Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/24306/2018

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal	**Decision & Reasons Promulgated**
on 11 September 2019	**on 18 September 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

NICHOLAS KEVIN FULLERTON
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Jibowin instructed by Rogols Solicitors.
For the Respondent: Mr D Mills Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Butler promulgated on 3 May 2019 in which the Judge dismissed the appellant's appeal against the refusal of his application for leave to remain pursuant to articles 3 and 8 ECHR which the appellant claimed engaged an exception to his deportation pursuant to UK Borders Act 2007.

Background

2. The appellant is a citizen of Jamaica born on 25 December 1996. The Judge sets out his immigration history at [2] and criminal history at [3].
3. The Judge notes a number of convictions set out at [3] in the following terms:

> (i) On 12 June 2014 possession of a knife for which he was given a 3-month referral order, costs of £85 and victim surcharge of £15;
> (ii) On 7 June 2016 possession of cannabis, a controlled Class B drug for which he was given a 12-month conditional discharge, costs of £85 and victim surcharge of £15;
> (iii) On 14 September 2016 for taking a motor vehicle without consent and using a vehicle without insurance for which he was fined £240, costs of £300, victim surcharge of £30 and 8 points on his licence
> (iv) On 24 January 2017 for possession of a knife for which he was sentenced to 245 days in a Young Offenders Institute and given a victim surcharge of £415; and
> (v) On 16 February 2018 for possession of cannabis and on 6 July 2018 for possession of Class A drugs, heroin and cocaine, with intent to supply for which combined conviction he was sentenced to 5 years in prison.

4. The appellant was served a deportation order dated 18 November 2018.
5. Having considered the oral and documentary evidence the Judge sets out relevant findings at [27 – 37] of the decision under challenge which are in the following terms:

> 27. The Appellant is 22 years old. He entered the UK when he was 6 and was without leave for about 8 years after the expiry of his visit Visa. He has been sentenced to a period of 4 years imprisonment and has, therefore, not spent half of his life lawfully resident in the UK.
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> 28. He may well argue that he is socially and culturally integrated in the UK. He certainly has a caring family, has been educated here and has a loyal circle of friends who have taken the trouble to support his current application. However, the extent to which he has integrated is damaged by his criminal activities and his convictions. Before me, the Appellant explained that he was blameless in respect of his conviction for possession with intent to supply Class A drugs. I do not accept that explanation. In his sentencing remarks, the judge made a point of saying the Appellant was near the head of the activity of obtaining the drugs with intent to supply. He was not believed even though he pleaded not guilty. His actions were described. It is difficult to envisage how the Appellant can be said to have integrated socially into the UK when his conviction and the length of his sentence clearly show that his activities were such as to cause harm to society.
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> 29. In assessing whether the Appellant would face obstacles to his integration into Jamaica, I have considered the level of support he would have there and the extent to which his connections to Jamaica have survived since he entered the UK. Photographs of a burned-out house have been produced to support the Appellant's account that his grandmother's house was firebombed earlier this year forcing her to move to the USA to live with her daughter. There is no evidence that the photographs produced are of his grandmother's house nor that the property shown is even in Jamaica. No motive for the destruction has been given. I do not accept Mrs Drickett's evidence that, having been rendered homeless, her mother did not speak to her between the fire and leaving for the USA.

30. It has also been suggested that the Appellant's younger brother relies on him for support and to take him and collect him from school. I was told that his mother had found it necessary to reduce her hours of work in order to cover these duties. This is not, however, supported by the comments in the report of Dr Manyame-Tazarurwa at page 5 where she states, "the mother works long hours as a carer in order to pay bills and make ends meet".

31. The Appellant has also visited Jamaica several times with his mother so cannot be said to have completely severed his ties with his home state. He would have retained a familiarity with social and cultural matters there.

32. Dr Manyame-Tazarurwa's report states throughout that the Appellant is very sorry for what he has done and does not intend to reoffend out of the love for his family, especially his brother, and the fact he does not want to be deported to Jamaica. This does not rest easily with the fact that his offences have escalated in terms of their seriousness. Further, the report was compiled without the benefit of seeing the Refusal Letter and sentencing remarks of the judge and is based solely on an interview with the Appellant. It is difficult to envisage that the Appellant would have said anything other than what is recorded. There is no OASys report produced to me which would have given a much better insight into the prospects or otherwise of the Appellant reoffending. I attach little weight to this report.

33. The Appellant also claims to have a problem with his eye. This has been dealt with in detail in the Refusal Letter. I note, however, that there is no information produced to me about the condition. The only documentation is in the Respondent's bundle at page F and is for an eye hospital appointment on 19 August 2013. There is no indication of what the problem is, a diagnosis or a prognosis. Accordingly, I do not consider it exceptionally enough for a claim under either Article 3 or 8.

34. I have considered the evidence produced in relation to the situation in Jamaica, its general lawlessness and, in particular, the position of those returning there. I note that the emphasis on those returnees who have been killed but I also note that the number of such deaths is only a small percentage of the total number of deaths each year. This is borne out by the Home Office Country Information on Jamaica. I am also unconvinced by the suggestion that the Appellant would be homeless since I find the evidence of his grandmother's flight to the USA to be unconvincing.

35. For the above reasons, I do not find that the Appellant falls within the exceptions listed in section 117C. He has not convinced me on the balance of probabilities that his circumstances are so very compelling as to outweigh the public interest in deporting him. In reaching this conclusion, I have taken into account of the decision in SSHD v Olarewaju [2018] EWCA Civ 557 and applied this to my reasoning. On the balance of probabilities, considering the age of the Appellant, his family connections in the UK and Jamaica, the fact that I do not accept he will be totally without support and the unconvincing evidence of his rehabilitation, I do not consider there to be very compelling circumstances which outweigh the public interest in deportation following what was a very serious criminal offence.

36. Applying these findings to the balancing of the public interest against the Appellant's right to respect for his Article 8 rights, I consider the five-stage test laid down by Lord Bingham in Razgar. The decision is an interference with the Appellant's right to respect for his private life in the UK which has consequences of such gravity as to potentially engage Article 8. It is in accordance with the law. It

is necessary in a democratic society to protect public order and the protection of others.

37. In deciding whether removal is proportionate in pursuit of the legitimate end sought to be achieved, I note that only very compelling circumstances will outweigh the public interest in removing a foreign criminal who has committed a Category A offence. From the discussion above, I find no such compelling circumstances in the Appellant's case and it would, therefore, be proportionate to remove him.

6. The appeal was therefore dismissed on all grounds.
7. The appellant sought permission to appeal arguing the Judge attached insufficient weight to the report of Dr Tazarurwa, incorrectly found the psychotherapist report was prepared without the benefit of the writer having seen the decision letter or sentencing remarks of the judge when the writer of the report refers to having had sight of the application to appeal of which the decision letter forms part. The grounds assert the Judge misdirected himself infringing the principle that a child must not be blamed for matters for which he or she is not responsible such as the conduct of the parent which is said to have arisen as the appellant is not to be blamed for his prior bad immigration status which occurred when he was a minor and that the Judge misdirected himself when he found the appellant did not satisfy Exception 1. The grounds also assert the Judge did not carry out a proper balancing exercise regarding the appellant's integration into the UK having placed undue weight on his criminal convictions and not having sufficient regard to the evidence regarding strong private life established in the UK, that the Judge did not give sufficient if any regard to the best interests of the child such as to amount to arguable legal error.
8. Permission to appeal was granted by another judge of the First-Tier Tribunal the operative part of which reads *"in an otherwise careful decision it is nevertheless arguable that the Judge failed to adequately considered the best interests of the Appellant's younger brother for whom the appellant claims to be a father figure and role model."*

Error of law

9. Whether a person has been lawfully resident in the UK for most of his life, sufficient to engage Exception 1 of section 117C is a factual question. In addition Exception 1 requires more as that exception only applies where (a) the foreign criminal has been lawfully resident in the UK for most of his or her life, the foreign criminal is socially and culturally integrated into the UK, and there will be very significant obstacles to the foreign criminals integration into the country to which it is proposed he or she is to be deported.
10. The Judge's findings are that the appellant has not been lawfully resident in the United Kingdom for most of his life. This is not punishing the appellant through the actions of his parents but is a simple statement of fact which has not been shown to be incorrect. The appellant did not produce sufficient evidence to show that for most of his life he had lawful leave to be in the United Kingdom. The Judge also found the appellant was not socially and culturally integrated

and that there were no very significant obstacles to his integration to Jamaica. Accordingly this challenge has no arguable merit.

11. The assertion by Mr Jibowin that the finding in relation to integration is flawed has no arguable merit. The Court of Appeal have reminded us that integration includes a person considering themselves bound by the laws of the United Kingdom and acting in such a manner so as to not infringe such laws. The appellant's pattern of offending clearly raised sufficient doubt in the Judge's mind regarding the level of the appellant's integration. It is not made out the conclusion is outside the range of findings open to the Judge on the evidence. It is also not made out that even if the appellant was integrated living with his parents, having attended college, having friends and having been in the United Kingdom since 6 years of age, it would have made any material difference to the Judge's decision.
12. The appellant committed a serious offence regarding the supply of class A drugs for which there has been judicial authority for some time in relation to the damage the same can cause to society and the serious nature of such offending - see for example SS (Nigeria) [2013] EWCA Civ 550.
13. The Judge clearly considered the report of the expert relied upon by the appellant and gives adequate reasons in support of findings made. The weight to be given to the evidence was a matter for the Judge and it has not been made out that such weight is irrational or outside the range permitted to be given to the evidence by the Judge.
14. The comment by the Judge at [32] that the report was prepared by the psychotherapist without the benefit of the writer having seen the refusal letter or sentencing remarks is factually correct. The appellant in the grounds claims that such information was contained in the original Grounds of Appeal, but such grounds do not set out the full content of either document. The refusal letter is some 9 pages and 52 paragraphs long and the sentencing remarks 3 pages long. The grounds of appeal are considerably shorter, and it is not made out the author of the report had the benefit of considering these documents in full. The submission by the appellant that the fact there may be reference to these documents in the original Grounds of Appeal should somehow allow it to be inferred that the expert was able to take the content of the same into account in full has no arguable merit. As the Judge noted at [32] the report in question is based solely on an interview with the appellant. The Judge was arguably entitled in all the circumstances to attach little weight to that report.
15. The Judge clearly considered the position of the appellant's younger brother who has always been in the care of his mother who has been responsible for providing such care especially when the appellant has been in prison. It was not made out the best interests of the child are the determinative factor on the basis of the evidence before the Judge. It is not made out the Judge did not factor this and other relevant considerations into account cumulatively when assessing the merits of the appeal.
16. The appellant's denial of responsibility for the offences that led to his conviction by a jury was noted by the Judge. In his Sentencing Remarks of 6 June 2018 His Honour Judge Farrell QC, the Record of Cambridge and Peterborough stated:

> Yes stand up please Nicholas Fullerton and Harvey Jefferson. You Nicholas Fullerton were convicted by a jury unanimously on 6 June of this year, of 2 counts of being concerned in the supply of class A drugs. You having earlier pleaded guilty to simple possession of cannabis. You, Harvey Jefferson had the good sense to plead guilty when first before this court to the counts that I have to deal with you for: that is counts 5 and 6, possession with intent to supply of the class A drugs cocaine and diamorphine respectively. To count 7, simple possession of cannabis and count 8, the possession of criminal property; namely money relating to the sale of drugs.
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> As a result of your early guilty plea, you are entitled to and I will give you, the 25% credit reduction that the guidelines indicate is appropriate. I am sure on the evidence that I heard at the trial and in relation to you, Mr Fullerton, that you were at the higher end of this chain of supply enterprise. You held the phone, you organised the deals and facilitated the delivery of drugs. You in my judgement, plainly had an operational or management function within the chain. You, Mr Jefferson, held the drugs. You therefore, had the higher risk end of the operation, but you went to the house of what was a vulnerable user - despite that user not in fact, being in fear of you - in order to use the premises to assist in the supply of the class A drugs.
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> As I hope both of you are now aware, the supply of class A drugs is regarded by the courts as extremely serious, because it is the distribution of the cause of misery to those that are addicted to drugs. It affects their health; it often causes them to commit acquisitive crime in order to fund their habit that they have. And you, the pair of you, were involved in this operation, undoubtedly for money, making money out of the misery that those that are addicted to drugs suffer. And indirectly, obviously to the public in general because those who are addicted commit, as I have said, acquisitive crimes; burglaries, robberies and the like in order to fund that addiction.
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> That is why the courts take class A drugs so seriously. And it is further aggravated in this particular case, because there is no doubt at all that this is what has been described as a country lines case. One in which inevitably, younger people come up from London in order to distribute drugs in counties outside London, and that is what you were doing. So far as your previous convictions are concerned, you Mr Fullerton have two previous convictions for possession of knives, one of which cause you to go into custody and also possession - a possession of drugs. You, Mr Jefferson, have no relevant previous convictions, you are both 21 years of age.

17. The Judge thereafter undertook the sentencing exercise resulting in the appellant being sentenced as noted above.
18. In *Hesham Ali (Iraq) v SSHD [2016] UKSC 60* Lord Reed noted that "cases falling within the scope of section 32 of the 2007 Act in which the public interest in deportation is outweighed, other than those specified in the new rules themselves, are likely to be a very small minority (particularly in non-settled cases). They need not necessarily involve any circumstance which is exceptional in the sense of being extraordinary (as counsel for the Secretary of State accepted, consistently with Huang [2007] 2 AC 167, para 20), but they can be said to involve "exceptional circumstances" in the sense that they involve a departure from the general rule".
19. Whilst the appellant disagrees with the Judge's conclusions and does not wish to be deported from the United Kingdom it has not been made out the Judge's findings are outside the range of those reasonably available to the Judge on the

evidence. It is not made out there is anything in the grounds sufficient to warrant the Upper Tribunal interfering any further in what is a carefully considered and written decision balancing the competing interests in this deportation appeal.

20. In relation to the appellant's role model argument, whatever role the appellant played in assisting his mother with his brother he is not the primary carer and the evidence before the Judge failed to establish that his brothers best interests were adversely affected by his deportation.

21. There were no Article 8 considerations remotely sufficient to displace Parliament's judgment of the weight to be given to the deportation of the appellant as a foreign criminal pursuant to the automatic deportation provisions in this case. Article 3 is not engaged. The grounds amount to no more than disagreement with the Judge's carefully considered conclusion that deportation is proportionate.

Decision

22. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

23. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 11 September 2019