



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00647/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 4th March, 2014
(Given extempore)

Determination Promulgated
On 26th March, 2014

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR STEPHEN NAMBWE

Respondent

Representation:

For the Appellant: Mr M Bradshaw of counsel instructed by Bolton CAB
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant in this appeal to the Upper Tribunal is the Secretary of State for the Home Department. I shall, for convenience, continue to refer to her as “the respondent” and to Stephen Nambwe as “the appellant”.

Background

2. The appellant is a citizen of Liberia, who was born on 8th February, 1994. He arrived in the United Kingdom on 19th November, 2004, when he was 10 years of age. He is now 20 years of age. He arrived with his mother, Ms Plo Swen. They had both been given recognised status under the Gateway Protection Programme administered by the UNHCR.

Appellant's Criminal Conviction

2. The appellant was convicted on 19th August, 2011, of assault with intent to rob, for which he was sentenced to a term of imprisonment of three years. He was also convicted of robbery which resulted in a two year sentence of imprisonment, both sentences to run concurrently. The appellant had earlier convictions which had prevented him from obtaining naturalisation which he applied for in August 2010. On 20th February, 2012 the appellant was served with a notice of liability to deportation questionnaire and issued with a Section 72 warning letter asking him to rebut the presumption that he was a danger to the community and that he had been convicted of a particularly serious offence. On 13th March, 2013 the respondent decided to revoke the appellant's refugee status under Article 1(c)(v) of the Geneva Convention and on the same day made the decision to deport him using her powers under Section 5(1) of the Immigration Act 1971.

Appeal to the First Tier Tribunal

3. The appellant appealed and his appeal was heard by First-tier Tribunal Judge Cheales on 24th September last at Birmingham. In a determination promulgated on 16th October, 2013, she allowed his appeal, having found that deportation would result in unjustifiably harsh consequences for the appellant, such that deportation would not be a proportionate response on the part of the Secretary of State.

Secretary of State for the Home Department's Application

4. The Secretary of State challenged the determination of First-tier Tribunal Judge Cheales on two grounds. The first was in respect of the assessment of the appellant's Article 8 rights. The Secretary of State for the Home Department suggested that the Tribunal had failed to have regard to the requirements of the Immigration Rules and, as a result, the Article 8 assessment was unsustainable and incomplete. The second challenge suggests that the Tribunal failed to provide adequate reasons why the appellant has reformed and will not re-offend in future, given that he was bound to constitute a danger to the community. The grounds suggest that the:
 - Tribunal "has also placed a lot of weight on his behaviour in prison" and suggested that this was not a plausible excuse for the appellant's behaviour
 - appellant remains a risk to the public and at risk of re-offending and that the decision to deport him is entirely proportionate;
 - Tribunal failed to consider why the appellant cannot continue his family life from Liberia; and that the
 - Tribunal had failed to provide adequate reasons why it concludes that the appellant has no ties in Liberia.

5. Before me Mr Harrison told me that he was content solely to rely on the grounds and agreed that there was nothing perverse in the public law sense in the Tribunal's decision. He entirely properly and very fairly pointed out to me that the appellant had never lived in Liberia, because he was actually born in Sierra Leone. Harrison accepted that there was no evidence that he had any connection with Liberia. He also very fairly accepted that whilst the determination fails to identify any insurmountable issues, the fact that the appellant has never lived in Liberia amounts to such an insurmountable issue, or at least could be regarded as such. I indicated that in the circumstances I did not need to hear from Mr Bradshaw.
6. The Secretary of State's grounds amount to no more, in my view, than a disagreement with the judge's decision.
7. The judge quoted from the remarks made by the sentencing judge (*see paragraph 11 of the determination*) and demonstrates that she very carefully examined all the evidence before her, including the OASys report of September 2012. At paragraph 48 of her determination, the judge quote from the report and noted that as at the date of the report risk of re-offending was assessed as being medium to high and risk of serious harm was assessed as being high towards the public and medium towards staff. At paragraph 52 the judge refers to the appellant having been born in Sierra Leone and his mother having left Liberia in 1990. At paragraph 57 the Tribunal expressly recognised the very considerable weight to be attached to the public interest in deporting foreign criminals. At paragraph 59 the judge specifically indicates that she has considered the nature and seriousness of the offence. She noted that it was committed when he was 16 years of age and that since he had not committed any further offences she quite properly noted that for the majority of the time since the commission of the offences the appellant has been in custody. The judge took account of the sentencing remarks at paragraph 61 of the determination. She was clearly impressed by the evidence of Mr Cook who indicated that he would provide support for the appellant should he need it.
7. The judge quite properly recognised that were the appellant to be returned to Liberia, he and his family would be separated permanently. He does not speak the language, he is still a very young man, and he has been in the United Kingdom and been educated in the United Kingdom for the last ten years.
8. The finding of the judge was one which I believe she was entitled to reach on the evidence before her. She very clearly did take account of the very serious nature of the offences which were committed when the appellant was 17; he is now 20. He has spent a very large part of his life in the United Kingdom. The judge noted the progress the appellant had made and the responses on his part to help offered to him. She was entitled to place weight on the evidence of progress he made during his time in prison and she was right to recognise that the September 2012, report was a report made at that time. Whilst I may very well have reached a different conclusion on the outcome of this appeal, that is not the test. On the evidence before her, the judge's decision was one which was open to her to make.
9. I have concluded that the determination of First-tier Tribunal Judge Cheales contains no error on a point of law and it is **upheld**.

Upper Tribunal Judge Chalkley