IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Appeal No: UI-2021-001543
First-tier Tribunal No:
HU/50314/2021
IA/01022/2021

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On 19 February 2023

Before

UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NICHOLAS NEEQUAYE

Respondent

Representation:
For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Mr A Pipe, counsel, instructed by Worldwide solicitors

Heard at Field House on 9 January 2023

DECISION AND REASONS

BACKGROUND

1. This is an appeal by the Secretary of State for the Home Department. For ease of reference we refer to the parties as they were in the First-tier Tribunal. The Respondent appeals against the decision of First tier Tribunal Judge Andrew heard on 9 July 2021 via CVP in Birmingham and promulgated on 15 July 2021, allowing the Appellant's appeal against the Respondent's decision of 21 January 2021, refusing his human rights claim on the basis of a deportation order made on 21 January 2019.

2. The Appellant is a national of Ghana, born on 1 May 1981. He entered the United Kingdom in either 1985 or 1987 and has remained ever since, receiving all his education in this country. He was granted ILR on 22 April 1995 and the Windrush Team at the Home Office endorsed a No Time Limit stamp in his passport on 15 December 2020.

3. The Appellant received a series of non-custodial sentences in 2000, 2004, 2005, 2006, 2007 and 2008 and in 2009 he received a sentence of imprisonment for 3 years and 9 months for suppling a controlled drug and further non-custodial sentences in 2015, 2017 and 2019.

4. The Appellant has been in a relationship with his partner, a British citizen of Jamaican heritage, since 2015 and they have two children, born on 10 May 2017 and 13 March 2020, who are both British citizens. The Appellant's relationships with his partner and children are accepted by the Respondent as being genuine and subsisting but her position was that it would not be unduly harsh for the Appellant's partner and/or children to live in Ghana or remain in the United Kingdom without the Appellant.

5. At the hearing before the First tier Tribunal Judge, she heard evidence from the Appellant and his partner. The Judge noted evidence from the CPS in the Appellant's supplementary bundle stating that the Sunlab Lab report of 11 June 2019 is unreliable, which casts doubt on the safety of the Appellant's conviction in 2019. The Judge accepted at [10] that significant weight must be given to the deportation of an offender but found at [13] that on the evidence before her, she was satisfied that despite his offending the Appellant is socially and culturally integrated into the United Kingdom. She noted at [16] that the Appellant had been involved in drugs but had since embarked on a rehabilitation programme and at [17] that he was now clean of drugs. She took account of a report of a hair sample and that the Appellant had been attending Narcotics Anonymous.

6. The Judge accepted that the Appellant's offences could be said to be persistent but not that they had escalated, given it had been 12 years since the Appellant was incarcerated and his subsequent offences were for possession of drugs rather than supply [18]. She

further noted at [20] that the Appellant had expressed remorse for his offending, was now clean of drugs and has never been a member of a gang. At [22] the Judge stated that she was satisfied on the balance of probabilities that the Appellant had become self-employed as a painter and decorator. At [23] she took account of the absence of any evidence to show that the Appellant had grown up in the culture of Ghana, having visited twice with his mother as a child and having no relatives there. The Judge at [24] also took account of the evidence of the Appellant and his partner of a holiday to Ghana in 2018 but they stayed in an Airbnb and had very little in common with that country and went only to tourist recommended places.

7. At [26] the Judge found that the Appellant speaks only English and none of the local languages used in Ghana and that his evidence was that the English spoken there was so heavily accented that he had difficulty in understanding it. He does not read and write in any other Ghanaian languages. At [28] the Judge noted that the Appellant did not know anything about the paternal side of his family and that many of his maternal relatives are in the United Kingdom. She found that he would find grave difficulties on his return to Ghana. At [29] the Judge found that she was satisfied the Appellant no longer has any relatives in Ghana or if he does he has had no contact with them for a very long time, he has no home there nor contacts and is suffering from some mental health difficulties for which he has been receiving counselling.

8. The Judge went on to direct herself with regard to the judgment of the Court of Appeal in Kamara [2016] EWCA Civ 813 and found at [30] that the Appellant would not be enough of an insider in terms of understanding how life in Ghana is carried on or a capacity to participate in it so as to have a reasonable opportunity to be accepted there, be able to operate on a day to day basis and to build up within a reasonable time a variety of human relationships to give substance to his private or family life. Consequently she found at [31] that the Appellant meets Exception 1 to deportation, on the basis of his private life.

9. The Respondent sought permission to appeal against this decision, in time, on 20 July 2021. The grounds in support of the application asserted that the Judge had erred at [19] in finding that the Appellant is socially and culturally integrated into the United Kingdom despite his conviction for possession of Class A drugs and persistent offending. Reliance was placed on the decision in Bossade (ss.1117A-D – interrelationship with Rules) [2015] UKUT 415 (IAC) at [55]. The grounds further assert that the starting point is to assume that the Appellant would be able to integrate into Ghana unless he can demonstrate that this is not the case; "*very significant obstacles to integration*" is a high threshold and entails something that would prevent or seriously inhibit him from integrating and

establishing a private life or those obstacles would cause severe hardship and it was submitted that the Judge had erroneously diluted the requisite threshold which must be made out as established by MK (Sierra Leone) [2015] UKUT 223 at [46] and failed to identify any obstacles that would reach the definition of "very significant."

10. Permission to appeal to the Upper Tribunal was refused by First tier Tribunal Judge Gibbs on 20 October 2021 but in a decision dated 13 March 2022, Upper Tribunal Judge C.N Lane granted permission to appeal in the following terms:

> "The grounds regarding the judge's findings as to the existence of very significant obstacles to the appellant's integration in Ghana are arguable notwithstanding the length of time he has lived in the United Kingdom. I also observe that (i) despite the judge's findings at [26], [29] and [38], English is the official language of Ghana; (ii) despite finding that she should not go behind the Appellant's 2019 conviction, she still took into account the possibility that the conviction may not be safe [19]. All the grounds may be argued."

HEARING

11. At the outset of the hearing, Mr Pipe on behalf of the Appellant informed us that the 2019 conviction had been quashed. Mr Clarke, on behalf of the Respondent, served four judgments that he wished to rely upon in support of the Respondent's appeal: CI (Nigeria) [2019] EWCA Civ 2027; Binbuga [2019] EWCA Civ 551; Kamara [2016] EWCA Civ 813 and AS [2017] EWCA Civ 1284, acknowledging that the appeal had then proceeded to the Supreme Court.

12. Mr Clarke submitted that there were essentially two grounds of appeal. Firstly, in relation to the Appellant's social and cultural integration, he submitted that the Judge had inadequately reasoned her findings, given that for a significant proportion of his life the Appellant had been involved in criminality and had a very significant criminal history from 2000 to 2019. Mr Clarke sought to rely upon the judgment in Bossade [2015] UKUT 00415 (IAC) which had been referred to in Binbuga (opt cit) at [55] as to how involvement in criminality and anti-social behaviour can relate to discontinuity.

13. Mr Clarke next drew our attention to the judgment in CI (Nigeria) [2019] EWCA Civ 2027 at [79] specifically in terms of whether someone's private life is of such gravity that it outweighs public interest in deportation and at [78] which recognises that offending can cause a break in integration and criminal offending and can show a breakdown of ties to family and friends. Mr Clarke acknowledged that he had to accept the analogy between this case and CI (Nigeria) in terms of the length of residence and clear significant private life. He submitted however that the way in which

the Judge approached this at [13]-[22] was not an adequate assessment of criminality as it was not a matter of just going to prison but required looking at the other criminality, including its anti-social nature and how that affected integration.

14. The panel pointed out that the Judge had considered the issue of integration at [15], [17]-[18] of her decision and reasons. Mr Clarke fairly accepted that the Appellant has moved on from his own drug use and that his offences have de-escalated. He also fairly accepted that the quashing of the 2019 conviction put him in some difficulty. However, he submitted that the 2017 conviction was not just possession of drugs but also driving an uninsured car, which required more reasoning from the Judge and that her focus on the lack of membership of a gang and the one period of imprisonment shows she did not consider properly whether the Appellant's private life was worthy of such protection and that she had failed to fully engage with this. Mr Clarke submitted that it was clear from CI (Nigeria) at [62] that a person who has lived all or most of his life in the UK and speaks no language other than English has deeper roots, but this was not the end of the story in terms of the question of whether his private life is worthy of protection and whether integration is broken. He submitted that the evidence of a substantive private life in the United Kingdom was not substantial in terms of consideration of whether that private life was worthy of protection.

15. As to the second ground of challenge and whether there were very significant obstacles to integration, Mr Clarke submitted that the Judge had not applied the higher threshold. He submitted that, with regard to the Appellant's mental health, that she had not considered whether assistance would not be forthcoming for this nor how as a matter of fact this would impact on his ability to integrate and it was conceded that he is not a vulnerable witness: [2] refers. Whilst Mr Clarke appreciated that the Judge did invoke the test in Kamara, English is an official language in Ghana and public domain sources show that it is the most widely spoken language given the colonial past. Therefore, it is not well reasoned to find the Appellant does not speak any of the languages in Ghana.

16. In his submissions in response, Mr Pipe sought to rely upon his rule 24 response dated 4 December 2022. He submitted that the Respondent's challenge is effectively a sustained disagreement with a properly reasoned decision, which applied the appropriate legal tests: see [77] of CI (Nigeria) op cit) which provides:

> "77. ... The judge should simply have asked whether – having regard to his upbringing, education, employment history, history of criminal offending and imprisonment, relationships with family and friends, lifestyle and any other relevant factors – CI was at the time of the hearing socially and culturally

> integrated in the UK. The judge should not, as he appears to have done, have treated CI's offending and imprisonment as having severed his social and cultural ties with the UK through its very nature, irrespective of its actual effects on CI's relationships and affiliations – and then required him to demonstrate that integrative links had since been "re-formed".

17. In terms of the assessment of very significant obstacles to integration. Mr Pipe submitted that the test is set out in Kamara (op cit) and also Parveen [2018] EWCA Civ 932 that one must look at the obstacles and conduct an evaluative exercise as to whether they are very significant. Mr Pipe submitted that at [4] the Judge looks at the Appellant's criminal record and sets it out in detail. At [5] she looks at the 2019 conviction and CPS letter and directs herself that she cannot look behind this. The Appellant entered the UK at the age of 3 or 4 years and he is now aged 40 and so has at least 36 years residence in the United Kingdom. In terms of building up relationships he has a partner and two children.

18. Mr Pipe submitted that the Judge found article 8(1) is engaged and she then moved to look at the exceptions to deportation. At [12] the Judge accepted lawful residence for most of the Appellant's life and she found he is socially and culturally integrated, despite his offending; it is front and centre of the Judge's consideration. At [14] the Judge narrated his education and difficulties in his home environment and noted that all but one of his sentences was non-custodial and his period in custody was in 2009, which is some 12 years previously.

19. At [15] the Judge did not make light of the Appellant's period of time spent in prison and with regard to drugs, she considered his relationships and the fact that he is now clean of drugs. The Cellmark hair sample report only showed the presence of prescribed codeine. The Judge found no escalation in offending and did not make light of it, but this did not prevent social and cultural integration *cf.* CI (Nigeria) (op cit). She took account of his relationships including with his disabled brother. Mr Pipe noted that there had been no challenge to the Appellant being self-employed. The Judge found he had not grown up in culture of Ghana and had one 10 day visit as an adult and no connection with the country through his partner. Mr Pipe submitted that the Judge had provided far above adequate reasons and the more pressing point is that she clearly put and wrestled with the impact of the criminal history on the Appellant's social and cultural integration.

20. In terms of very significant obstacles to integration, which Mr Pipe submitted was not the question before the panel, he submitted that the Judge had clearly not strayed outside the range of rational responses. The background facts are that the Appellant came to the United Kingdom as 3-4 year old, spent 36 years here and has no

background with Ghana. Mr Pipe noted that in Binbuga (op cit) the Court deprecated the home grown criminal concept but in the recent case of Lowe [2021] EWCA Civ 62, the Court considered exile which is akin to that. He submitted that the Judge was entitled to find the Appellant did not speak any languages spoken in Ghana other than English and that he would find grave difficulties there as he has no contact with anyone in Ghana and no contacts there as confirmed in his evidence and that of his partner. As to the Appellant's mental health difficulties, there was evidence before the Judge and it formed part of the holistic assessment. Mr Pipe submitted that the Judge's decision was not inadequately reasoned and that she made sustainable findings.

21. We announced our decision at the end of the hearing that we found no material error of law in the decision of the First tier Tribunal Judge and that our reasons would follow in writing.

DISCUSSION

22. We agree with Mr Pipe's submission that, following close analysis, the Respondent's grounds of appeal are no more than a disagreement with the findings of the First tier Tribunal Judge and do not disclose any material errors of law.

23. We have reached this conclusion in light of the following material points.

24. The Judge allowed the appeal with regard to Exception 1 which is set out at Section 117C(4). This provides:

> "(4) Exception 1 applies where—
>
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
>
> (b) C is socially and culturally integrated in the United Kingdom, and
>
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported."

25. The Respondent challenged the Judge's findings with regard to (b) whether the Appellant is socially and culturally integrated in the United Kingdom and (c) whether there would be very significant obstacles to his integration in Ghana.

26. We have carefully considered the Judge's findings in respect of (b) which are set out at [11]-[22] of her decision and reasons. At the outset of her consideration the Judge stated, correctly, at [11] that the Appellant must meet all three heads of the Exception and at [12] that the Respondent had already accepted that the Appellant

meets the first limb *viz* that he has been in the United Kingdom lawfully for most of his life. The Judge then proceeded at [13]-[22] to give her reasons for finding that, despite his offending, the Appellant is socially and culturally integrated into the United Kingdom. Those reasons are: all but one of the Appellant's sentences were non-custodial and the one period of imprisonment was 12 years previously; his last conviction in 2019 may be unsafe; there is no suggestion of involvement in gang culture; he has embarked on a rehabilitation programme for his drug addiction and is now clean of drugs based on a report of a hair sample and his attendance at Narcotics Anonymous as well as his own evidence; his offences, whilst persistent; have not escalated given it is 12 years since his incarceration and she was satisfied that his offending is such, when taken with the amount of time he has spent in the United Kingdom and his family life that it did not prevent him from being socially and culturally integrated in the United Kingdom and he has expressed remorse for his offending; he remains close to his disabled brother and would, if anything happened to his mother, become his sole carer; she was satisfied on the balance of probabilities that the Appellant has been self-employed as a painter and decorator because this is consistent with his description of his occupation on his children's birth certificates and some evidence of work in the Appellant's bundle.

27. The challenge by the Respondent to the Judge's finding in this respect is on the basis that it is inadequately reasoned, however, as we consider apparent from the summary set out at the paragraph above, that is clearly not the case. Mr Clarke sought to rely on the judgment of the Court of Appeal in CI (Nigeria) [2019] EWCA Civ 2027 at [78] and [79]. In that case, the Upper Tribunal Judge found that that Appellant had "broken" the social and cultural integration acquired during his childhood. In finding that this was an incorrect approach, Lord Justice Leggatt held, beginning at [77] cited at [16] above, continued:

> "78. … The phrase "socially and culturally integrated in the UK" is a composite one, used to denote the totality of human relationships and aspects of social identity which are protected by the right to respect for private life. While criminal offending may be a result or cause of a lack or breakdown of ties to family, friends and the wider community, whether it has led or contributed to a state of affairs where the offender is not socially and culturally integrated in the UK is a question of fact, which is not answered by reflecting on the description of criminal conduct as "anti-social".
>
> 79. … The reason for considering whether the person is socially and culturally integrated in the UK, however, is not to assess the strength of the public interest in deportation: it is to assess whether deportation would involve an interference with the person's private life of such gravity that this outweighs the

> public interest in deporting them on account of the seriousness of their offending. It is therefore wrong to treat the individual's criminal offending as relevant to the test of integration, not because of what it shows about the solidity of his social and cultural ties to the UK, but because it strengthens the case on the other side of the scales in favour of deportation.
>
> 80. The judge's many references to integration being "broken" by anti-social behaviour give the impression that he saw the relevant question as being whether, through the nature and seriousness of his offending, a "foreign criminal" has broken the social contract which entitles him to the protection of the state. That, however, is not the relevant test, which should be concerned solely with the person's social and cultural affiliations and identity."

28. We consider that the Judge in this Appellant's case correctly applied the test as set out by Lord Justice Leggatt.

29. We turn now to the second ground of appeal, which challenged the First -tier Tribunal Judge's finding that there were very significant obstacles to integration into Ghana, pursuant to section 117C(4)(c) on the bases that the Judge had erroneously diluted the requisite threshold *cf.* MK (Sierra Leone) [2015] UKUT 223 at [46] and failed to identify any obstacles that would reach the definition of "very significant."

30. The First tier Tribunal Judge considered this question at [23]-[30] of her decision and reasons, and took the following into account: there was nothing before her to show that the Appellant had grown up in the culture of Ghana, visiting only twice as a child with his mother when they stayed with a friend of hers and that he had no relatives there [23]; his partner is British of Jamaican origin; he, his partner and daughter visited Ghana on holiday and stayed in an Airbnb and had little in common with that country and she noted his partner's comments made to Susan Pengella in her psychotherapist's report [24]; the Appellant speaks only English and does not speak any of the languages used in Ghana nor read or write in other Ghanaian languages [26]; many of his maternal relatives are in the United Kingdom and the Appellant knows nothing about the paternal side of his family [28]; she was satisfied that he no longer has any relatives in Ghana or if he does he has had no contact with them for a very long time; he has no home in Ghana nor contacts there and is suffering from some mental health difficulties, anxiety and depression, for which he has been receiving some counselling [29].

31. The Judge then directed herself with regard to the judgment in Kamara (op cit) and was satisfied for the reasons she gave that the Appellant would not be enough of an insider in terms of understanding how life in the society in Ghana is carried on or a capacity to participate in it so as to have a reasonable opportunity

to be accepted there, be able to operate on a day to day basis and to build up within reasonable time a variety of human relationships to give substance to his private or family life.

32. Mr Clarke in his oral submissions wisely did not seek to place reliance on the decision in MK (Sierra Leone) [2015] UKUT 223 at [46] which is irrelevant to the question we are required to consider, given that it was concerned with the threshold for whether or not deportation would be unduly harsh, rather than any test for the threshold for finding there were very significant obstacles to integration. With regard to the languages spoken in Ghana, the only substantive point Mr Clarke relied upon was the fact that English is an official language in Ghana and public domain sources show that it is the most widely spoken language given the colonial past. However, the Judge noted at [26] that English is spoken in Ghana and we find that this clearly formed part of her consideration of this aspect of Exception 1.

33. Consequently we find that the Judge correctly applied the relevant threshold set out in Kamara (op cit) and identified the obstacles she considered as very significant and why she reached that conclusion.

Notice of decision

34. For the reasons set out above, we find no material error of law in the decision of First tier Tribunal Judge Andrew, which is upheld.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

17 January 2023