Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00683/2012

Heard at Field House
on 29th July 2013

Determination Promulgated
on 31st July 2013

THE IMMIGRATION ACTS

Before

UPPER TRIBUNAL JUDGE P D KING
UPPER TRIBUNAL JUDGE HANSON

Between

KERWIN JOSEPH MOHAMMED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Nicholson instructed by Jason Forde Solicitors.
For the Respondent: Mr Deller Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of a panel of the First-tier Tribunal composed of First-tier Tribunal Judge Brennells and Dr P L Ravenscroft (hereinafter referred to as 'the Panel') who dismissed the appellant's appeal against an order to deport him from the United Kingdom under both the Immigration Rules and Article 8 ECHR.

2. Permission to appeal was granted generally by Upper Tribunal Judge Southern on 1st July 2013 following a refusal of permission to appeal by another judge of the Upper Tribunal having been quashed by the High Court.

3. It was conceded by Mr Deller that the Panel had erred in law in relation to their consideration of paragraphs 397-400 of the Immigration Rules. If this is the case their dismissal of the appeal under Article 8, which turned upon the

proportionality issue, may be directly affected too. We set the determination aside. There is no challenge to the factual findings which shall be preserved.

Discussion

4. The appellant was born on the 16th November 1988 and is a citizen of Trinidad and Tobago. He entered the United Kingdom as a visitor with his mother in June 1994 and was granted indefinite leave to remain on 26th April 2005.

5. The appellant is the subject of the deportation order as a result of his conviction on the 9th December 2011 of an offence of possessing a Class B drug, Cannabis, with intent to supply for which he received a 22 month custodial sentence.

6. A number of documents were presented to the Panel at the hearing on 11th December 2012. They included witness statements from the appellant, his mother and other family members. In outline the appellant has not returned to his home state since arriving in the United Kingdom and the only evidence of family connections there was from his mother who stated that she only returned to arrange a divorce from her then husband. She stayed with her mother's sister who is a 65 year old pensioner with her own children and grandchildren who would not be able to care for the appellant if he was returned. They are said not to be very close. The evidence is that the appellant left Trinidad & Tobago aged five and has no recollection of life there and no family that he is close to, who will be able to care for him.

7. Having considered this evidence the Panel made the following finding at paragraph 17 of the determination:

> 17. Although aged 23 at the time of his arrest, the Appellant was still living with his mother and siblings in his mother's house. He was unemployed and has few educational qualifications. Should he be permitted to remain in the United Kingdom he would like to study on a Construction Course which he hopes would enable him to obtain a job. He has said nothing in his evidence as to any private life which he has developed apart from his relationship with his girlfriend. He came to the United Kingdom at a very early age and most of his formative years have been spent here. We accept the evidence he presented which shows that whilst he does have some relatives living in Trinidad and Tobago, they are unlikely to be in a position to assist him to find work and accommodation on his return. He is fit and healthy.

8. Both parties agreed that the central issue in this appeal was whether or not the appellant had sufficient ties to Trinidad and Tobago so as to meet or fail to meet that requirement under the Immigration Rules. Mr Nicholson on behalf of the appellant invited us to consider the issue upon the evidence already submitted.

He invited us to find that in reality there were no ties and accordingly invited us to allow the appeal on that basis. Mr Deller, whilst recognising that the evidential basis was finely balanced, relied upon the approach taken in the reasons as set out by the Secretary of State for refusing to implement paragraph 399A in this case.

9. The Secretary of State, in her notification of the reasons for deportation, [R's bundle pages N5-8] considered paragraph 399A and states:

> Paragraph 399A of the Immigration Rules defines the criteria which must be satisfied before an individual's private life outweighs the public interest in deportation in line with Article 8 of the ECHR.
>
> Paragraph 399A of the Immigration Rules requires that each of the criteria contained within it be satisfied.
>
> (a) it is accepted that you have lived continuously in the UK for at least half your life immediately preceding the date of the immigration decision (discounting any period of imprisonment) and
>
> (b) it is not considered that there are no ties to Trinidad & Tobago to which you will be deported.
>
> It should be noted that English is the official language of Trinidad & Tobago, therefore this will not be a barrier to removal. It has also been noted that you mother has previously returned to Trinidad & Tobago to visit relatives there. Therefore, by returning you to Trinidad & Tobago and with the assistance of your relatives you would be able to re-adjust and re-integrate into the family network that still exists.

10. The ability to speak the language and the presence of family has been held not to be the correct test in cases of this nature. In Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 60 (IAC), at paragraphs 123-125, it was held:

> 123. The natural and ordinary meaning of the word 'ties' imports, we think, a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. It involves there being a continued connection to life in that country; something that ties a claimant to his or her country of origin. If this were not the case then it would appear that a person's nationality of the country of proposed deportation could of itself lead to a failure to meet the requirements of the rule. This would render the application of the rule, given the context within which it operates, entirely meaningless.

124. We recognise that the text under the rules is an exacting one. Consideration of whether a person has 'no ties' to such country must involve a rounded assessment of all the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances. Nevertheless, we are satisfied that the appellant has no ties with Nigeria. He is a stranger to the country, the people, and the way of life. His father may have ties but they are not ties of the appellant or any ties that could result in support to the appellant in the event of his return there. Unsurprisingly, given the length of the appellant's residence here, all of his ties are with the United Kingdom. Consequently the appellant has so little connection with Nigeria so as to mean that the consequences for him in establishing private life there at the age of 28, after 22 years residence in the United Kingdom, would be 'unjustifiably harsh'.

125. Whilst each case turns on its own facts, circumstances relevant to the assessment of whether a person has ties to the country to which they would have to go if they were required to leave the United Kingdom must include, but are not limited to: the length of time a person has spent in the country to which he would have to go if he were required to leave the United Kingdom, the age that the person left that country, the exposure that person has had to the cultural norms of that country, whether that person speaks the language of the country, the extent of the family and friends that person has in the country to which he is being deported or removed and the quality of the relationships that person has with those friends and family members.

11. The findings of fact in paragraph 17 of the Panel's determination have not been challenged by the Secretary of State. Those finding in any event fairly reflect the evidence as presented. We do not find that the appellant has any relevant ties so as to defeat the operation of the Immigration Rules. Given the concession that the appellant has lived continuously in the United Kingdom for at least half his life immediately preceding the date of the immigration decision. The appeal must be allowed on the basis of the Secretary of State's own assessment of what is proportionate.

Decision

12. **The Immigration Judge materially erred in law. We set aside the decision of the original Immigration Judge. We remake the decision as follows. This appeal is allowed.**

Anonymity.

13. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

We make no such order as there was no application for the same and no justification for such an order is proved.

Signed…….
Upper Tribunal Judge Hanson

Dated the 30th July 2013