



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/22866/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 18th October 2021**

**Decision & Reasons
Promulgated
On 20th October 2021**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**C G G
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr T Melvin, Home Office Presenting Officer
For the Respondent: Unrepresented

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State. I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Jamaica born in 1963. His appeal against the Respondent's decision to deport him was allowed by First-tier Judge Beach on 9 January 2020. The Secretary of State appeals on the ground that the judge failed to make a finding as to whether the Appellant is liable to deportation under the 1971 Act. There was no cross-appeal by the Appellant.

2. Permission was granted by Resident First-tier Tribunal Judge Phillips on 11 February 2020 for the following reasons: “The Judge finds that the Appellant does not fulfil the requirements for the exceptions in section 117C(4) of the 2002 Act and that there are no very compelling circumstances over and above the exceptions (paragraph 86). However, in going on to find that the Appellant does not fall within the definition of ‘foreign criminal’ it arguable that the Judge should have considered whether his deportation was conducive to the public good under the 1971 Act.”
3. The Appellant was deported to Jamaica on 6 September 2016. He lodged an out of country appeal in October 2016 and his appeal was heard by the First-tier Tribunal in July 2017. This decision was set aside by the Upper Tribunal and re-heard by First-tier Tribunal Judge Beach on 5 and 6 December 2019. The Appellant represented himself at the hearing and gave evidence by video link. The Appellant’s wife, son and his sister also gave evidence. The Appellant’s immigration history and a record of the evidence and submissions appears in the First-tier Tribunal decision promulgated on 9 January 2020.
4. The error of law hearing was listed before the Upper Tribunal on 28 April 2020, but was adjourned due the global pandemic. The Upper Tribunal issued directions and the Respondent submitted a skeleton argument dated 30 March 2020. There was no response from the Appellant. The matter was re-listed and came before me on 18 October 2021.
5. Notice of hearing was served on 21 September 2021 by first class post on the Appellant’s last known address in Slough. The Appellant failed to notify the Tribunal of his address in Jamaica. The Tribunal contacted the Appellant’s previous solicitors and they confirmed by email sent on 5 July 2021 that were no longer able to represent the Appellant. The Home Office informed the Tribunal by email dated 24 September 2021 that there was no request to provide a video link and 18 October 2021 was a public holiday in Jamaica.
6. I had a discussion with Mr Melvin about the lack of merit in the grounds of appeal and whether to proceed in the Appellant’s absence. After considering [9] of the Respondent’s supplementary letter dated 25 February 2016, Mr Melvin conceded the appeal should be dismissed. It was apparent from [25] of the Respondent’s decision of 5 August 2015, the Respondent’s case was that the Appellant’s deportation was conducive to the public good and in the public interest because the Appellant was a persistent offender. Mr Melvin accepted that the grounds of appeal did not challenge the judge’s finding that the Appellant was not a persistent offender.
7. I am satisfied that reasonable steps have been taken to notify the Appellant of the hearing and that it is in the interests of justice to proceed. There is no merit in the Respondent’s grounds of appeal.

8. I find that the judge properly considered section 3(5) of the 1971 Act which she set out at [14] of her decision. She properly directed herself in accordance with paragraph 398(c) of the Immigration Rules at [52 and 66] and SC (Zimbabwe) v SSHD [2018] EWCA Civ 929 at [63] and Binbuga v SSHD [2019] EWCA Civ 551 at [64]. The judge's finding that the Appellant was not a persistent offender was open to her on the evidence before her and was not challenged by the Respondent.
9. I find the judge properly considered whether the Appellant's deportation was conducive to the public good and concluded it was not at [77]. There was no material error of law in the judge's conclusion that the Appellant was not a foreign criminal at [86]. There was no error of law in the decision to allow the Appellant's appeal against deportation. The Respondent's appeal is dismissed.

Notice of decision

Appeal dismissed

J Frances

Signed
Upper Tribunal Judge Frances

Date: 18 October 2021