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Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00631/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 4 December 2013	**On 16 December 2013**

Before

MR JUSTICE MITTING
UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EARL DAREN RODNEY

Respondent

Representation:

For the Appellant: Ms A. Everett, Senior Home Office Presenting Officer
For the Respondent: Mr A Alhadi, legal representative of Stevjeme & Co

DETERMINATION AND REASONS

1. Earl Daren Rodney, who we shall refer to as the respondent, is a 25 year old citizen of Jamaica. He arrived in the United Kingdom with his mother and grandmother on 9 July 2001 aged 13. He had leave to remain until 31 December 2007 in the last instance as a student.

2. On 31 October 2007 his mother applied for indefinite leave to remain and included the respondent on her application, but because he was 18 he was told to apply in his own name. He did not do so. On 23 July 2009 he did apply in his own name for leave to remain outside the Rules. On 3 May 2011 his application was refused for two reasons, first stating the obvious that he was not a person covered by the Immigration Rules, and secondly he had convictions which he did not disclose including one for possession of cannabis on 12 October 2009 which was not spent. Although he was refused leave, no decision to remove him was made.

3. On 8 August 2011 he participated in the ransacking of a hairdresser's in Lavender Hill during the London riots and committed as two separate and distinct offences, the acquisition of criminal property on the same day. He pleaded guilty to burglary and the two offences of acquiring criminal property at the earliest opportunity. On 23 November 2011 he was sentenced by His Honour Judge Grobel at Inner London Crown Court to twenty months' imprisonment, sixteen months for the burglary and four months concurrent with each other but consecutive to that sentence for the criminal property offences. 105 days spent on remand was to count towards his sentence. Judge Grobel did not treat his previous convictions as "significantly aggravating" factors and took into account in his favour a clear CARAT report from the prison and his own letter to the court and testimonials from those who knew him as "aspects of good character".

4. Because the respondent was sentenced to a period of imprisonment of less than four years but more than twelve months, he was subject to automatic deportation under Section 32(5) of the UK Borders Act 2007 unless Exception 1 in Section 33(2) applied to him. On 19 December 2011 the Secretary of State served notice of liability to deportation.

5. On 3 January 2012 the respondent's representatives submitted a detailed response claiming that the Exception did apply to him because deportation would infringe his right to respect for private and family life under Article 8 ECHR. The principal grounds relied upon were three: (i) that he had lived in the United Kingdom since the age of 13 and had no subsisting ties to Jamaica, which he described as "a war zone"; (ii) he had two children by different mothers in the United Kingdom, one aged 6 and one aged 7 months who were both British citizens; (iii) his deportation would be immensely disturbing to his partner, the mother of the younger child, to his brother and sister, all of whom were lawfully resident in the United Kingdom.

6. On 15 March 2013 in a conspicuously well-reasoned decision letter, UKBA notified him of the decision to make a deportation order. The letter focused inevitably and understandably on the circumstances of his partner and two children.

7. He appealed to the First-tier Tribunal who allowed his appeal. In summary, the Tribunal found that his partner and, by the time of the hearing, two youngest children, who were British citizens, would not be

able to travel to Jamaica, nor would it be reasonable to expect them to relocate there. The Tribunal accepted that he had cut his ties with Jamaica having lived in the United Kingdom, as it put modestly inaccurately, "for more than half his life since the age of 13". It considered that the interference with his family life and his effect on his partner and two young children weighed heavily against deportation. It took into account the sentencing judge's remarks, including those which were favourable to the respondent which we have already referred to. In paragraphs 24 and 25 it set out its conclusions:

> "24. The appellant pleaded guilty to the matters for which he was sentenced to 20 months' imprisonment. We find that whilst the appellant pleaded guilty to a serious matter he is not a hardened criminal with a long record displaying a history of serious offending. We assessed the appellant as a young man whose offending history was very minor and then committed one serious offence in the context of a period of serious civil disorder. We accept as did the sentencing judge that there are undoubtedly aspects of good character, in particular the appellant's commitment to his partner and children. We accept that the appellant has stopped taking drugs and is not likely to reoffend.
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> 25. We have carefully weighed up the competing interests in this case. Whilst we find that the public interest in deportation is strong, we conclude that in the particular circumstances of this case and giving special weight to the judgment of Parliament, there is no pressing need for the appellant's deportation. Further, we find that the effect of being separated from his children and family in the United Kingdom constitutes a very strong Article 8 case. For these reasons we come to the conclusion that the appellant's deportation is disproportionate to the legitimate aim of the maintenance of law and order."

8. The Secretary of State appeals against that finding on four grounds. All four grounds are in principle directed to the fact-finding of the panel but are stated to be of such significance as to amount to an error of law. The first ground begins with the Tribunal's finding that the appellant is not likely to reoffend. The submission is made in the grounds, although not by Ms Everett today who realistically recognises the weakness in some of the grounds, that the Tribunal failed to provide adequate reasons for the findings. The Tribunal did not need to. There was an OASys report in the papers before the Tribunal which assessed the respondent's risk of reoffending as low.

9. Ground 1 went on to assert that the appellant's offences have escalated in seriousness. That is true. It goes on further to assert that the appellant in his evidence minimised his actions by claiming he entered the properties to dress a wound that he claims was inflicted by falling on a broken bottle, evidence which in the view of the author of the grounds of appeal

suggested that he had not reformed and had continued to deny responsibility for his actions. The Presenting Officer's note of the evidence given at the hearing prepared after the event suggests that there might be something in that ground, but the contemporaneous note which is the best record of what the appellant said made by the Tribunal is that he accepted that he broke into the hairdresser's shop, and the findings of the sentencing judge leave no ground to doubt that he did that. Accordingly, although if the evidence had been as is asserted in ground 1 that might have given rise to concern about the fact finding of the Tribunal, given that its own record of evidence was not to that effect, there is no such concern and ground 1 of the notice of appeal therefore fails.

10. Ground 2 notes that the Tribunal found that it would not be reasonable for the appellant's partner and children to relocate to Jamaica but asserts that the Tribunal has failed to provide adequate reasons as to why his partner and children cannot relocate. This is a ground which overlooks the terms of the well-reasoned decision letter which notes, when considering the circumstances of the then-younger child, the following: "It is considered that it would be unreasonable to expect CR to leave the United Kingdom", and:

> "It is considered that CR's mother is her primary carer and provides the day-to-day care for her, and that they have both had to cope without you whilst you were incarcerated. The decision of where CR lies with her mother who is her primary carer and it would be in her best interests to continue living in the United Kingdom with her mother where she has lived since birth."

11. In other words, the decision maker accepted that it would not be reasonable for the respondent's partner and his then-younger child to relocate to Jamaica. In those circumstances the Tribunal was under no obligation to set out an extended passage of reasoning why it agreed with that conclusion. Paragraph 2 also goes on to assert that the partner was aware of his precarious immigration status when they began their relationship in 2009. That conflicts with the evidence that she gave which was noted by the Tribunal in its determination and reasons that she did not become aware of his lack of immigration status until she received a letter in March 2011.

12. There may have been a minor error in that in that the letter which refused a variation of the appellant's leave, as it was put, was not dated until 3 May 2011. In any event the date on which she said she first became aware of his precarious immigration status was two years or so after their relationship began. In those circumstances, given that the Tribunal did not make any adverse finding about the credibility of that witness, there is no foundation for that aspect of ground 2 and it therefore fails.

13. Ground 3 notes the error in the Tribunal's reasoning in its conclusion that he had spent more than half his life in the United Kingdom rather than

slightly less than half his life. The error is, as Ms Everett realistically acknowledges, immaterial.

14. Ground 3 goes on to complain that the Tribunal did not make adequate findings about the connections, if any, which the respondent may still have in Jamaica. It is true that its finding on that issue is spare but it can reasonably be understood to have accepted the respondent's evidence about that issue as it was entitled to do. There is therefore nothing in Ground 3.

15. Ground 4 on its face is of potentially greater significance. It concerns the alleged instability of the respondent's then-current family life. It asserts correctly, as far as we can tell from the notes of evidence of the Tribunal, that he had said that he saw his oldest child regularly whereas his partner, whose evidence the Tribunal appears to have accepted, was that he had not seen his oldest child for over five years. On any view, the connection between the respondent and his eldest child was a weak one.

16. That however does not undermine the Tribunal's finding that family life enjoyed between the respondent, his partner and his two youngest children was a strong, significant and weighty factor. Ground 4 goes on to assert that documentary evidence from March 2013 showed that he and his partner were living separately. The basis for this assertion was not clear to us from the notes and documents which we have of the proceedings before the Tribunal. Ms Everett has helpfully pointed us to the birth certificate of the youngest child. It is difficult to interpret but like her we are unable to read into it a clear statement that the two parents of the youngest child, the respondent and his partner, did not live at the same address. It is true that they did not live together until he was released from imprisonment, but the Tribunal were clearly well aware of that and did not found their decision on the somewhat haphazard and precarious private and family life enjoyed by the respondent before he was sentenced to a significant term of imprisonment and released from it.

17. Ground 4 therefore on proper analysis is no stronger than grounds 1, 2 and 3. This is a decision which not every Tribunal would have reached. Our own view about what the decision should have been if we were the primary decision makers is not however one which we are entitled to substitute for that of the First-tier Tribunal unless we are able to identify an error of law which undermines the conclusions of the Tribunal. We are not able to identify any such error of law, and for that reason this appeal must be dismissed.

Signed Date

Mr Justice Mitting