**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: DA/01110/2013

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Determination Promulgated** |
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| **On 4 March 2014** | **On 13 March 2014** |

**Before**

**UPPER TRIBUNAL JUDGE MOULDEN**
**UPPER TRIBUNAL JUDGE COKER**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR LASCELLES WHITE**
**(Anonymity Direction not made)**

Respondent

**Representation:**

For the Appellant: Ms A Everett a Senior Home Office Presenting Officer
For the Respondent: Mr A Akindele a Solicitor from A & A Solicitors

**DETERMINATION AND REASONS**

1. The appellant is the Secretary of State for the Home Department. We will refer to her as the Secretary of State. The respondent is a citizen of Jamaica who was born on 24 April 1957. We will refer to him as the claimant. He has been given permission to appeal the determination of a panel (First-Tier Tribunal Judge Holder and non-legal member Mrs S I Hewitt JP) who dismissed his appeal

against the Secretary of State's decision of 29 May 2013 to make an automatic deportation order against him under the provisions of section 32 (5) of the UK Borders Act 2007 as a foreign national who had been convicted of an offence and sentenced to a period of imprisonment of at least 12 months.

2. The offence leading to the deportation order was the claimant's conviction at Bristol Crown Court on 29 February 2012 when he pleaded guilty to supplying a class A drug (crack cocaine) for which he was sentenced to 6 years imprisonment and there was a confiscation order in respect of £12,600.

3. On 8 August 1973 the claimant was granted leave to enter the UK in order to join his father. His father was living here with his mother. The claimant had been brought up in Jamaica by his grandmother He arrived here on 11 October 1973 and was granted indefinite leave to remain. He has lived here ever since, although he has made two visits to Jamaica one of them for his grandmother's funeral. It is not now clear whether, in about 2010, he applied for British citizenship but withdrew the application because he needed his passport to go to Jamaica for his grandmother's funeral or whether he applied for what has been referred to as a "no time limit". Nobody has been able to explain to us exactly what a "no time limit" is, although we surmise that it is likely to have been an application to provide an appropriate endorsement in his Jamaican passport showing that he still had indefinite leave to remain. However, it is common ground that the claimant has always been in this country legally, is still a Jamaican citizen and has never become a British citizen.

4. The pre-sentence report prepared in November 2011 prior to the claimant's conviction for the index offence records that he had been convicted 21 times for a total of 35 offences. His likelihood of reconviction was assessed as low but the risk of causing serious harm as medium. There had been 8 offences against the person, 1 offence against property, 19 theft and kindred offences, 2 public disorder offences, 3 offences relating to police/courts/prisons and 3 drug offences. The first conviction was on 17 December 1976 and the last (the index offence) on 29 February 2012. The claimant is still in prison.

5. The claimant has been with his wife for about 20 years and they married in June 2011. They have two sons born in January 1994 and December 1995. The claimant's wife has two older children and the claimant is their stepfather. She suffers from depression and asthma. The claimant is diabetic and takes insulin. He may be developing an eye problem and renal failure.

6. The claimant appealed against the Secretary of State's decision claiming that it would breach his Article 8 human rights to family life and his Article 3 and 8 human rights because he would not be able to obtain adequate treatment for his diabetes in Jamaica.

7. The panel held the appeal on 12 August 2013. Both parties were represented. The panel heard evidence from the claimant, his wife, his sister, his mother

and his elder son. There were statements from other relatives including the claimant's younger son and a letter from the claimant's GP surgery. The panel made reference to extensive case law, the judges sentencing remarks, the pre-sentence report, the OASys report and a letter of support from the prison chaplain.

8. The panel heard submissions from both representatives.

9. The panel concluded that, because the claimant had been sentenced to 6 years imprisonment, paragraph 398(a) of the Immigration Rules applied. Paragraphs 399 and 399A did not apply and it would only be in exceptional circumstances that the public interest in deportation would be outweighed by other factors. In paragraph 52 the panel set out what were considered to be the other factors before reaching the conclusion that there were such exceptional circumstances.

10. The panel went on to consider the Articles 3 and 8 human rights grounds outside the Immigration Rules reaching the conclusion that the Article 8 claim succeeded but the Article 3 claim did not because the claimant had not shown that he would be unable to access insulin in Jamaica or that he would have significant difficulty in accessing adequate healthcare for his diabetes.

11. The respondent sought permission to appeal which was refused by a judge in the First-Tier Tribunal. The application was renewed and granted by a Judge in the Upper Tribunal. There is one ground which submits that the panel erred in law by failing to give reasons or adequate reasons for the findings on material matters. These are set out in more detail in the numbered paragraphs which follow.

12. There has been no application to produce the claimant from custody and neither he nor any member of his family attended the hearing before us. The claimant's solicitors have submitted a Rule 24 response in their letter dated 28 February 2014.

13. Ms Everett relied on the grounds of appeal. She submitted that the claimant needed to show exceptional circumstances but had failed to do so because the panel did not give adequate reasons for the conclusions. She was not arguing that the reasoning or decision was perverse. In reply to our question, she accepted that in paragraph 78 of these determination the panel had not said that the assistance required by both the claimant's parents and his wife's parents would or should be provided by the claimant. She also accepted that paragraph 5 of the grounds was misconceived because the panel had not reached the conclusion that the claimant would not be able to obtain appropriate medical treatment in Jamaica. Notwithstanding what was said in paragraph 52(i) the panel reached the final conclusion in paragraph 82 that he had not shown that he would be unable to access insulin in Jamaica or that he would have significant difficulty in accessing adequate health care for his

diabetes. She said that the Secretary of State no longer pursued paragraph 5 of the grounds.

14. Ms Everett questioned what the panel meant in paragraph 54 when it was said that the claimant was, in effect, a "home grown offender". This was an inappropriate finding. She accepted that the claimant's children had lived here all their lives and were British citizens.

15. We raised the question of whether, in paragraph 59, the panel's précis of some of the circumstances of the index offence correctly recorded what the judge had said in his sentencing remarks. Ms Everett said that it appeared to be factually incorrect, although she accepted that what was said here needed to be read in the light of a substantial extract from the sentencing remarks set out in paragraph 42.

16. We were asked to find that the panel had erred in law and to set aside the decision. Ms Everett submitted that we could remake the decision without adjournment and without hearing further evidence.

17. Mr Akindele relied on the Rule 24 response. Neither he nor Ms Everett could assist us as to exactly what a "no time limit application" might be. Mr Akindele thought that it might be a further endorsement in the claimant's passport indicating that he had indefinite leave to remain. He had not appeared for the claimant before the panel and could not say what evidence had been submitted or submissions made about this.

18. Mr Akindele submitted that the panel made findings of fact and reached properly reasoned conclusions in the light of the evidence before them. It was clear that the panel had followed all the appropriate Razgar steps. The panel had accepted that the index offence was a very serious offence. Describing the claimant as a "home grown offender" was no more than a reflection of the fact that he had been in this country for so long. It was argued that the determination was lengthy, detailed and well written. What the panel said in paragraph 59 had to be read in the light of the detailed extract from the judges sentencing remarks set out earlier in the determination. There was no material difference. We were asked to find that the panel had not erred in law and to uphold the decision. We reserved our determination.

19. Paragraph 1 of the grounds argues that the panel failed to provide adequate reasons for the conclusion that there were exceptional circumstances which outweighed the public interest in deportation. We find that in paragraphs 51 to 55 of the determination the panel did provide clear and sufficient reasons for this conclusion. If any amplification of these reasons is required it can properly be found in the detailed record of the evidence set out earlier in the determination. The Secretary of State's representative at the hearing before the panel does not appear to have suggested that the claimant or his witnesses were not credible and there is no indication that the panel did not accept their evidence. Providing adequate reasons does not mean that the panel is

required to set out, in that part of the determination, every aspect of the evidence and every possible interpretation of it. It is sufficient for the panel to make reference to and outline the important factors, particularly if further details can be found elsewhere in the determination. We find that this is what the panel did both in relation to the challenge in this paragraph of the grounds and the other challenges relating to alleged lack of reasoning. Paragraph 1 is in substance no more than an attempt to re-argue the case without identifying any error of law.

20. Paragraph 2 of the grounds relies on the submission that the claimant had to establish that there were insurmountable obstacles to the family relocating to Jamaica. That is not the test. The correct test, applied by the panel, was whether it would be unreasonable to expect the family to relocate to Jamaica. The panel gave sufficient reasons for the conclusion that it would be unreasonable to expect them to relocate in paragraph 52 (h). Paragraph 52 needs to be read as a whole and in the light of all the evidence recorded in the determination.

21. As to paragraph 3 of the grounds which refer to paragraph 52 (e) of the determination, the panel did not find that the withdrawal of an application by the claimant for British citizenship was an exceptional circumstance to outweigh the public interest in deporting him. They found that this was one of a number of factors which led them to that conclusion. We can find no indication that the panel was shown any documentary evidence as to the precise nature of the claimant's application in 2010. We accept that in paragraph 62 the panel said that the claimant was "close to achieving British citizenship". However, in the assessment of the position following the deportation order the panel did not make any finding as to whether the claimant could apply for or would be likely to obtain British citizenship. Whether there was an application for British citizenship which the claimant withdrew, for what appears to have been a good reason, or an application for some sort of further documentation to record his indefinite leave to remain is of no material significance where it is common ground that the claimant is still a Jamaican citizen and has never become a British citizen.

22. In paragraph 4 of the grounds the Secretary of State argues that the panel failed to provide adequate reasons for the finding in paragraph 78 (iii) that the claimant's wife's parents required assistance. The panel said; "both the appellant's and his wife's parents are elderly and require assistance". The panel did not say that that assistance would or should be provided by the claimant. The claimant's wife gave evidence as to the ages of her parents and that she visited them three times a week which is recorded in paragraph 14 of the determination. It was a reasonable conclusion open to the panel that both sets of parents were elderly and required some assistance.

23. Paragraph 5 of the grounds was withdrawn by Ms Everett.

24. In paragraph 6 the Secretary of State submits that the panel failed to give adequate reasons for the conclusion set out in paragraph 61 that the claimant's conduct in prison had been excellent and that he was making good progress with his rehabilitation. We find that the panel gave sufficient reasons for this conclusion based on the evidence set out in paragraph 61. Paragraph 6 of the grounds also submits that the panel failed to make any findings about the appellant's risk of harm which had been assessed as medium, the escalation in the seriousness of his offences and that he had failed to take numerous previous opportunities to reform. Whilst we accept that in paragraph 52 (j) the panel referred to the low risk of reoffending but not the risk of causing serious harm, this is recorded in paragraph 44 in the panel's assessment of the pre-sentence report. We find that this was taken into account as was the panel's assessment of the claimant's offending history. The panel properly assessed the seriousness of the index offence as appears from paragraph 59.

25. In relation to paragraph 7 we are not sure what the panel meant in paragraph 54 when they said that the appellant was a "home grown offender". The phrase is unfortunate, lacks clarity and would have been better avoided. Taken in context it seems to us that the panel were emphasising that the claimant came here when he was approximately 16 and did not start offending until about four years later and now has strong family ties in the UK, built up over a lengthy period and no significant family or ties in Jamaica. The phrase does not indicate to us that the panel thought that the claimant "learnt" this behaviour whilst in the UK, as the grounds suggest.

26. As to paragraph 8 of the grounds we find that the panel did give adequate reasons for the conclusion in paragraph 78 that it would be in the best interests of the claimant's younger son for him to remain here with both his mother and father. The panel made reference to the evidence that there was a close bond between the claimant and his father. Furthermore, we find that the panel accepted the evidence of the claimant and his wife about their younger son which can be found in paragraphs 11, 12, 13 and 18.

27. Whilst it is not referred to in the grounds we raised the question of whether, in paragraph 59, the panel made an error of fact amounting to an error of law when stating; "we find from the court documentation that the nature of the appellant's index offence is supplying class A drugs in circumstances where the Judge found that he was looking after the drugs for another and would have handed them back to that other person for eventual supply on the streets". We find that there is a minor error of fact in the summary of the sentencing remarks. The sentencing judge did not say that the claimant would hand the drugs back to the person who gave them to him. He said that the claimant would make the drugs available to those who would supply them on the streets. The panel did say that the drugs would be made available for "eventual supply on the streets". We conclude that the factual error as to whether the supply would be via the person who originally provided the drugs to the claimant or direct to the street is minor and has made no material difference to the panel's assessment or to the outcome.

28. We have not been asked to make an anonymity direction and can see no good reason to do so.

29. The conclusions reached were open to the panel on all the evidence and sufficiently reasoned. We find that the panel did not err in law and we uphold the determination.

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Signed Date 5 March 2014

Upper Tribunal Judge Moulden