Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08763/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 December 2018	**On 7 February 2019**

Before

THE HONOURABLE MR JUSTICE SWIFT
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE PERKINS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ADEN ASAVA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr J McGirr, Home Office Presenting Officer
For the Respondent: The Respondent represented himself.

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing an appeal by the respondent, hereinafter "the claimant", against a decision of the Secretary of State to refuse him leave to remain on human rights grounds.

2. The claimant is a national of Kenya born in November 1991 who has lived in the United Kingdom since 2003. He has committed offences. He was fined for offences of dishonesty in June 2011. The sentence was varied to four weeks in a young offenders' institute. Other matters are known. On 4 September 2015 when he was 23 years old the claimant was with an accomplice who robbed a

young person walking home from school and he was sent to prison for thirteen months on 24 August 2016.

3. It was the Secretary of State's case that the appeal could only be allowed if the claimant was integrated into the United Kingdom and there were very significant obstacles in the way of his integrating in Kenya. This is echoing the requirements set out in Section 117C(4) of Part 5A of the Nationality, Immigration and Asylum Act 2002 and the associated Immigration Rules. The Secretary of State's case is that though the judge acknowledged this, the evidence did not permit the judge to conclude that either criteria was established and the judge was wrong to reach the conclusions that he did.

4. We have had an opportunity of going through the Decision and Reasons with some care. We do not agree that the Secretary of State's criticisms of the judge's finding that the claimant was integrated in the United Kingdom. Clearly, trouble with the criminal law and being sent to custody are indications of a person who is not integrated. They show disaffection with society and in the times that a person is incarcerated he is clearly not integrated into society as a whole. However, these feature do not represent the entire story of the claimant's life and the First-tier Tribunal did take notice that the claimant had spent time in care. He had developed some associations as a result of that but, more significantly, as is explained in paragraph 40 of the Decision and Reasons, he has "formed a relationship with his foster family and he has undergone some educational courses pursuing studies in electrical installation with some success".

5. We are not aware of any precise test on the meaning of "integration" for these purposes. The First-tier Tribunal did direct its mind to all of the matters pointing towards integration and not before finding that the appellant has "integrated". We do not say that this was the only conclusion possible on the evidence but we are satisfied that the First-tier Tribunal was entitled as a matter of law to conclude that the first part of the relevant test was satisfied, namely that the claimant, who had been lawfully resident in the United Kingdom for most of his life, was socially and culturally integrated there.

6. However, that is no use to the claimant unless he can also satisfy the Tribunal properly that there will be very significant obstacles to his integration into a country to which he will be deported, in this case Kenya. Here we have to say that we cannot agree with the First-tier Tribunal that the evidence could support such a conclusion.

7. The First-tier Tribunal judge has shown clear regard to the law in the body of the Decision and Reasons and was careful to make findings in an ordered way and that has assisted us. This is how we are able to reach the conclusions we have on the first part of the test, but when it comes to the second part we find that the judge had confused issues. In paragraph 46, for example, the judge refers to the claimant having "obviously a close and loving relationship with his foster family" and it being a "very big step indeed" to be removed from that family. These are not reasons to conclude that the claimant would have very significant obstacles to his integration into Kenya. They are further reasons to show how he has integrated in the United Kingdom and they do not address the point that they relied upon to address by the judge.

8. Similarly, difficulties were acknowledged in the claimant's relationship with his natural mother but she is not in Kenya. It is therefore not relevant for the purposes of the second limb of the test for the judge to say as the judge did that these things are "positive matters which at a stroke would be removed if the claimant was sent to Kenya". Again, as we have indicated, the judge either did not apply the correct test, or did not apply it in the right way because the judge was influenced by facts that are irrelevant to the point which is being made.

9. The judge did note that the claimant had not been to Kenya for some time and that the claimant speaks English which is widely spoken in Kenya, and that it is accepted that the claimant is an enterprising young man who is preparing to pursue a career as an electrician.

10. We do not doubt for a moment that he would find it difficult to establish himself in Kenya. We acknowledge, as the judge did, that he has not been there since he was a boy and there is no evidence of any ties with anyone who might have any inclination to offer him any kind of support or assistance. These points are things that we have considered. We cannot see that the judge was entitled on these facts to say that there were very significant obstacles to his integration. They were the kind of problems that were to be expected in the case of a person being deported who has spent a long time in the United Kingdom and that is as far as it goes.

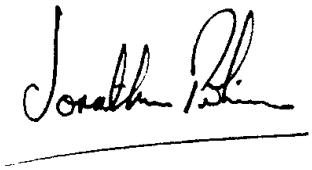
11. We therefore conclude that the judge erred in law by making findings that simply do not satisfy the legal test that he correctly set himself.

12. We are grateful to the claimant for the way he has conducted himself today. He has given evidence and made his submissions calmly and courteously. He made a good impression, but this does not alter the fact that the test in law cannot be satisfied on the evidence before a First-tier Tribunal.

13. We therefore find the First-tier Tribunal clearly erred in law. We allow the Secretary of State's appeal against that decision and we substitute the decision dismissing the claimant's appeal against the Secretary of State's decision.

Notice of Decision

14. The First-tier Tribunal erred in law. We set aside its decision and we substitute a decision dismissing the claimant's appeal against the Secretary of State's decision.



Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 30 January 2019