Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/01179/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 October 2021	**On 16 November 2021**
Ex tempore	

Before

THE HONOURABLE MR JUSTICE SAINI
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MR ALLICK P'ALIKER
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms F Allen, Counsel, instructed by David Benson Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal brought by the appellant against a decision of First-tier Tribunal Judge Burns promulgated on 6 May 2021. By that decision the judge held that the

deportation of the appellant was lawful under section 6 of the Human Rights Act 1998.

2. The appellant is a citizen of Uganda born on 6 July 1996. On 12 December 2017 the respondent made a deportation order against him proposing to deport him to Uganda and on 12 December that year his human rights claim was refused. The appeal was brought under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. We will turn to the detail of the judge's decision, but begin by identifying in broad terms the nature of the challenge that has been made before us. There are two grounds pursued. The first ground is based upon the submission that the judge's finding that the appellant would not face very significant obstacles in Uganda was irrational. Ms Allen, Counsel for the appellant, has not shrunk from making that submission before us today. The second ground is that the judge failed to take into account the jurisprudence of the Strasbourg Court when considering whether there were very compelling circumstances outweighing the public interest in deporting the appellant. In this regard it is said that the judge failed to have regard to the well-known case law **Üner v Netherlands [2006] 45 EHRR 14** and **Maslov v Austria [2009] INLR 47**. We note that since the decision which is the subject of this appeal was made there has been a significant decision of the Supreme Court in **Sanambar v Secretary of State for the Home Department [2021] UKSC 30**. That is a decision which we will need to address in the course of our decision.

The decision under challenge

4. With that very broad description of the complaints, we turn first to the decision under appeal. Having set out the nature of the appellant's background and his family in paragraphs 6 to 14 of the decision the judge moved on between paragraphs 15 and 34 to set out in some detail the shocking criminal background of the appellant. His conclusion at paragraph 34 was that he had noted the appellant's recent professions of remorse and promises of reform, but the judge found that the appellant posed at least a medium risk of repeat offending including violence. That is not a surprising conclusion based upon the evidence which the judge had before him.

5. The judge then went on to direct himself at paragraphs 35 to 37 as to the appropriate legal regime and there has been no submission before us that he misdirected himself in identifying the relevant legislation.

6. There were three matters to be considered by the judge under Exception 1. First, whether the appellant had been lawfully resident in the United Kingdom for most of his life; second, whether he was socially and culturally integrated in the United Kingdom; and third, whether there would be very significant obstacles to the appellant's integration into the country to which it was proposed that the appellant be deported. This was a reference to section 117C(4) of the 2002 Act. The judge then went on at paragraph 39 and following to consider each of these matters. He concluded first that the appellant had been lawfully resident in the UK for most of

his life; in fact in this case it was all of his life. He then concluded at paragraph 44 to accept the submission of Ms Allen on behalf of the appellant that the appellant was socially and culturally integrated in the United Kingdom. The first two points under section 117C(4) were decided in the appellant's favour.

7. However on the third issue, namely the question of obstacles to the appellant's integration, the judge determined this matter against the appellant. The judge began paragraph 45 by identifying the well-known passage in **Kamara v Secretary of State for the Home Department [2016] EWCA Civ 813** at paragraph 14. He then went on to set out his conclusions based upon the evidence he had heard earlier and the inferences he drew from that evidence.

8. Given the nature of the submissions in the first ground it is appropriate that we set out that reasoning in full:

> "46. Ms Allen submits that this Appellant has no family members in Uganda to assist him with integrating and finding work and accommodation; that all his family members are in the UK and it cannot be assumed that he has any knowledge of life in Uganda simply because his parents are Ugandan nationals; that he is a person who has never left the UK, and has always lived either with his parents and siblings or in prison; that he has never lived independently and therefore would face significant obstacles integrating into a country to which he has never been and a culture of which he has no insider experience.
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> 47. I have noted these points. However, the Appellant is now nearly 25 years of age, in good health and with some basic education and skills in bricklaying and cooking. He speaks English which is an official language in Uganda. If speaking Acholi would assist his life in Uganda, there is no reason why he could not learn it.
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> 48. The Appellant's father, with whom the Appellant confirmed he has a good relationship, still retains significant ties to Uganda, has visited Uganda several times since he settled in the UK, and in 2015 returned from a prolonged stay there. Gulu is a small but well-established center in Uganda which is a reasonably peaceful and stable country. While the family land in Gulu is subject to litigation and occupied by squatters, it represents at least a potential family capital asset. If the land could be recovered from the squatters, perhaps the Appellant could get involved in some useful new life involving that land. But even if that was impossible, his father is maintaining a rented house for his mother (the Appellant's grandmother) in Gulu, and supplying money for her subsistence. It is a reasonable possibility, consistent with the father's expressed interest in the Appellant's wellbeing, and their good relationship, that the Appellant, on arrival in Uganda, could find a subsidized home at least at first with his grandmother, and with his father continuing his £20 per week payments to the Appellant at least until he got established.

> 49. While it is true that the Appellant has not lived independently yet, he is at an age and stage when he would expect to do so in any event. While he does not want to go to Uganda, and would have to make adjustments, I do not find that there would on the facts of this case be very significant obstacles to his integration there.
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> 50. Hence, I conclude that the Appellant cannot satisfy all the requirements of Exception 1 in section 117C(4) and it follows that the public interest requires his deportation".

9. The judge then went on separately to consider between paragraphs 51 and 58 the issue of the appellant's Convention rights and he concluded at paragraph 57:

> "Taking all factors in consideration, I find that the Appellant's criminality is the determining factor in this case. It has been significant and persistent, despite numerous interventions by the police and the courts, and a warning since 2015 that he was at risk of deportation if he continued. Despite the efforts of his father, I have found that the Appellant poses at least a medium risk of repeating his offending, which has in the past included several unpleasant uses and threats of violence against innocent people. This is a powerful public interest consideration which in my view outweighs the factors in his favour, and which justifies the personal hardship which deportation would no doubt cause him".

10. For these reasons the judge found that the appellant's deportation would be proportionate and accordingly the respondent's decision was lawful under section 6 of the Human Rights Act 1998.

Caselaw

11. Before turning further to the grounds and the submission made in relation to them, we should identify two cases which have been the subject of submissions before us.

12. The first case is the relatively recent decision of the Court of Appeal in **Lowe v Secretary of State for the Home Department [2021] EWCA Civ 62**. In that case the Court of Appeal overturned a decision of the Upper Tribunal which had itself overturned a decision of the First-tier Tribunal on the basis that it was found by the Upper Tribunal to be irrational. Although a number of submissions have been made to us about the facts of the **Lowe** case, in our judgment one is not assisted by comparing facts of that case with the present case. What is important to note is that in that case the Court of Appeal underlined the respect with which the Upper Tribunal should have approached the findings of fact of the First-tier Tribunal.

13. There has been certain argument before us in relation to paragraph 3 of the **Lowe** decision and in particular the reference in the judgment of McCombe LJ to the concept of "exile". In that paragraph McCombe LJ was merely reciting the determination of the Upper Tribunal that the case before it was a case of "exile rather than deportation". As was observed in argument today the concept of exile was not a term of art and insofar as it is simply a shorthand way of referring to the removal of

a person to a country with which they have had absolutely no connection, that is a concept which is already embraced through the relevant Immigration Rules and legal regime. We say nothing further about the **Lowe** case because it is a case on its own facts. It does help us however in underlining the respect with which we should approach the factual findings of the First-tier Tribunal.

14. The second case is one to which we have already made reference, that is the decision of the Supreme Court in **Sanambar**. What is particularly relevant in that case is the discussion between paragraphs 37 and 46 of the relevant legal principles to be drawn from the Strasbourg case law. It is significant in that case that the Supreme Court underlined that the criteria to be applied were those in the **Üner** case and in particular having cited both that case and some other case law the Supreme Court concluded in paragraph 46 as follows:

> "46. None of these cases supports the proposition that in carrying out the assessment of the fair balance required by article 8.2 between the appellant's right to respect for his private and family life on the one hand and on the other, the prevention of disorder or crime it is necessary to impose a condition subsequent as a result of para 75 of *Maslov* in addition to a careful consideration of the *Üner* criteria. The analysis in *JO (Uganda)*, *MW (Democratic Republic of Congo)* and *Akpinar* correctly identifies that paragraph as containing a summary of the implications of the preceding paragraphs the effect of which is to recognise that the weight that should be given to those criteria will depend upon the circumstances. Unsurprisingly children are treated differently from adults".

Discussion and conclusions

15. We turn then to the grounds of appeal.

Ground 1.

16. As we have indicated, this is a direct attack on the rationality of the judge's decision in relation to the question of very significant obstacles to integration. We have cited above the relevant paragraphs of the judge's determination in full. A number of submissions were made both in writing and orally but the overriding submission is that the judge was not entitled to make the findings identified in those paragraphs.

17. In particular, it is argued that the judge should have (in addition to what he said) made some specific findings about, for example, how long it would take the appellant to learn the local language. Complaints are also made that there is a focus in paragraph 48 upon findings in relation to the appellant's father rather than findings in relation to the difficulties which the appellant would have if he was sent to Uganda.

18. Having considered both the written submissions and those which have been made orally, we have no hesitation rejecting ground 1. We consider that although the reasoning in the central paragraphs is brief and compressed, the findings which the

judge made were open to him. In particular, the judge drew certain inferences at paragraph 48 based upon the family connections and ties which we cannot accept are irrational.

19. It was open to the judge to determine that there was a reasonable possibility (consistent with the appellant's father's interest in his wellbeing and their good relationship) that the appellant when he arrived in Uganda could find a subsided home and that the appellant would continue to receive a subsistence payment of £20 per week. We also consider it significant that the appellant is young, in good health and does speak one of the official languages of Uganda.

20. For these reasons, we do not consider it is open to us to question on rationality grounds the conclusions made by the judge in this part of his decision. We return again, as we have already mentioned, to the approach that this Tribunal should take to findings of fact made by a lower Tribunal and the **Lowe** case, to which we have already referred.

21. At best the argument could be made that the judge should have explained his reasoning in more detail but we consider on balance there is a sufficient amount of detail in the material paragraphs for us to be satisfied that this was a decision open to the judge and one which was plainly rational.

Ground 2

22. We turn then to the second ground. If one steps back and considers paragraphs 51 to 57 of the judge's decision in relation to the Article 8 question it is clear to us that the judge has given significant weight in the balance sheet in favour of the appellant to the personal factors affecting him. Specifically, weight is given to the fact that he was born in the UK, weight is given to the fact that but for the inattention of his parents he would have acquired immunity from deportation. The judge also noted that all of the appellant's family ties are with his parents and siblings who live in London, that he is a product of British society and that he has lived nowhere else.

23. It is clear to us that those factors have both been identified and in due course given weight. It is also clear to us that despite the able submissions of Ms Allen to the contrary, there is nothing in paragraphs 51 to 58 which is inconsistent with the most recent governing case law which is the **Sanambar** decision to which we have already made reference. Insofar as the submission is that separately the judge should have considered by way of some condition subsequent what follows from paragraph 75 of **Maslov**, that is the submission which has been rejected by the Supreme Court in paragraph 46 of **Sanambar**.

24. For those reasons we do not consider that there was any error of law in the approach to the balancing exercise. In particular it is clear to us that the judge approached the particular facts and circumstances of this appellant with some care and he was entitled (even giving weight to the personal circumstances of the appellant) to find as he did at paragraph 57 that the appellant's criminality was the determining factor.

25. There is simply no error of law there and if anything, the **Sanambar** case has underlined the correctness of the judge's approach.

Anonymity

26. No anonymity direction is made in this case.

Notice of Decision

27. The decision of the First-tier Tribunal did not involve the making of an error of law.

28. We dismiss the appeal.

Signed *Mr Justice Saini* Date: 21 October 2021

Mr Justice Saini
Sitting as a Judge of the Upper Tribunal