Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/01214/2020

THE IMMIGRATION ACTS

Heard at Field House Face to Face	**Decision & Reasons Promulgated**
On 11th November 2021	**On 09th December 2021**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CECIL ANTHONY SAMBA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: Ms A Nizami, instructed by Turpin & Miller LLP

DECISION AND REASONS

1. The application for permission to appeal was made by the Secretary of State but nonetheless I shall refer to the parties as they were described before the First-tier Tribunal. The Secretary of State asserted that the First-tier Tribunal Judge (the judge) had failed to take material matters into account when allowing the appeal of the appellant on 18th August 2021.

2. The judge's decision recorded that the appellant was born on 23rd February 1996 in Sierra Leone, entered the United Kingdom in September 2005 and was given temporary admission, and filed an appeal against the

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refusal of entry which was dismissed on 10th November 2005. An application on 18th July 2013 was granted and the appellant was given leave to remain until 5th June 2016. He therefore had three years' leave. He was convicted, however, in 2014 for battery and given a three months' referral order. Again in 2014 he was convicted of possessing an offensive weapon and given a six weeks' imprisonment suspended for twelve months and a supervision requirement. Again in 2014 he was convicted of possession of a knife/blade in a public place and given a four months' imprisonment sentence suspended for twelve months and a supervision order and was also convicted of a breach of a suspended sentence. Finally, on 30th May 2018 at Leicester Crown Court he was convicted of having a knife/sharp blade in a public place and attempted wounding with intent to do grievous bodily harm and on 20th September he was sentenced to four year's imprisonment.

3. On 3rd June 2016 he applied for leave to remain, but that application was rejected as invalid. Effectively the appellant had leave to 2016.

4. The Secretary of State deemed his deportation to be conducive to the public good and under Section 32(5) of the UK Borders 2007 Act and the appellant was subjected to the automatic deportation Rules. It was observed that the public interest required his deportation unless there were very compelling circumstances. The appellant did not claim to have family life with children in the UK and he had a girlfriend with whom he did not live. It was accepted that he was socially and culturally integrated into the UK to some extent because of the length of his residence, that he would have established a private life and he had family ties in the UK with his father and younger brother.

Application for Permission to Appeal

5. The application for permission to appeal first submitted that the judge when allowing the appeal had placed reliance on the conclusions of Professor Knorr given in an expert report on conditions in Sierra Leone and who had concluded that given the high rate of young people earning below the poverty line (paragraph 68) together with the "appellant's mental health issues and the fact that he does not speak the major language of Sierra Leone" he would be very unlikely to find "legal and non-exploitative employment" (paragraph 69).

6. These expert conclusions were given weight by the judge, see paragraphs 106–107, however, the judge failed to take into account relevant facts, and which rendered the determination unsustainable.

7. It was submitted the nature and extent of any mental health issues suffered by the appellant was entirely unclear and, in fact, the limited extent of the evidence was noted by the judge at 104 when stating: "The appellant has referred to mental health issues in particular depression although I do not have any formal medical report in relation to this the

overall evidence is that he does suffer from depression and has received counselling in the past (sic)".

8. The Secretary of State submitted there was no proper evidential basis on which to conclude the appellant suffered from current mental health difficulties that would significantly affect his ability to integrate in Sierra Leone.

9. Secondly, the appellant did speak fluent English which was the official language of Sierra Leone, and it was not clear that the Tribunal was referred to any statistics to the rate of unemployment amongst the English speaking population in Sierra Leone. Further, the judge concluded that because the appellant's current lack of "meaningful connection" to Sierra Leone and the fact he has no family members living there he "will be at risk of exploitation on return". However, no consideration had been given to the ability of the appellant's family members in the UK (including his father, brother and partner) to assist him with financial remittances or visits initially while he established himself.

10. The difficulties that the appellant claimed he would face in reintegrating on return were highly material to the overall conclusion on very compelling circumstances and it was submitted that the judge had erred in making that assessment.

The Decision of the First tier Tribunal.

11. As the judge indicated at paragraph 26 it is only a claim which is very strong indeed which would succeed because of the length of the appellant's prison sentence. It was recorded at paragraph 34 that the appellant's Counsel accepted that the appellant could not comply with the exceptions of paragraph 399A nor Section 117C(4) although this was still relevant when considering "very compassionate circumstances over and above the exceptions to deportation and whether deportation was proportionate".

12. The judge recorded that the appellant had attended local primary school in Sierra Leone, and that he had not spoken to his mother since he came to the UK.

13. The judge concluded that the appellant had previously received a suspended sentence for an offence of possessing of an offensive weapon prior to the index offence (paragraph 47). He had three convictions in relation to having a blade within a period of just over four years (paragraph 48).

14. The judge accepted that the appellant and his partner were in a genuine and subsisting relationship and had plans to marry.

15. He accepted at paragraph 60 that the appellant had not spoken to his mother since he came here and stated, "there is no evidence to indicate that this statement is not correct". The appellant's evidence which was

not challenged was that his uncle died in 2015 and that he had no family in Sierra Leone who could assist him.

16. In fact, I note at this point that the respondent stated in the refusal letter "it is believed you still have ties to your country of origin through family and friends".

17. The judge found that in view of the relationship there was nothing to prevent the appellant and his partner "maintaining their relationship through modern communication means" and that he was not satisfied that it would be unduly harsh to expect the appellant to return to Sierra Leone and maintain a relationship with Ms Lawrence should she wish that to continue (paragraph 64). The judge noted the appellant only had lawful leave for three years and thus could not comply with the requirement of Section 117C(4), that he had been resident in the United Kingdom for most of his life. It was noted the Secretary of State accepted that he had established a private life and was socially and culturally integrated within the United Kingdom

18. The judge turned at paragraph 69 to the report of Professor Knorr noting that "he [the appellant] does not speak the major language of Sierra Leone and that his chances of finding legal and non-exploitative employment would be very low".

19. At paragraph 73 the judge stated this:

> *"73. Prof Knorr concludes that the appellant given the bad socio-economic conditions, lack of family support and his mental health issues will be at major risk of destitution and severe deterioration of his mental health and that he would be very vulnerable to physical and emotional exploitation".*

20. The judge referred to the evidence of three witnesses, and recorded the first was Mr Baptiste, to whom the appellant was referred in 2009 when he worked with the Southwark Council's Youth Offending Prevention Services. Mr Baptiste confirmed that the appellant had not completed the programmes offered although he observed the appellant did not wish to revert to crime. The second witness, Mr Julian Wright of the Southwark Council called Southwark Anti-Violence Unit had worked with the appellant since 2012 and confirmed the appellant had completed a number of NVQ level 3 courses. The third, Mr Bob Mugisha, a caseworker at St Giles Trust confirmed the appellant had been accessing services since 2012 and that the appellant had engaged with NHS Mental Health Services. Mr Ian Wint, a deputy support worker at the Springfield Lodge Salvation Army, the appellant's key worker, was aware of the problems of his relationship with his father who was not supportive and that he had been his key worker from March 2014 to summer of 2016. He also confirmed that the appellant had little connection with Sierra Leone and the consequences if he returned would be extremely bleak.

21. In relation to the appellant's offending the judge recorded, "there is no doubt the appellant's offending is serious and that he was given an opportunity to reform his life when he was given a suspended sentence" and he confirmed at paragraph 94 that the appellant had not told the truth about the index offence. At paragraph 95 in relation to the evidence of Mr Baptiste and Mr Wright the judge stated that:

> *"It is particularly relevant to note that they had given the time to assist the appellant and that all of the witnesses have indicated that he is mature and that he is trying to get his life back together. They have also all confirmed the issues that the appellant had with regard to falling out with his father and the problems that has caused".*

22. The decision noted there was no risk assessment in relation to the appellant's offending although his offending had increased in severity (paragraph 96). The judge factored into his findings the relationship with his said partner and that he had no family life established with his brother or father but stated "the appellant has however been in this country for sixteen years which is the majority of his life". He considered that to be a relevant factor and he also noted that the appellant "has referred to mental health issues in particular depression" although there was no formal medical report.

23. At the hearing before me, Mr Tufan submitted that the judge had not applied Section 117C(6) properly. The judge had applied **Kamara** but **Mwesezi [2018] EWCA Civ 1104** identified that **Kamara** related to Exception 1 rather than very compelling circumstances. Mr Tufan confirmed that it was also important that the judge looked at the possibility of the availability of support from family members and the voluntary assisted return. It was clear that the appellant had been in Sierra Leone until he was 9 years old and must have spoken the mother tongue there and further that Krio is based on English.

24. Ms Nizami submitted that Mr Tufan was attempting to reargue the case and that I may take the view that the decision was generous but that did not mean there was an error of law. The judge directed herself appropriately and repeatedly referred to very compelling circumstances. The respondent did not commission her own report and this was a nuanced decision. The judge was entitled to take into account and place reliance on Professor Knorr's report given the appellant's long absence and his lack of connections to Sierra Leone. Whether the family were in a position to offer support was not ventilated before the First-tier Tribunal and the question of remittances or support being available was not in the refusal letter and not part of the case before the First-tier Tribunal. Even if it were this would not address the question of whether he would be enough of an insider. There was evidence of a mental health vulnerability which was evidenced by Mr Wilkinson. There was evidence that the appellant only spoke English and had no grasp of Krio and the point about language is that the appellant without a grasp of Krio would not be able to re-establish himself. The fact that each offence was more serious was

taken into account and the judge had recorded that the appellant had been assisted by the witnesses in their professional capacity for nine years before the offence. Professor Knorr did not just reach her conclusions based on the fact that he was suffering from mental health issues but also in relation to the socio-economic situation whether he could re-establish himself having been absent for more than fifteen years.

Discussion

25. The basis of the report submitted by Professor Knorr did refer to the decades of severe crisis in Sierra Leone that it had been hit by a devastating Ebola epidemic in 2018 and that whilst Sierra Leone had been declared Ebola free there had been a significant effect on the health system. She noted that Sierra Leone was one of the poorest countries in the world and there was no functioning public social care system in Sierra Leone. Professor Knorr opined at paragraph 14 "unless they are well-off from the outset re-migrants and returnees to Sierra Leone – like Mr Samba – depend on family networks to reintegrate, find accommodation and a job" and at paragraph 15 "people who are not members of (extended) kin and social networks and at the same time socio-economically poor are particularly vulnerable in terms of social stigmatisation, socio-economic destitution, exploitation and violence" and at paragraph 16:

> *"Given the unemployment figures stated above, this – in addition to his mental problems and the fact he has no command of the major language of Sierra Leone – there would be hardly any chance that Mr Samba would find legal and non-exploitative employment. He would therefore not be able to afford adequate food and accommodation, less so therapy and counselling".*

26. During the course of the hearing Ms Nizami stated that the Home Office had not challenged the evidence of Professor Knorr but it became clear that there were documents cited in the decision which had not been referred to or apparently considered by the judge. These included a Response to an Information Request Sierra Leone: Returnees dated 20th May 2021 and which identified that the International Organisation for Migration Report noted:

> *"1.1.1 Since 2017, over 3,000 Sierra Leoneans have been assisted with voluntary return by IOM. Around 70 per cent of these returns were registered in Freetown-Western Urban and Waterloo in the Western Rural Area of Sierra Leone.*
>
> *'... "Whilst we will intensify safe migration messaging campaign, IOM will continue to develop programs to address the problem of youth unemployment through skills training and entrepreneurship especially for young people at different irregular migration prone areas in the country," he adds.*

> *'Upon arrival Thursday in Freetown, IOM provided returnees with food assistance, pocket money and onward transportation to meet their immediate needs.*
>
> *'In the coming weeks, returnees will receive reintegration assistance that will address their economic, social and psychosocial needs, with various types of support tailored to their needs and interests".*

It is also evident that there are also NGOs within Sierra Leone to which the judge made no reference, albeit that Professor Knorr stated they were "mere drop in the ocean". Thus the evidence of support available to the appellant with or without family support and which was relevant, was not identified by the judge.

27. Additionally, the report detailed that the appellant's his mental health difficulties were significant in relation to the appellant's ability to sustain himself and find work in Sierra Leone. There was, however, as the judge acknowledged very limited evidence of the appellant's mental health difficulties. As the judge identified, large sections of the report of Professor Knorr relied on the fact that the appellant had a significant mental health difficulty. The evidence did not support that assertion which would in turn undermine the conclusions of the report; the judge failed to resolve this inconsistency.

28. Nor apparently did the judge take into account the fact that the appellant had been brought up in Sierra Leone for the first nine years of his life and had been to school in Sierra Leone.

29. In view of the very serious nature of the appellant's criminality, the judge also failed to take into account that he had been supported by the professional witnesses in some cases for nine years prior to the index offence.

30. I find in the particular circumstances of this case that it is not a question of just disagreement with the decision of the judge but that there is a material error because the judge failed to take into account relevant and important information and place emphasis on a report which in turn was predicated on an apparent misapprehension of the evidence. Having failed to take into account such information, the conclusion of the judge that the appellant had made out "very compelling circumstances" falling within section 117C(6) was not one reasonably open to the judge on the facts as identified.

31. I find a material error of law. The decision is set aside and the matter will be remitted to the First-tier Tribunal because of the significant omissions in considering the evidence and the extent and the significance of the findings to be made.

32. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

33. Direction

    Skeleton arguments with relevant legal authorities should be filed and served at least 14 days prior to any substantive hearing.

No anonymity direction is made.

Signed H Rimington Date 29th November 2021

Upper Tribunal Judge Rimington