IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000535
On appeal from: HU/00548/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 15 August 2024

Before

UPPER TRIBUNAL JUDGE GLEESON
DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHUMARKIE SHIELDS
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Julie Isherwood, a Senior Home Office Presenting Officer
For the Respondent: Mr Ishtiyaq Ali of Counsel, instructed by M & K Solicitors

Heard at Field House on 22 April 2024

DECISION AND REASONS

Introduction

1. The Secretary of State challenges the decision of the First-tier Tribunal allowing the claimant's appeal against his decision on 21 October 2022 to make a deportation order for his removal to his country of nationality. The claimant is a citizen of Jamaica and is a foreign criminal within the meaning of section 32 of the UK Borders Act 2007.

2. **Mode of hearing.** The hearing today took place on a hybrid basis, Mr Ali for the claimant appearing by video link because he was unwell and unable to make the journey from Northampton to London to appear in person. Everyone else attended face to face. There were no technical difficulties and we consider that the hearing was completed fairly, with the cooperation of both representatives.

3. For the reasons set out in this decision, we have come to the conclusion that the Secretary of State's appeal must be dismissed.

Procedural matters

4. **Vulnerability.** The claimant has significant cognitive difficulties. He struggles to communicate, is suggestible and compliant and he also has dyslexia. The claimant is a vulnerable person and is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance.

5. The First-tier Judge identified this and did treat him as a vulnerable witness. There is no challenge to his treatment of the claimant.

Background

6. The claimant came to the UK in 1999, legally, with his mother. He was then 6 years old. He has had all of his education and adult life in the UK and is now 30 years old. Until the making of the deportation order, he was always lawfully in the UK.

7. The claimant fell into bad company and on 2 November 2010, he was convicted of dangerous driving and using a vehicle while uninsured. He was 17 years old.

8. On 18 January 2011, age 17, the claimant was convicted of possession of a bladed article in a public place, and theft. The supervision order then imposed was breached on three occasions. On 26 October 2011, now aged 18 and an adult, he was given a conditional discharge for taking a vehicle without consent.

9. A year later, on 25 October 2012, age 19, the claimant was given a community order for criminal damage, and on 7 November 2016, age 23, he received another community order for battery.

10. On 3 August 2018, when he was 25, the applicant was found in possession of Class A controlled drugs (heroin and cocaine) with intention to supply them to another. He had been arrested in a property in St Neots, at the kitchen table, with a large amount of crack cocaine on it, a vegetable knife, digital scales and a roll of clingfilm. He was in the process of bagging up drugs valued at £420. The police seized his mobile telephone, on which there was evidence that he was dealing and supplying drugs.

11. On 25 February 2021, age 28, the claimant was given a conditional discharge for 'making off without payment'.

12. The claimant pleaded guilty on 13 October 2021 to the drugs charges. His sentencing was delayed until 20 May 2022. The sentencing judge considered that the claimant's culpability was at Category 3 (a reduced level), recording that he was 'at the bottom end of a lesser role…probably simply performing a function of bagging up' and that the claimant was 'a suggestible and compliant person', as assessed by a professional.

13. On 14 May 2020, aged 27, the claimant forced a man to give him his wallet and bank card, outside or perhaps within the man's flat. The man whom the claimant robbed was also a vulnerable individual. The claimant took the man's wallet and Barclays Bank card, which he then used that evening on two occasions to withdraw £200 and £100 at a cashpoint in Huntingdon.

14. That amounted to one robbery offence and two offences of dishonestly making false representations to make gain for himself or loss to another. Those are the index offences underlying the deportation order.

15. The sentencing judge considered the robbery offence to be Category C for culpability, as the claimant had used minimal force only, and in relation to harm Category 2. On 20 May 2022, the claimant was sentenced to 3 years' imprisonment overall, the sentencing judge observing that his conduct was 'just too serious' for anything less.

16. We have not been made aware of any offences committed after May 2020, or convictions after May 2022.

First-tier Tribunal hearing

17. **Concessions.** There were two concessions during the First-tier Tribunal hearing:

    (1) For the claimant, Mr Ali (who also appears today) did not pursue in the First-tier Tribunal an argument, previously advanced, that Article 3 of the ECHR would be breached by the claimant's return to Jamaica;

    (2) At the end of the oral evidence, Mr Bassi for the Secretary of State conceded that the claimant's lawful presence in the UK for most of his life had been established. The First-tier Judge so found and that concession has not been withdrawn before us.

18. **Issues.** It was agreed at the First-tier Tribunal hearing that there were two issues to be determined: whether the claimant met Exception 1 in section 117C(4) of the Nationality, Immigration and Asylum Act 2002 (as amended), and if not, whether there were very compelling circumstances, engaging section 117C(6) of that Act, which would outweigh the public interest in deportation of the claimant. It was not suggested that Exception 2 was relevant to his circumstances.

19. The First-tier Judge found that the claimant was socially and culturally integrated in the UK, despite his association with gang culture, having

moved here to join his mother, with leave, in 1999 when he was 6 years old. The claimant had a difficult childhood, which was set out in the decision.

20. The claimant also had documented cognitive and educational difficulties, which were set out at [46]-[54] of the First-tier Judge's decision. The Judge's core reasoning is at [55]-[56]:

> "55. It is not in dispute that the [claimant] left Jamaica when he was aged 6 years and he has not been back to that country. I find that his entire family group is in the UK and I accept the evidence that he is close to his mother and his brother notwithstanding a period of estrangement in 2016. I accept the evidence of the [claimant's] mother that she would be unable to provide him with much financial assistance as she, as a paid carer, was in receipt of a relatively low income. He has no friendship network in Jamaica. In effect, I find that his only link to Jamaica is his residual nationality and that he would be returning to a country with which he has very little acquaintance. I consider the [Secretary of State's] assertion that as the [claimant] had been brought up in a Jamaican household he would have been aware of the customs and traditions of his own country to be speculative and there was, I find, no evidential basis upon which to make that assertion. Return to Jamaica would, I find, be a form of "exile" for a vulnerable man who is now aged 30 having arrived in the UK as a primary school pupil. I have considered the submissions of the [Secretary of State] both before me and in the review that the [claimant] had "skills and qualifications that are easily transferable". There was, in my judgment, no evidence of any such skills or qualifications. The qualifications obtained by the [claimant] at college were 'taster' entry qualifications. He had completed a maths course in detention but only with assistance but this was simply a Functional Skills Qualification at Entry Level 3 and I consider I can take judicial knowledge that this is no more than a gateway qualification. In other words, the [claimant] remains an individual with inadequate communication skills and extremely limited qualifications and I find on the totality of the evidence on balance that the [claimant] would not only be "an insider in terms of understanding how life in the society in that other country is carried on" but that he would struggle to acquire that understanding and he has therefore established that there are very significant obstacles to his integration to Jamaica.
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> 56. There is a very strong public interest in the deportation of the [claimant] which I recognise. However, for the reasons given above, I find that as the [claimant] has established that he is a foreign criminal to whom section 117C(4) of the 2002 Act applies, this is sufficient to outweigh the considerable public interest in the removal of the [claimant] and accordingly I find the [Secretary of State's] decision is incompatible with the [claimant's] Article 8 Convention rights."

21. The Secretary of State appealed to the Upper Tribunal.

Permission to appeal

22. The grounds of appeal challenged the finding of fact that the claimant was socially and culturally integrated (ground 1) and the Judge's finding that there would be very significant obstacles to his integration in Jamaica

(ground 2). Ground 1, on which permission was granted, was expressed thus:

> "It is submitted that Judge Dempster has erred in failing to have due regard to the absence of evidence to show the appellant has a desire to reform and abstain from offending behaviour which is arguably a relevant part of the assessment of the appellant's social and cultural integration.
>
> It is accepted that the appellant meets the first limb however in respect of the second limb, Judge Dempster has relied largely on the appellant's past integration through his education and employment, so too, his family ties and friendships. Furthermore, in assessing the appellant's history and learning difficulties, reference has been made to past assessments and reports. There is in fact no current, up to date medical or psychological assessment of the appellant's present disabilities and/or limitations.
>
> Further, in Judge's assessment reference was made to the appellant being a low risk of serious recidivism, however the evidence clearly shows that the appellant's criminality has escalated in its nature and severity which culminated in his latest conviction and sentence, He was also assessed as being a medium risk of causing serious harm to the public in the OASys report.
>
> Whilst it is acknowledged that the appellant has a number of vulnerabilities, and has expressed remorse for his actions, there is no evidence of rehabilitation specifically addressing his offending behaviour. This is material in showing that the appellant is presently motivated to reform himself going forward and desist from offending and given that his motivation is financial. In view of the lack of evidence, it is submitted that the appellant is not presently socially or culturally integrated."

23. The Secretary of State relied on *AM (Somalia) v Secretary of State for the Home Department* [2019] EWCA Civ 774 at [88] in the concurring judgment of Lord Justice Males, agreeing with Lady Justice Gloster, who gave the principal judgment. Lord Justice Hamblen agreed both with Gloster LJ and Males LJ.

24. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Gill, limited to ground 1 of the Secretary of State's challenge:

> "Ground 1 (paras 3-8 of the grounds) challenge the finding of Judge of the First-tier Tribunal Dempster that the appellant is socially and culturally integrated in the United Kingdom. …
>
> Whilst the judge's assessment of the evidence in reaching her finding that the appellant is socially and culturally integrated in the United Kingdom is detailed, it is nevertheless just about arguable that she omitted to take into account the lack of evidence of rehabilitation in reaching her finding, as argued in ground 1. … The grounds of appeal to the Upper Tribunal are limited to ground 1 (paragraphs 3-8 of the grounds)."

25. Permission was refused on ground 2, which challenged the First-tier Judge's finding that there would be very significant obstacles to the claimant's reintegration in Jamaica, which Upper Tribunal Judge Gill

considered unarguable, as that challenge 'ignores the fact that the Judge accepted that the [claimant] is a vulnerable adult with limited communication skills who would struggle to manage without assistance'.

26. There was no Rule 24 Reply on behalf of the claimant. At the hearing before us, Mr Ali said that he had not been instructed to prepare one by the claimant's representatives, M & K Solicitors.

27. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

28. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. We had access to all of the documents before the First-tier Tribunal.

29. For the Secretary of State, Ms Isherwood relied on the grounds of appeal. She argued that the Judge's consideration of the factual matrix was based on 'extremely old evidence' and was too limited to be sustainable. She asked us to set aside the decision of the First-tier Tribunal and dismiss the appeal.

30. For the claimant, Mr Ali provided a skeleton argument, which unfortunately did not reach us until the morning of the hearing. We have reserved our decision, in order to consider the arguments advanced in his skeleton argument.

31. Mr Ali observed that the Secretary of State's representative had not taken any point about rehabilitation in the First-tier Tribunal in relation to section 117C(4)(b). He argued that rehabilitation or the lack of it would not have been determinative of the appeal and that if the claimant had failed to show very significant obstacles to reintegration in Jamaica, the Judge would have gone on to allow the appeal under section 117C(6) (very compelling circumstances). The First-tier Judge's decision disclosed no material error of law and should be upheld.

Discussion

32. We remind ourselves that Upper Tribunal Judge Gill limited her grant of permission to ground 1, which argued that consideration of the lack of any evidence of rehabilitation would have added sufficient weight to the public interest to lead to a different outcome.

33. We have considered the decision in *AM (Somalia).* The appellant in that appeal had lost his social and cultural integration, with no evidence of any surviving family ties. He was both homeless and jobless. His 45 convictions over a 13 year period included racially aggravated offences and assaulting a police officer which Males LJ held to 'indicate an alienation from important values of our society', as did offences of taking money from other family members.

34. Males LJ summarised the particular factual matrix of *AM* as follows:

> "93. In these circumstances the FTT was entitled to find that the appellant was not socially and culturally integrated in the United Kingdom. That was so not merely because of his conviction for a serious offence and the time which he had spent in prison as a result, but also because of the long period of anti-social criminal behaviour leading up to that conviction, the complete absence of any family life in this country for what was at the time of the hearing before the First Tier Tribunal the last 14 years, and the absence of any evidence of social or other connections here other than the mere fact of his lawful presence in this country. This was no doubt an unhappy life, particularly as there are some indications that AM wanted to reform, but it cannot be described as a life of social or cultural integration in this country."

35. The Court of Appeal cited with approval the guidance given by the Upper Tribunal in *Bossade (ss.117A-D-interrelationship with Rules)* [2015] UKUT 415 (IAC) (16 July 2015) at [5] in the judicial headnote:

> "5. *... So far as concerns focus on the situation in the country of return, paragraph 399A no longer looks at 'ties' per se but at the more inclusive notion of integration and obstacles thereto. By requiring focus on integration both in relation to a person's circumstances in the UK as well as in the country of return, the new Rules achieve a much more holistic assessment of an appellant's circumstances. Thereby they bring themselves closer to Strasbourg jurisprudence on Article 8 in expulsion cases which has always seen consideration of both dimensions as requiring a wide-ranging assessment: see e.g. Jeunesse v Netherlands (GC) App.No. 12738/10, 31 October 2014, paragraphs 106-109.*"

It is clear from both of these decisions that what is required is an holistic assessment of the facts regarding the claimant's social and cultural integration in the UK.

36. A finding of social and cultural integration is a finding of fact, with which the Upper Tribunal can interfere only if it is 'plainly wrong' or 'rationally insupportable': see *Volpi & Anor v Volpi* [2022] EWCA Civ 464 (05 April 2022) at [2]-[5] in the judgment of Lord Justice Lewison, with whom Lord Justices Males and Snowden agreed. The core findings in *Volpi* are at [2]:

> "2. The appeal is therefore an appeal on a pure question of fact. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:
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> i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. *It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.*

iii) *An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration.* The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

[*Emphasis added*]

37. Ground 1 is essentially a perversity challenge, and that is the Upper Tribunal's role at the error of law stage. The question for the Upper Tribunal is not whether we would have reached the same conclusion, or whether the First-tier Judge's decision is generous. It was the First-tier Tribunal which heard the claimant's witnesses and is best placed to reach conclusions of fact and credibility.

38. In this case, the facts found by the First-tier Judge were that the claimant had lived in the UK since he was 6, is now 30 years old, had all of his education here and has a close bond with his family members, all of whom live in the UK. His finding is neither perverse nor *Wednesbury* unreasonable on the evidence and arguments before the First-tier Tribunal. Those findings were unarguably open to the Judge.

39. We are not satisfied that the lack of evidence of rehabilitation, a point which was not argued on behalf of the Secretary of State in the First-tier Tribunal, is sufficient to render the Judge's finding 'plainly wrong' or 'rationally insupportable'.

40. Accordingly, on the only ground on which permission to appeal was granted, the Secretary of State's appeal fails and is dismissed.

Notice of Decision

41. For the foregoing reasons, our decision is as follows:

The making of the previous decision involved the making of no error on a point of law
We do not set aside the decision but order that it shall stand.

Case No: UI-2024-000535
On appeal from: HU/00548/2023

Judith Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 25 April 2024