



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

Appeal Number: DA/00363/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 10 December 2013**

**Determination
Promulgated
On 16 December 2013**

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR TYRONE ANTHONY WHITE
(No Anonymity Direction Made)**

Respondent

Representation:

For the Appellant: Mr G Saunders a Senior Home Office Presenting Officer

For the Respondent: Mr R Toal of counsel instructed by Rodman Pearce

DETERMINATION AND REASONS

1. The appellant is the Secretary of State for the Home Department. I will refer to her as the Secretary of State. The respondent is a citizen of Jamaica who was born on 9 May 1971. I will refer to him as the claimant. The Secretary of State has been given permission to

appeal the determination of a panel (First-Tier Tribunal Judge Jackson and non-legal Member Mr P Bompas) who allowed the claimant's appeal against the Secretary of State's decision of 5 February 2013 to make a deportation order against him pursuant to section 5 (1) of the Immigration Act 1971, Section 32(5) of the UK Borders Act 2007 and under Paragraphs 398 to 399A of the Immigration Rules, to refuse him asylum, humanitarian protection or leave to remain on human rights grounds.

2. The claimant came to the UK in October 2001 with a six-month visit visa. He claimed to have made an application for further leave shortly after, but there is no record of this. He was granted temporary admission subject to reporting conditions in around 2004 or 2005 which he complied with for approximately 2 years. He then married an American citizen who has leave to remain in the UK.
3. On 20 May 2010 the claimant pleaded guilty and was convicted of one count of attempted robbery and one count of possession of a small firearm. He was sentenced to 8 years imprisonment and six years imprisonment to run concurrently. He claimed asylum on 11 April 2011 whilst in prison. There was a screening interview followed by a full interview. He was served with a notification of his liability to be deported on 27 September 2011.
4. The claimant appealed against the decision of 5 February 2013 and his appeal was heard by the panel on 13 August 2013. Both parties were represented and the panel heard evidence from the claimant and his wife. They married on 7 January 2006 and have two children born on 1 February 2004 and 9 May 2005.
5. The panel found that the claimant had been convicted of very serious crimes but that it was extremely unlikely that he would become involved in criminal activities in the future. He did not constitute a continuing danger to the community. In relation to the asylum claim the panel concluded that the claimant had suffered serious harm and persecution in Jamaica at the hands of the PNP party and associated gangs. He would still face serious harm and persecution were he to return although he would not face destitution and would not be at risk from his co-defendants in the offences for which he was convicted in this country or their associates. It would be unduly harsh and impractical to expect him to internally relocate within Jamaica. The panel found that the claimant had established that he came within the exception to automatic deportation in section 33(2)(b) of the UK Borders Act 2007. The panel said that as a result it was not necessary for the human rights grounds to be determined although had it been necessary to do so the conclusion would have been that the claimant's deportation would be a disproportionate interference with his right to respect for family life in the UK. The panel assessed the claimant's family life with his wife, who has no time limit on her stay in the UK and their two children who are British citizens. The respondent had conceded that it would

not be reasonable to expect the wife and children to relocate to Jamaica.

6. The claimant's appeal was allowed on asylum grounds. The Secretary of State applied for and was granted permission to appeal. I will address her grounds.
7. Mr Saunders informed me that he had given careful consideration to the determination and the Secretary of State's grounds of appeal. Apart from relying on the grounds he would not be making any further submissions. In the circumstances I indicated to Mr Toal that I need not trouble him to make any submissions. I was conscious of the fact that Mr Toal was in some difficulty. There had been a misunderstanding between the claimant's solicitors and counsel's clerk and as a result counsel who appeared for the claimant before the panel had gone to South Wales to hear another case. Another member of chambers, Mr Toal, was present at Field House dealing with another case and had been asked to appear before me without having seen any papers. I gave him a duplicate Tribunal bundle but it was clear that he would not have had sufficient time to both prepare and consult with the claimant and his wife who were present.
8. I find that the determination of the panel is clear, careful and detailed. There is one overarching ground of appeal which submits that the panel erred in law by failing to give reasons or adequate reasons for findings on material matters.
9. Paragraph 1 of the grounds argues that the panel failed to resolve the different opinions expressed in the Probation Service reports and the independent risk assessment as to the claimant's risk of harm to the public if he were to reoffend. It is argued that the conclusion that he does not constitute a danger to the public is flawed. I find that this ground is largely misconceived because it addresses only part of the risk assessment; the secondary part which only comes into play if the claimant does reoffend. In paragraph 73 the panel correctly state that; "The OASys Report, the National Probation Service report with information for a Foreign National Prisoner and the Independent Risk Assessment all agree that the Appellant is at a low risk of reoffending". The difference of opinion was not as to the risk of reoffending but the risk of harm if he were to reoffend. The public reports assessed this as a medium risk to the public although low in other categories whilst the Independent Risk Assessment concluded that there was a low risk of serious harm. The panel properly assessed these reports in the light of the evidence and gave clear and sufficient reasons for the conclusion that it was extremely unlikely that he would be involved in criminal activities in the future.
10. In paragraph 2 of the grounds it is argued that in paragraphs 80 and 94 the panel failed properly to assess the admitted delay by the Secretary of State which should not have been determinative,

although it is not disputed that the delay allowed the claimant to develop stronger Article 8 rights in this country. Paragraph 18 deals almost entirely with delay not by the Secretary of State but by the claimant. The only reference to any lack of action on the part of the Secretary of State is in the sentence; "given that the appellant was reporting for a number of years and there is no evidence that the respondent ever commenced in the enforcement action against him, we accept that the appellant may have formed the view that he could continue without formally regularising his status." In paragraph 94 the panel properly weighed the fact that the claimant established family life in the UK at a time when he had no lawful leave to be here and he must have known that his situation was precarious against the fact that he reported to the Secretary of State for a number of years without any action being taken to remove him. I can find no indication that the panel treated any delay by the Secretary of State as determinative or that there is any error in the approach to delay.

11. In paragraph 3 of the grounds it is not correct to state that the panel's conclusions as to risk on return are not based on any objective evidence. There is a proper assessment of the objective evidence and the country guidance case law in paragraphs 82 to 84. There is no conflict or inconsistency between these findings and the conclusion that the claimant would not be at risk on return at the hands of those with whom he was involved in the crimes for which he was convicted in this country or their associates. There is a proper consideration of state protection and internal relocation in paragraphs 87 to 89 and the question of whether the claimant would still be at risk after the length of time he has spent outside Jamaica in paragraph 84.
12. Paragraph 4 of the grounds does not identify the paragraph in the determination as a result of which it is argued that the panel made an incorrect assessment or gave too much weight to the fact that the claimant "has a restricted use of his hands". On the contrary, in paragraph 85 the panel concluded that the claimant would have family support and assistance on return to Jamaica that he had previously been employed in Jamaica and had regular employment in the UK and had gained educational qualifications, skills and experience that he could use in finding employment on return.
13. Paragraph 4 of the grounds incorrectly states that the panel allowed the appeal on Article 8 grounds. The appeal was allowed on asylum grounds only; although the panel gave an indication that had it been necessary to do so the appeal would also have been allowed on Article 8 human rights grounds. There has been a proper consideration of the public interest and the panel referred to the relevant case law in paragraph 95. The grounds amount to no more than disagreement with conclusions properly reached by the panel.
14. I find that the panel did not err in law and I uphold the determination.

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Signed
Upper Tribunal Judge Moulden

Date 11 December 2013