



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/01147/2012

THE IMMIGRATION ACTS

Heard at Field House  
On 17<sup>th</sup> October 2013

Determination Promulgated  
On 29<sup>th</sup> November 2013

Before

UPPER TRIBUNAL JUDGE RENTON  
UPPER TRIBUNAL JUDGE McGEACHY

Between

AAK  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Kiai, Counsel instructed by Southwark Law Centre  
For the Respondent: Ms H Horsley, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant is a male citizen of Sierra Leone, born on 31<sup>st</sup> December 1984. It seems to be the case that in August 1992, when the Appellant was not yet 8 years of age, he came to the UK with his grandfather in order to visit his mother, TB, who was a

student. Thereafter the Appellant was granted leave to remain and then, in October 1996, indefinite leave to remain as a dependant of his mother.

2. On 13<sup>th</sup> June 2005 the Appellant was convicted at the Inner London Crown Court of the offence of possessing a Class A controlled drug. He was subsequently sentenced to two years six months' imprisonment. As a consequence, on 20<sup>th</sup> March 2006 the Respondent decided to make a deportation order against the Appellant. The Appellant appealed that decision unsuccessfully, and on 9<sup>th</sup> August 2006 a Deportation Order was signed against him.
3. In August 2012 the Appellant submitted to the Respondent further representations as to why he should not be deported and these were treated as an application to revoke the Deportation Order. That application was refused on 21<sup>st</sup> August 2012 for the reasons set out in the Respondent's letter of that date. The Appellant appealed, and his appeal was heard by a panel chaired by Judge of the First-tier Tribunal Ruth (the Panel) sitting at Taylor House on 17<sup>th</sup> July 2013. The Panel decided to dismiss the appeal under the Immigration Rules and on human rights grounds for the reasons given in its Determination dated 31<sup>st</sup> July 2013. The Appellant sought leave to appeal that decision, and on 23<sup>rd</sup> August 2013 such permission was granted.

### **Error of Law**

4. We must first decide if the decision of the Panel contained an error on a point of law so that it should be set aside. At the hearing we heard submissions from both representatives on that subject. First, however, we refused an application made by Ms Kiai to introduce new evidence being an Addendum to the Report of Dr Agnew-Davies, a Clinical Psychologist. We were of the view that a report as to the mental health of the Appellant's partner could have no relevance to the question of whether the Panel had made an error of law.
5. The Panel dismissed the appeal under the Immigration Rules and also on human rights grounds. Its reasons for so doing are set out in the Determination. The Panel took as its starting point the findings of fact made in the Determination of the previous appeal, promulgated on 20<sup>th</sup> June 2006, and went on to find that the Appellant was lacking in credibility. Indeed, he had lied during his evidence to the Panel. The Panel found further that the Appellant had manipulated "everybody around him for his own benefit", and as a consequence the Panel was not satisfied that the Appellant had a genuine and subsisting relationship with his claimed partner, LS. Therefore the Appellant could not satisfy the requirements of paragraphs 399 and 399A of HC 395 and consequently the appeal failed under the Immigration Rules.
6. The Panel went on to consider the Appellant's Article 8 ECHR rights. It found that the Appellant had a family life only with his two children from an earlier marriage, named R and T, but that he had a "particularly strong and deep private life" in the UK. That family and private life would be interfered with by the Appellant's removal to such a degree of gravity as to engage his Article 8 rights, but that his removal would be proportionate. The Panel accepted that it would not be in the best

interests of the Appellant's children for him to be deported but, at paragraph 145 of the Determination, found that other factors in the appeal weighed more heavily than the best interests of the children. The Panel's decision was summarised at paragraph 142 of the Determination which reads as follows:

"142. In this particular case, we consider the Appellant's past and continuing criminality, the continuing risk he poses to the public in our view and the very powerful interests of the Respondent outweigh his interests in this case. We accept that a higher level of compulsion is necessary for exile and in this case we find that the higher threshold is met."

7. The Panel therefore found that there were no exceptional circumstances to outweigh the public interest in deportation.
8. At the hearing, Ms Kiai argued that the Panel had erred in law in coming to these conclusions. She referred to the grounds of application and submitted that the Panel had misunderstood the evidence and drawn inferences not supported by the evidence in reaching the conclusion that the Appellant had no commitment to his relationship with LS as he had been in a relationship with another woman at the same time. This was material to the Panel's finding that the Appellant was manipulative. Further, the Panel had failed to take into account relevant evidence about when the Appellant and LS had started cohabiting, and the Panel's subsequent finding about LS's ability to care for her child.
9. Ms Kiai went on to submit that the Panel had made perverse and irrational findings which were not sufficiently explained concerning the risk of reoffending of the Appellant. In particular the Panel failed to explain why it attached no weight to the Independent Social Worker's Report. Further, the Panel erred in law by failing to take into account the evidence contained in certain witness statements, such as that of Granville Williams, which went to the credibility of the Appellant, particularly relating to his relationship with his children. Finally, Ms Kiai submitted that the Panel had failed to take into account sufficiently explanations appearing in the evidence, again relating to the relationship between the Appellant and other members of his family.
10. In response, Ms Horsley referred to the Rule 24 response and argued that read as a whole the Determination amounted to a detailed and comprehensive analysis of the evidence which dealt assiduously with all the issues. The Panel had given a number of reasons for its finding as to the credibility of the Appellant. There were no misunderstandings as to the evidence. All the findings made by the Panel were sustainable on the evidence before it. The arguments of Ms Kiai amounted to no more than a disagreement with the weight attached by the Panel to certain parts of the evidence. That weight was a matter for the Panel, and in respect of each finding a full explanation was given.
11. At the end of the hearing we reserved our decision which we now give.

12. We find that we are in agreement with the arguments of Ms Horsley that the decision of the Panel contained no material errors of law so that it should be set aside. This was a very thorough Determination in which all of the issues raised in the appeal were dealt with and the evidence was carefully and comprehensively analysed. We are satisfied that there are sufficient reasons given for all of the decisions of the Panel. Those findings are based firmly on the evidence and we find Ms Kiai's arguments to amount mainly to mere disagreement with them. According to the contents of paragraph 47 of the Determination, the Panel had no doubt that the Appellant had deliberately lied to it in his evidence, and that the Appellant was a witness of no credibility. The Panel found that the Appellant had failed to accept the responsibility for and the consequences of his criminal behaviour. The Panel further found that it could not rely upon the evidence of LS as she was a victim of the Appellant's ability to manipulate. The Panel dealt with the evidence of the other witnesses and found that the Appellant could not benefit from the provisions of paragraphs 399 and 399A of HC 395. That particular decision has not been impugned in this appeal.
13. The Panel went on to consider the Appellant's Article 8 ECHR rights as it was bound to do. The Panel rejected many of the Appellant's claims as to his family life in the UK, but was satisfied that the Appellant had a family life with two of his children, and also a significant private life in the UK. It also found that that family and private life would be interfered with by the deportation to such a degree of gravity as to engage the Appellant's Article 8 rights. In its decision, the Panel then demonstrated that it had carried out the balancing act necessary for any assessment of proportionality. The Panel took into account the best interests of the children as a primary consideration, but found that those best interests and the circumstances of the Appellant were not so exceptional as to outweigh the public interest. This was a conclusion open to the Panel on the evidence before it and which, again, it fully explained.
14. Turning to the grounds of application as argued by Ms Kiai at the hearing, the Panel's finding as to the nature of the relationship between the Appellant and LS were derived from a careful analysis of the evidence relating to that relationship and was one open to the Panel on the basis of its findings. The Panel's interpretation of the evidence was one open to it and this ground amounts to little more than a disagreement with that interpretation. Further, the Panel's reasons for its finding that there was a continuing risk to the public that the Appellant will re-offend are given at paragraph 131 of the Determination. In this paragraph it is recorded that the assessment of the Independent Social Worker was that the risk of re-offending was "medium" and this assessment was taken into account by the Panel. It therefore cannot be argued that the expert opinion of the Independent Social Worker was ignored, nor that there is any lesser degree of a risk of re-offending.
15. The witness statements of other witnesses are referred to in paragraph 84 of the Determination. The Panel explained why it attached less weight to them than to other evidence, and again it is a matter for the Panel to decide what weight to attach to such evidence, and to disagree with that weight does not satisfy us that there was

any error of law. The fourth and final ground again is no more than a disagreement with the findings of the Panel.

**Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

We do not set aside the decision.

**Anonymity**

The First-tier Tribunal made an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and we continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

Upper Tribunal Judge Renton