Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01118/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 6 February 2014	**On 17 February 2014**
Extempore	

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

KASHIEF LAIDLEY

Claimant

Representation:

For the Claimant: Mr Adekoya, Counsel
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Secretary of State appeals with permission against the determination of the First-tier Tribunal, the panel comprising First-tier Tribunal Judge Glossop and Mrs S I Hewitt, JP promulgated on 16 October 2011 allowing Mr Kashief Laidley's appeal against the decision of the Secretary of State made on 23 April 2013 that he is a

person to whom Section 32(5) of the UK Borders Act applies. For clarity, I refer to the Secretary of State as the respondent and to Mr Laidley as the claimant.

2. The respondent was granted permission to appeal against that decision and the matter then came before me in the Upper Tribunal after permission had been granted by Upper Tribunal Judge Martin. That hearing before me was on 6 December 2013 and for the reasons set out in my decision promulgated on 13 December 2013 I found that the First-tier Tribunal had erred in law. A copy of my decision is annexed to this determination.

3. I gave directions as to how the appeal was to be re-made, making it clear that in this case the central issue is whether the claimant has no ties to Jamaica, it being accepted that he is under the age of 25 and has spent more than half of his life in the United Kingdom. To that end I heard evidence from the claimant, the claimant's mother, the claimant's grandmother and the claimant's cousin, Ms Peterkin, all of whom appeared in the First-tier Tribunal. In this case they all adopted the witness statements that they had given and were cross-examined by Mr Duffy.

4. The common theme of the evidence is that the claimant has no family in Jamaica. He was brought up there it appears by his mother and grandmother until his mother came to the United Kingdom. His uncle was also involved with that, that is his uncle, Everton, who, it appears, died a few years ago in a car crash.

5. The evidence of the witnesses is broadly consistent and is to the effect that since he has come to the United Kingdom the claimant has lost his ability to speak patois, has difficulty communicating in patois both with his grandmother and mother and that on occasions they have to ask him to speak more slowly and he has to ask them to speak more slowly. That is also the evidence of Ms Peterkin, his cousin.

6. The claimant has been educated in this country, and it is also the consistent evidence of the witnesses that he was not educated in Jamaica; he did not attend school as it was too far from the house. All the witnesses were of the opinion that the claimant would have difficulties in re-adjusting to life in Jamaica due to his difficulty to communicate, that is in his difficulty in speaking and understanding patois which would be expected were he to return there. It is also the consistent evidence that he does not like Jamaican food, no longer eats it and has in fact been eating "English food" for want of a better description since more or less the time he arrived here. His mother relates this to the food that he was given when he first started attending school in this country around the age of 8.

7. I also bear in mind that it was the evidence of the claimant's mother that he has some learning difficulties and that is a matter which was also dealt with by the First-tier Tribunal. The claimant does it appears have a large number of more distant relatives in the United Kingdom. The claimant's grandmother explained that her brothers and sisters with one exception live in the United Kingdom. The claimant's mother has one sister in the United States with whom she has limited contact and has not seen for fourteen years.

8. Mr Duffy submitted that I should have close regard to the Immigration Directorate Instructions, chapter 13, specifically section 4 which deals with the definition of no ties including social, cultural or family. He also addressed me on **Ogundimu (Article 8: new Rules) Nigeria [2013] UKUT 60 (IAC)** which also deals with that issue at [122] to [126].

9. Mr Duffy submits that the question which should be asked is whether the claimant would be able to have an adequate private life if returned to Jamaica. He submitted that as the claimant had been living with two Jamaican women it was unlikely that he would have lost all his cultural ties to Jamaica. He submitted also there was a danger that the witnesses were seeking to exaggerate the difficulties the claimant would have on return, that the claimant would have acquired a pattern of speech up until the time he left and that would have not diminished to any great extent given that he was still living with his family.

10. Mr Duffy also submitted that in the alternative were I not to find that the claimant had no ties to Jamaica that this is not a case in which there would within paragraph 398 of the Immigration Rules be exceptional circumstances, addressing me in particular on the decisions of the Court of Appeal in **SS (Nigeria)** [2013] EWCA Civ 550 and **MF (Nigeria)** [2013] EWCA Civ 1192 as well as **Gulshan (Article 8 – new Rules – correct approach)** [2013] UKUT 640 (IAC.

11. Mr Adekoya submitted that on the basis of what is said in **Ogundimu** and also the Home Office instructions it is clear in this case that this claimant no longer has any ties to Jamaica given the length of time be has spent in the United Kingdom and that whilst he may well have been exposed in some degree to the cultural norms through living with two Jamaican women, the situation is that his mother in particular had moved on and had adapted to life in the United Kingdom. He drew my attention to the fact that she said they keep different groups of friends and family.

12. I note also that the claimant went to school in this country. Mr Adekoya submitted also that the claimant had limited use of patois and limited understanding of it; that he had no family and friends in Jamaica; and, in the reality there were no ties to Jamaica. He submitted that in the alternative there are exceptional circumstances in this case, given that the claimant has learning difficulties, is solely dependent on his family, and would find it very difficult for him to return and would in fact be unduly harsh to expect him to do so.

13. In reaching my conclusions, the starting point must in reality be what is said in **Ogundimu** at [123]:

> "The natural and ordinary meaning of the word 'ties' imports, we think, a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. It involves there being a continued connection to life in that country; something that ties a claimant to his or her country of origin. If this were not the case then it would appear that a person's nationality of the country of proposed deportation could of itself lead

> to a failure to meet the requirements of the rule. This would render the application of the rule, given the context within which it operates, entirely meaningless."

It is also stated [124]:

> "We recognise that the text under the rules is an exacting one. Consideration of whether a person has no 'ties' to such country must involve a rounded assessment of all the relevant circumstances and is not to be limited to social, cultural and family circumstances."

14. I deal first with the evidence of the witnesses.

15. There is some merit in Mr Duffy's submission that the family may well have exaggerated to some degree the difficulties that the claimant would have due to not speaking Patois, but I do not consider that that exaggeration is material. I accept that the claimant will understand some patois, he was certainly brought up in a house where that is spoken but that does not mean that he would be able to communicate as clearly with those in Jamaica whose patois is spoken all the time. I bear in mind that both the grandmother and the mother, although they both speak patois, also speak English because they have to do so in their everyday life in the United Kingdom. In reality patois and English are not two distinct languages; there is a spectrum. Speakers will use more or less patois in their speech depending on context, education and situation; it is likely that in Jamaica, particularly in a rural area, an individual will use far more patois and in a more accented way than somebody for example who is educated and lives and works in a professional job in Kingston but they will equally both speak patois.

16. There is considerable merit in Mr Adekoya's submission that the other members of the family have adapted to life in the United Kingdom and thus it is difficult to characterise the claimant as being brought up in a Jamaican environment; both the mother and grandmother have, I accept, changed through being here and neither has been back to Jamaica; their ties to that country have also diminished. I bear in mind also that the claimant has been at school here. He will have been educated in an environment which almost inevitably will not be exclusively Jamaican; it will have been in a multicultural environment, in south London, with a large number of people from different countries. It likely that a child becoming an adolescent and eventually an adult, as the claimant has done, will become more influenced by his peer group at school rather than by family and that his cultural norms will flow from them. It is instructive to note in this context that the claimant appears from a relatively young age to have been influenced to eating food provided to him at school rather than the food offered at home to the extent that both his grandmother and mother have cooked separately for him. Whilst they are quite happy to eat Jamaican food, he is not.

17. It is not in doubt that this claimant has no friends left in Jamaica. He left at the age of 8. There is no evidence of him having continued contact with anybody there. He did

not go to school there and so it is in effect inevitable that he would have had few friendships of the type, certainly as he left at 8, which would have continued. I accept the evidence of the witnesses that they have few if any ties to Jamaica and I note that even when the mother's brother died it was through her sister in the United States that that information was passed on to her. Further, given that the claimant left Jamaica at the age of 8 and had until then lived in a small rural community, he would have little or no knowledge of the country as a whole.

18. Pulling all of these factors together and bearing in mind the definition that is set out in Section 4.1 of the UKBA Guidance, I consider that the reality is that this claimant has little or no knowledge if any of how life is conducted in Jamaica. It could at best be second hand from his mother and grandmother who have, through losing ties with the country over the years, less and less up to date knowledge of it. His experience is to say the least limited given that he did not go to school there and left at the age of 8. He has lived in the United Kingdom now for over twelve years, more than half of his life. He is as Mr Adekoya submitted entirely dependent on his family here. He has no family or connections to Jamaica and whilst his family have ties to Jamaica, he does not.

19. Whilst the factual matrix here is different from **Ogundimu**, I note that given that the family have in effect little or no ties to Jamaica other than historical, and on the particular facts of this case, I consider that the exacting test set out in the Rules is in met as I am satisfied that the claimant has shown that he does not have ties to Jamaica.

20. Accordingly it follows from that that I am satisfied this is a case to which paragraph 399A(b) applies and accordingly this appeal falls to be allowed under the Immigration Rules. In the circumstances, as I am satisfied that the claimant does meet the requirements of paragraph 399A there is no need for me to consider whether there are, as is set out in paragraph 398 of the Immigration Rules any exceptional circumstances which apply.

SUMMARY OF CONCLUSIONS

1. The determination of the First-tier Tribunal did involve the making of an error of law and is set aside. I re-make the decision by allowing the appeal under the Immigration Rules.

Signed Date 13 February 2014

Upper Tribunal Judge Rintoul

ANNEX – ERROR OF LAW DECISION

Upper Tribunal
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THE IMMIGRATION ACTS

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Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR KASHIEF LAIDLEY

Claimant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Adekoya, Legal Representative
For the Respondent: Mr P Duffy, Presenting Officer

DECISION AND REASONS

1. The respondent appeals with permission against the determination of the First-tier Tribunal (a panel comprising First-tier Tribunal Judge Glossop and Mrs S I Hewitt JP) promulgated on 16 October 2013 in which they allowed the

claimant's appeal against the respondent made on 23 April 2013 that he is a person to whom Section 32(5) of the UK Borders Act 2007 applies and should therefore be deported pursuant to his conviction for attempted robbery in breach of previous orders to which he was sentenced to eighteen months' imprisonment.

2. The claimant is a citizen of Jamaica born on 12 September 1993. He entered the United Kingdom in 2001 and has lived here since. He remained here and was granted indefinite leave to remain in 2009.

3. The claimant has been convicted of a number of criminal offences the most recent being a conviction on 7 November 2011 for common assault for which he received a community order and a conviction on 12 July 2012 at Isleworth Crown Court for the offence of attempted robbery and a breach of the previous community order for which he was sentenced to eighteen months' imprisonment.

4. After taking into account representations from the claimant, the respondent considered that he was a foreign criminal who should be deported and did not fall within the exceptions set out in paragraphs 399(a), 339(b) or 399A on the basis that he had no children and was single and, that although he had lived continuously in the United Kingdom for at least half of his life immediately preceding the date of the immigration decision (discounting his imprisonment) it was not unreasonable to expect him to be able to readjust to life in Jamaica should he be deported and that he has ties to the country. The respondent considered also that there were no exceptional circumstances in this case.

5. The claimant's case is that he in fact has no ties to Jamaica, no relatives there and no longer has any memories of living there. He lives with his mother and grandmother. The claimant has had significant educational difficulties, attending a special school between 2008 and 2010 and is fact dependent on his mother although he is now aged 19. His case is that he has now reformed, is no longer at risk of committing further offences and that it would, despite the public interest in deporting foreign criminals, be disproportionate on the particular facts of this case to deport him to Jamaica.

6. The First-tier Tribunal heard evidence from the claimant, the claimant's mother and grandmother and his cousin, Miss Angela Peterkin. The Tribunal found:-

   (a) that he had been convicted of a number of criminal offences prior to the index offence resulting in the deportation order [17];

   (b) that a probation officer had assessed his remorse following his conviction as genuine [18];

   (c) that the claimant had had an unsettled life in the past moving around on a number of occasions, had been excluded from school as a result of his behaviour and although he had been statemented as having special educational needs, this had not been proceeded with [19] noting also that the probation officer who reported on the claimant in October 2012 considered that the claimant was making more constructive use of his time, had seen a marked

improvement in his general belief system and motivation to change, had improved his thinking skills and was becoming more aware of the choices he had to make [20] and having had regards to his mother's caring attitude [21] that although the fact that he had shown bad public behaviour his criminality was of the very low risk level within its category [22] and having taken account of the probation officer's report and the evidence of Angela Peterkin [24] and although presented a medium level risk of harm and a medium level of re-offending [23] he did not pose a significant or an imminent risk of serious harm; that on all the facts of the case his deportation would be "heavily disproportionate" [27].

7. The respondent sought permission to appeal on the following grounds:-

   (a) that the First-tier Tribunal misdirected itself in law in failing to have regard to the Immigration Rules in the Article 8 assessment and in effect failing to have regard to the public interest when assessing the proportionality of deporting the claimant [1, 2];

   (b) in failing to give reasons or adequate reasons for finding why the claimant would not re-offend [1] and in particular failing to take into account the finding by the probation officer who found him still to pose a medium risk of harm and re-offending; failed to give adequate reasons for the finding that the claimant has no ties to Jamaica, considering only family ties or support; failing to provide adequate reasons for finding that he is dependent on his family.

8. Permission to appeal was granted by Upper Tribunal Judge Martin on 6 November 2013, stating

> "It is arguable that the First-tier Tribunal has erred in failing to consider at all the Immigration Rules as they relate to deportation and thus when conducting the balance exercise to attach the required weight to the Secretary of State's view. The First-tier Tribunal has not carried out the two-stage approach within the Rules referred to in **MF [2013] EWCA Civ 1192**."

9. I heard submissions from both representatives. Mr Duffy submitted that there was no indication anywhere in the determination that the First-tier Tribunal had considered the public interest let alone the weight to be attached thereto. He submitted that there was insufficient reasoning to uphold the findings reached by the Tribunal, if they could be called these, the Tribunal providing no reason for preferring the pre-sentence report from Miss Keeling over the more recent NOMS report.

10. Mr Adekoya submitted, in respect of Ground 1, there are a substantial number of references in the determination to the public interest. He submitted further that the Tribunal had given adequate reasons for their findings of fact submitting further that the Tribunal had considered all the evidence before concluding that the claimant had no ties to Jamaica.

11. Whilst the panel does record [6] that the respondent relied on **SS (India) [2010] EWCA Civ 388** and records the submissions of the Presenting Officer [15] it is not possible to discern from the determination what weight if any the Tribunal attached to the public interest in deporting foreign criminals. Whilst they state [26] that attempted robbery is always serious and that the respondent has good reason to order foreign nationals to be deported in many cases, that is not a sufficient or sustainable basis for the conclusion that deporting the claimant would be disproportionate. I consider that in these circumstances, the respondent could not know why it is that the Tribunal had found against her. Accordingly, and given that consideration offers significant weight to the public interest was capable of affecting the outcome of the appeal, I consider that this error is material and so on that basis alone the determination needs to be set aside.

12. Turning to the claimed errors of law as regards fact-finding, I consider that the Tribunal has given adequate and detailed consideration set out in paragraphs 18 to 25 that the claimant did not present a risk of re-offending. Whilst I accept that, as the grounds aver, the claimant had stated previously that he would not reoffend but had later done so, the Tribunal has given adequate reasons for concluding why it is this situation has now changed and noted that he had not re-offended since being released. They took into account a substantial amount of evidence indicating that he had in fact changed and was now getting the active support of family and the probation service. The conclusion was therefore open to the Tribunal on the evidence before them.

13. The panel considered the claimant still to be dependent on his mother. They found, and there is no challenge to this, that he lived with his mother and grandmother; that he has no partner; that he has no children; and he is an only child. He has never had any contact with his father and whilst he was in prison as an adult, it is evident from the evidence of his mother, grandmother and Miss Peterkin that he is close to his family. They also concluded, as they were entitled to [25] that he has seriously interested relatives who are able to assist him.

14. Assuming that what is set out at paragraph 26 is a finding that the claimant has no ties to Jamaica, I consider that this is inadequately reasoned given the failure to address the fact that the Immigration Rules at 399A refer to more than family. On that basis, I am satisfied that it will be necessary to remake the determination addressing the issue of whether the claimant has no ties to Jamaica, it being accepted by both representatives that if it is under after the Immigration Rules. I therefore adjourned the matter in order to hear fresh and additional oral evidence.