Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/23297/2016

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

TEMITAYO AKINOLA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss C Record, Counsel instructed by Direct Public Access
For the Respondent: Mr J McGirr, Home Office Presenting Officer

DECISION AND REASONS

The decision was given by extempore judgments by both judges after deliberating. Upper Tribunal Judge Perkins gave the first judgment at Mr Justice Swift's request:

UPPER TRIBUNAL JUDGE PERKINS:

1. This is an appeal against the decision of the First-tier Tribunal dismissing the appellant's appeal against a decision of the respondent to refuse him leave to

remain on human rights grounds. Permission to appeal was given, somewhat hesitatingly, by Upper Tribunal Judge Pitt who found it arguable that the Decision and Reasons did not show proper analysis of the relevant legal tests.

2. The appellant is a citizen of Nigeria. He was born in 1994 and he has lived in the United Kingdom lawfully since he was only 4 years old. In August 2015, when he was 21 years old, he was sentenced to six years' imprisonment for an offence of causing grievous bodily harm with intent. He was 19 when he committed the offence.

3. Parliament has decided that the deportation of foreign criminals is in the public interest. There is no doubt that the appellant is a foreign criminal. Parliament has prescribed a regime where persons who have been sentenced to less than four years' imprisonment but to one year or more can rely on certain exceptions to resist on human rights grounds the consequences of deportation. Parliament has also decided that where a person has been sentenced to four years or more the public interest requires deportation unless there are very compelling circumstances over and above those exceptions. This is set out in Part 5A of the Nationality, Immigration and Asylum Act 2002 and in very similar provisions under the Immigration Rules, which, as far as we are concerned, are not materially different for the purposes of this case.

4. It follows therefore that the First-tier Tribunal judge dealing with the appeal had to apply the law and therefore was unable to allow the appeal properly unless there were very compelling circumstances over and above those described in Exceptions 1 and 2. Exception 2 relates to parental or life partnerships, which do not exist here. Exception 1 relates to a person who is socially and culturally integrated in the United Kingdom and for whom there would be very significant obstacles to integration into the country to which he would be deported, in this case Nigeria.

5. A considerable amount of work had been done before the First-tier Tribunal and about the consequences of removal. It is appropriate for us to look at the appellant's circumstances and to indicate how deportation might affect them. Ms Record gave a short list of the matters that she considered to be important and particularly matters that were significant factors. They were the appellant's long lawful residence in the United Kingdom; the fact that he would be returned to Nigeria on his own, because there was no suggestion that there was anyone in Nigeria who would offer him any kind of support; and the fact that he had apparently learnt from his experiences in prison. Certainly he had taken advantage of the limited opportunities there by conducting himself responsibly, not getting into any trouble, and attending appropriate courses that are offered. We accept as well that the appellant has learnt a trade and is employable in the construction industry.

6. These things are relevant and have only been touched upon in the most cursory way by the First-tier Tribunal Judge but they have been touched upon. These pertinent facts are set out in paragraph 10, and particularly, the judge there was concerned about how the appellant could establish himself in Nigeria and noted that he could not speak Yoruba, which is the most commonly spoken language, but that also that English, which, clearly, he does speak and speak

well, is widely spoken. The appellant would not be returning to a country where he had no language in which to communicate.

7. Ms Record invited us to look carefully at the sentencing remarks but I do not accept that that is an appropriate approach. As I have already indicated, the regime of deportation and human rights is governed by statute and this identifies two regimes relating to particular periods of imprisonment. Once the person is subject to one of these "qualifying sentences", if I can so describe them, the details of the sentence and the attempts of rehabilitation and indeed the nature of the crime are of limited importance. We do not state for a moment that they are irrelevant in all cases but they are not matters of focus. Proper matters of focus are the length of sentence and the statutory criteria.

8. I find that the First-tier Tribunal clearly had in mind all the points that could be of relevance. I am also clearly of the view that even if that is wrong the points raised by Ms Record are not sufficient, either on their own or cumulatively, to displace the very clear requirement that deportation of foreign criminals is in the public interest and in the case of someone subject to a sentence of more than four years' imprisonment there is a need for very compelling circumstances over and above those described in Exceptions 1 and 2. Such circumstances are quite simply not present in the evidence in this appellant's case. On the evidence before us, this is an appeal that cannot succeed.

9. We put on record that it would not have been inappropriate if the First-tier Tribunal had a little more to say and showed a little more consideration for the points that were raised but we are satisfied that there is not a material error here. The judge reached the only conclusion properly open to him in the light of the statutory obligations.

10. Before concluding my judgment I have reflected for a moment upon the significance of this decision for the appellant and his family, who, I assume, are the people at the back of the hearing room. It is not a decision which I make with any pleasure. It is not nice. Deportation is often a serious and life changing step but it is what Parliament requires and, for the reasons I have given, I am satisfied that the First-tier Tribunal considered what had to be considered and reached the only conclusion available on the evidence before it. Therefore, we dismiss this appeal against the decision of the First-tier Tribunal.

MR JUSTICE SWIFT:

11. I agree. I particularly associate myself with the matters Judge Perkins has mentioned at the end of his judgment.

12. I also mention one other matter. As Judge Perkins has indicated, there was some discussion in the course of this hearing as to the relevance of sentencing reports in cases where the decision falls to be taken under Section 117C of the Nationality, Immigration and Asylum Act 2002. Apparently, it is common practice to refer to sentencing remarks in First-tier Tribunal cases such as this. It is not clear to me for what purpose that reference is had. I accept that by reason of Section 117C(2) of the Nationality Immigration and Asylum Act 2002, the Tribunal is required to have regard to the fact that *"the more serious the offence committed by a foreign criminal, the greater is the public interest in*

deportation of the criminal" but I question whether that obligation either requires consideration of sentencing reports, or whether compliance with that obligation is assisted by looking at the sentencing remarks. What is important for the purposes of section 117C(2) is the offence committed and the sentence imposed by the Court. The sentencing remarks will explain the reasons for the sentence passed, and will explain the circumstances of the offending, but any Tribunal looking at sentencing remarks needs to be careful not to risk either (a) double-counting against the person who is the subject of a deportation order by relying on the sentencing remarks as reinforcement of the severity of the offending which will in all cases have been appropriately reflected in the sentence passed by the court; or (b) double-counting against the public interest in the deportation of foreign criminals by placing weight on mitigating matters which (again) will have already been taken into account by the trial judge when determining the sentence to be passed. In all cases Tribunals should consider with great care whether it is relevant for the purposes of applying section 117C(2), to look at sentencing remarks. In my view, absent anything special arising on the facts of a particular case, it would be preferable for Tribunals not have regard to them.

Sealed Dated 4 February 2019