the length of residence of the appellant in this country; thirdly whether or not there are significant obstacles to him being returned to Nigeria; fourthly Article 8 principles and its applicability, and lastly Article 8 medical circumstances such as depression, suicide and self harm."

15. The First-tier Tribunal Judge set out his findings beginning at paragraph 29. He accepted that the appellant is socially and culturally integrated into the culture of the United Kingdom. In reaching that conclusion the judge reminded himself that the appellant has been convicted of numerous criminal offences but noted as well that his accent suggests that he lives in London and he carries himself in a way that would identify himself as a Londoner if he were returned to Nigeria. The judge found that the claimant would not be aware of cultural and social norms in Nigeria.

16. The judge did find there would be very significant obstacles to integration into society in Nigeria in the event of deportation. Particularly, the judge accepted the evidence that the claimant's entire family lived in the United Kingdom and that he knew no-one in Nigeria. The judge found it significant that the claimant had lived in the United Kingdom for 22 years. Some of that time was spent in prison but there was still a period of seventeen years' residence in the United Kingdom out of prison and the claimant had no knowledge of the culture in Nigeria or anyone to help him live there.

17. Paragraph 31 may be more troublesome because it might show weight being given to matters that are relevant but are not particularly important in an article 8 balancing exercise in a case involving deportation. There the judge said:

> "In relation to whether or not there are very compelling circumstances such as not to deport this [claimant] from this country I am of the view that such compelling circumstances do exist in that this [claimant] has for the majority of his life committed crimes, he has started to change his behaviour for example he has completed his probation and the course which he took in anger management has been of use to him. I find that having listened to him and having carefully considered his past that there is a strong possibility that what he says in his evidence that he has now turned over a new leaf and that he will continue to move away from a life of crime is something that I found to be credible and he has the support of his mother who has made it clear to him that she will not tolerate any more of his criminal behaviour. I am also persuaded by evidence that was given in relation to his other siblings and the fact that they are all law abiding that this has started to have a positive impact on the behaviour. I noted that in the hearing in 2012 that positive findings were made in respect of the [claimant] but matters have moved on greatly since then and the [claimant] went on to commit further offences and he has gone through a difficult period of being incarcerated as a result of his offences suffering from mental illness and suicidal thoughts and he is now feeling positive and started to make a positive contribution to activities concerning his reoffending."

18. The judge was also impressed with the medical evidence, particularly a report from Dr Grant Peterkin. The claimant has made "a number of impulsive attempts at suicide and self harm and his profile in this respect has increased and it does place him at moderate risk of self harm."

19. The judge was clearly impressed with the evidence of the claimant's mother that the claimant would rather kill himself than return to Nigeria, a country that he does not know.

20. The judge echoed this finding at paragraph 34 where he purported to follow the cases of "**J**" and "**Paposhvili**". It was the judge's view that, given the claimant's "impulsive nature and lack of coping mechanisms, it is likely that he will take his own life rather than be returned to a country which he left at the age of 7 and to be separated from his family in this country."

21. The judge then found that removal would be disproportionate and he confirmed that he had considered Sections 117B and 117C of the Immigration Act 2014.

22. The Secretary of State was not given an unfettered right to complain about the decision. She was given permission to appeal on grounds that she had drawn. We consider those grounds below.

23. The grounds note, correctly, that the First-tier Tribunal allowed the appeal "principally on the grounds that the [claimant] satisfied all three limbs of 399A". Given that the First-tier Tribunal had a statutory obligation to consider the requirements of paragraph 117C of the Nationality, Immigration and Asylum Act 2002 it might have been more helpful all

round if more thought had been given to that but we are not aware of any material difference between the requirements of the Section and the Rules identified by the respondent.

24. Notwithstanding the correct description for the reason for allowing the appeal, the first complaint in the grounds is that the judge gave too much weight to the issue of the risk of reoffending. It is said that the judge had referred to the authority of **Devaseelan** and said that the earlier appeal had been allowed because there was a very low risk of reoffending but the claimant had reoffended and had satisfied this judge that he had again turned over a new leaf.

25. With respect to Mr Bramble, who had to argue the case in accordance with grounds drawn, we find this point hard to follow. It was the finding of the Tribunal that the claimant had turned over a new leaf. Whether or not the leaf was turned over it did not stop him reoffending and if the judge had simply followed **Devaseelan** by finding that he had in fact turned over a new leaf he would no doubt have been criticised for making a finding that was perverse or at least a finding that did not recognise the true position by the time the offence was committed. The judge did not lightly decide that the claimant had in fact reformed. He recognised that the claimant had persuaded the Tribunal on a previous occasion that he had changed his ways and had not lived up to that new life. The judge found further reasons to find that the claimant had put his criminal behaviour behind him.

26. That said, we do not see that this is a particularly pertinent criticism. As the Secretary of State recognises and relies on later in her grounds, rehabilitation is a peripheral reason for allowing an appeal.

27. The next complaint relates to the finding that the claimant was “culturally and socially integrated in the United Kingdom”.

28. Much is made in the grounds about the claimant having spent time in prison but the judge’s answer to that, namely that he spent seventeen years of his life not in prison is, we find, a complete answer. The grounds, appropriately, refer to the decision of this Tribunal in **Bossade (ss.117A-D – inter-relationship with Rules) [2015] UKUT 414 (IAC)**. We accept that the Tribunal has decided that a claimant must show both social and cultural integration. Integration is described as something qualitative and integration is not established merely by a presence in the United Kingdom. It was the Tribunal’s view that further offending is clear evidence that a person is not integrated. However, it must be a matter of weight and degree. If the finding that a person was socially and culturally integrated could be defeated by the fact that he had a criminal conviction, even a criminal conviction that had resulted in his imprisonment for a period of up to but less than four years then the section would be otiose. The judge plainly had regard to a wide range of factors. It may not be particularly astute to refer to the claimant having a “London accent” (whatever that might be) but the point the judge was making is clear

enough. The claimant would stick out in Nigeria because his demeanour is that of a person who has grown up in London not Nigeria. However, this point probably goes to very significant obstacles to integration and we consider it below. The social and cultural integration was based on his long residence in the United Kingdom and his new sense of responsibility in having taken advantage of the opportunities presented to him in prison and the growing influence of his respectable relatives. We are far from saying that this was the only conclusion open to the judge but there is nothing perverse in the conclusion that the judge has reached.

29. Neither do we find anything erroneous in the finding there are very significant obstacles to integration in Nigeria. The main reasons for this finding are obvious. The claimant has no experience of life in Nigeria since he was a small boy and has no-one there to support him. Neither does he have the resources in terms of education or aptitude to establish himself easily in a country where he would be a complete stranger. Rather he would run into all sorts of undesirable temptations. Again we are not saying that this was the only conclusion open to the judge. However the judge heard the evidence and saw the witness and heard what other people had to say about him. He was perfectly entitled to come to the conclusion that he did that this claimant simply could not cope in Nigeria. It is not a perverse or unlawful finding. That being so the findings support the judge's conclusion that Exception 1 to the requirement for deportation, explained at section 117C(4) of the Nationality, Immigration and Asylum Act 2002, applies. The claimant has been lawfully resident in the United Kingdom for most of his life, he is socially and culturally integrated into the United Kingdom and there would be vey significant obstacles to his integration in society in Nigeria. If Exception 1 applies then the public interest does not require deportation.

30. Any errors in following the cases of "**J**" and "**Paposhvili**" are immaterial.

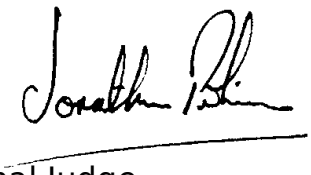
31. We are aware of authority binding on us that **Paposhvili** is not a relevant consideration **(EA and Ors (Article 3 medical cases – *Paposhvili* not applicable) [2017] UKUT 445 (IAC))**. However the decision in "**J**" is a reference to a decision of the Court of Appeal in **J v SSHD [2005] EWCA Civ 629** which clearly does bind us.

32. Further, although the explanation for the finding that the claimant's appeal should be allowed on human rights grounds with reference to Article 3 might be somewhat telegraphic it is instructive to consider the finding in the light of the written submissions made before the First-tier Tribunal. This is a man who has made four suicide attempts in the United Kingdom. He has refused food, he has attempted to hang himself, he has attempted to swallow razor blades and he has attempted to jump off Tower Bridge. The judge clearly, in accordance with the submissions, directed himself that he had to be satisfied that there was a "real risk" that removal would cause the claimant to take his or her life. The decision was open to him on the medical evidence.

33. It follows therefore that notwithstanding Mr Bramble's best efforts we uphold the decision of the First-tier Tribunal.

34. It may be that the decision is less than a model example and it may be that the grounds supporting the application for permission could have been drawn more artfully. The simple test is "Does the Secretary of State know why she has lost and are the reasons permissible?" The Secretary of State lost because the judge found that this claimant's circumstances came within the scope of Exception 1 to the normal Rule requiring deportation set out at paragraph 117C of the Nationality, Immigration and Asylum Act 2002. It is uncontroversial that the claimant had been lawfully resident in the United Kingdom for most of his life. The findings that he is socially and culturally integrated in the United Kingdom and the finding that there would be very significant obstacles to his integration into life in Nigeria were clearly open to the judge when it is remembered that this claimant has spent so many years of his life in the United Kingdom and has no contacts with Nigeria. That is what this case is all about and this was resolved in the claimant's favour.

35. It follows therefore that we dismiss the Secretary of State's appeal on all points.



Signed

Jonathan Perkins, Upper Tribunal Judge Dated: 23 January 2018