



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00760/2013

THE IMMIGRATION ACTS

Heard at Field House
On 13 March 2014

Determination Promulgated
On 29 April 2014
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Before

THE HONOURABLE MR JUSTICE PARKER SITTING AS A DEPUTY JUDGE OF THE
UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE ESHUN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MASTER T M
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Parkinson, Home Office Presenting Officer
For the Respondent: Ms A Pease, Counsel, instructed by TKD Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department which challenges a determination of the First-tier Tribunal, Judges Harries and Mr Bremmer.
2. The appellant, to whom I shall refer as Master T M in the light of the anonymity direction that has already been made, was at the time before the First-tier Tribunal hearing 17 years old. He was born on 5 September 1995 and is a national of Nigeria.
3. He appealed against the decision of the Secretary of State, the respondent, which was made on 3 April 2013 to make a deportation order against him under Section 5(1) of the Immigration Act 1971.
4. The circumstances briefly were that the appellant arrived in the United Kingdom in May 2003 when he was aged 7½ with his mother and brother. The appellant did commit a number of criminal offences and in particular, and most importantly, on 25 August 2011 he was convicted of two offences of possessing cocaine with intent to supply. The court imposed a six month detention and training order in respect of that offence and that was to run concurrently with an 18 month detention and training order that was imposed for violent disorder. Both those offences, one involving the supply of a Class A drug, and the second involving plainly from the length of sentence serious violent disorder, were serious offences. Nonetheless, it was contended that in the light of the appellant's integration into the United Kingdom, the time that he had spent there, the ties that he had formed, his age and the lack of ties in Nigeria, he benefited from the Immigration Rules that deal specifically with the balance between the public interest in deporting those who have committed serious crime and the considerations under Article 8 of both private and family life.
5. The Tribunal, at paragraph 27, considered the appellant's circumstances and made a specific finding that he fell within Rule 399A(b), namely that he was a person under the age of 25 who had spent at least half of his life living continuously in the United Kingdom immediately preceding the date of the immigration decision, in this case of course the deportation order, discounting any period of imprisonment and he had no ties, including social, cultural or family with the country to which he would have to go if required to leave the United Kingdom.
6. The Tribunal carefully considered the evidence and concluded, at paragraph 29 of the determination, that the appellant fell expressly within 399A(b) because he did not have the ties there specified. Accordingly, the Tribunal reached the decision that allowed the appeal under the Immigration Rules.
7. The Secretary of State nonetheless sought permission to appeal the decision and, in detailed grounds that ran to nine paragraphs in all, set out why they said permission should be granted.

8. Permission was granted by Upper Tribunal Judge Goldstein and he said at paragraph 2 of his reasons:

“The application demonstrates that the First-tier Tribunal panel may have made an error of law by failing to give adequate reasons for their findings on material matters and raises arguable issues as to whether they are entitled in law to reach the conclusions they did for the reasons given.”

9. It should be said that the grounds are directed at certain specific findings in relation to the Tribunal’s alleged failure to consider the level of risk, to consider the issue of offending since release, the issue of remorse, and specifically the issue about ties in Nigeria. Perhaps it should be noted, although not strictly relevant, that we have had the opportunity to consider those criticisms and we had reached, in any event, a preliminary view that there was no substance in fact to the criticisms made of the Tribunal who, in our judgment, did consider quite thoroughly and carefully each of those issues and reached, in respect of those issues, findings that it was entitled to make.
10. In any event, today Mr Parkinson on behalf of the Secretary of State has conceded that the finding of fact in relation to the application of Rule 399A(b) cannot sensibly be challenged on any basis. There were primary facts before the Tribunal upon which it was entitled to make the finding that it did and Mr Parkinson quite correctly acknowledges that that finding cannot be impugned.
11. On that basis, the Tribunal was driven to the conclusion that it reached that it had to allow the appeal under the Rules themselves and in those circumstances Mr Parkinson has frankly acknowledged that he cannot properly maintain this appeal.
12. In those circumstances, we formally dismiss the appeal and simply formally note that the decision of the First-tier Tribunal continues to stand.

Signed

Date

The Honourable Mr Justice Parker sitting as a Deputy Judge of the Upper Tribunal