



Upper Tribunal
Immigration and Asylum Chamber

Appeal Number: DA/01052/2013

THE IMMIGRATION ACTS

Heard at Field House
On 3 March 2014

Promulgated on:
On 4 March 2014

Before

Upper Tribunal Judge Kekić

Between

Mr Alrick Orville Huie
(anonymity order not made)

Appellant

and

Secretary of State for the Home Department

Respondent

Determination and Reasons

Representation

For the Appellant: Dr D Chirico, Counsel
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

Details of appellant and basis of claim

1. This appeal comes before me following the grant of permission on 4 December 2013 by First-tier Tribunal Judge Osborne in respect of the determination of a panel of the First-tier Tribunal chaired by Judge Keane which dismissed the appeal following a hearing at Taylor House on 11 October 2013 by way of a determination promulgated on 11 November 2013.

2. The appellant is a Jamaican national born on 20 February 1976. He appeals against the decision of the respondent, on 3 June 2013, to make a deportation order against him by virtue of section 3(5)(a) of the Immigration Act 1971 following his conviction for drugs offences in September 2006 when he was sentenced, on a guilty plea, to four years' imprisonment. He relies upon his private and family life in the UK, upon his marriage to a British national in September 2012, the relationship between himself and his wife's two children (one is an adult and is in prison, the other is a teenager in her final year at school) and the presence of his own two children (born in 2005 and 2010) from an earlier relationship. The appellant's immigration history is set out in the determination of the First-tier Tribunal; essentially he first arrived here in November 2001 as a visitor, switched to being a student but could give no details of his studies when apprehended in November 2002, for driving offences. He was also found to be working illegally and maintained that a cousin had applied for the variation of his stay from visitor to student. There is a contradiction over whether he was removed from the UK later that month (see determination of 2008) or whether he left voluntarily (see his own witness statement) but he then re-entered illegally (on an unknown date) and only came to the attention of the authorities when he was arrested at his property with a large quantity of crack cocaine. Following his release from prison after his four year sentence, the appellant absconded, failed to attend the hearing of his deportation appeal in December 2008, which was dismissed, and only resurfaced when he was shot on 30 April 2012 in a gang related incident connected to his stepson. He gave evidence against his attacker which resulted in a prison sentence for the latter. It is noted that in support of his appeal against deportation in 2008 he had claimed he had eye problems and that he had children in Jamaica but not in the UK. A claim for asylum was refused on non compliance grounds on 10 May 2012.
3. Permission to appeal was granted on the basis that arguably the panel had failed to give sufficient weight to the best interests of the children involved and failed to make findings on the risk of re-offending or the appellant's rehabilitation.

Appeal hearing

4. The appellant attended the hearing and I heard submissions from the parties as to whether the First-tier Tribunal Judge made errors of law.
5. Dr Chirico expanded his grounds and argued that whilst there were strong factors on both sides, the Tribunal had failed to engage with those pleaded for the appellant. There was no consideration of the best interests of the children as a primary factor, no appreciation of the fact that the appellant had not re-offended since his last conviction and no findings on whether he had rehabilitated himself following his conviction. He also argued that the judge

failed to give weight to the fact that the appellant had showed public spirit in giving evidence against the individual who had shot him.

6. In response Mr Jarvis argued that the determination had to be read as a whole. As the Home Office Presenting Officer had not sought to challenge any of the evidence pleaded on behalf of the appellant and the Tribunal had accepted all of it, there had been no need to assess that evidence. That was why the Tribunal had prepared the determination in the way that it had. It was plain that the judge was aware of the strong ties between the appellant and the children and also of the other factors argued in the appellant's favour but the panel concluded that the nature of the offence was such that deportation was justified.
7. At the conclusion of the hearing I reserved my determination which I now give.

Findings and Conclusions

8. I have considered the submissions made, the determination of the First-tier Tribunal, the judgments and the evidence I was referred to.
9. As acknowledged by Dr Chirico, this is a case that is finely balanced. On the one hand there is the extremely serious offence committed by the appellant, the lengthy conviction he received despite a guilty plea and his appalling immigration history and abuse of the laws of this country both before his return/removal to Jamaica and his illegal return. On the other are the strong family ties he has established with his wife, her daughter and his own two children from a previous relationship and the other aspects of his private life including the time that has passed since his conviction. The balance that is to be struck between the two competing sides is a matter for the Tribunal. In this case, the panel came down on the side of the respondent, against the appellant. The question I must now address is whether that decision contains any errors of law.
10. Had it not been the case that the panel had fully accepted all the oral and documentary evidence argued for the appellant and his family, the appellant would have had a better case for criticising the decision of the First-tier Tribunal. In this case, however, the Tribunal commenced its findings on the premise that the case for the appellant, as presented, both by way of the extensive oral testimony and the documentary evidence, was unchallenged and therefore accepted. The core of that case consisted of the very factors that Dr Chirico states the panel failed to engage with. Having accepted that the appellant's case was that he had strong family ties, that the best interests of his two minor children and those of his wife's teenage daughter were for the status quo to remain as it was, that he had remained out of trouble since his

release from prison and that he had been brave in giving testimony against his attacker, there was no need for the panel to then make “findings” on the very facts that it had accepted.

11. Having read the determination as a whole and having regard to the context in which the decision was reached, it is plain that the Tribunal took the view that notwithstanding all the strong factors argued on the appellant’s behalf, the public interest required his deportation. Given the seriousness of the offence, the lengthy sentence and the appellant’s other adverse behaviour over a prolonged period, this was a decision the Tribunal was entitled to reach. In some cases, a family split is justifiable and unfortunately for the appellant and his family, this is one such case.

Decision

12. The First-tier Tribunal did not make any errors of law. The decision to dismiss the deportation appeal is upheld.

Signed:

**Dr R Kekić
Judge of the Upper Tribunal**

4 March 2014.