Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01417/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 13 February 2014	**On 26 February 2014**

Decision delivered *extempore*

Before

THE HON. MR JUSTICE JAY
UPPER TRIBUNAL JUDGE O'CONNOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JAHWAHRAH BOGLE

Respondent

Representation:
For the Appellant: Ms Isherwood, Senior Presenting Officer
For the Respondent: Ms Spearing, instructed by Westkin Associates

DETERMINATION AND REASONS

1. The claimant is a citizen of Jamaica born in May 1993. He sought to enter the United Kingdom as a visitor with his mother in September 1999 but that application was refused. He and his mother were thereafter instructed to report on temporary admission but failed to do so.

2. On 18 April 2007 the claimant was granted three years' discretionary leave in line with the leave granted to his mother. This was subsequently extended for a further period of three years in December 2010.

3. In September 2010 the claimant was convicted of robbery and aggravated burglary and was sentenced to a two year training and detention order. Subsequently, on 22

March 2013, he was convicted of supplying Class B prohibited drugs and driving whilst uninsured and was sentenced to seven months in detention. Given these criminal convictions the Secretary of State decided, on 3 July 2013, that it was conducive to the public good to make a deportation order against the claimant. The claimant appealed this decision to the First-tier Tribunal.

4. The appeal was heard by First-tier Tribunal Judge Hollingworth sitting with Mr G Getlevog, a Non-Legal Member. They allowed the claimant's appeal under the Immigration Rules in a determination promulgated on 16 October 2013. The tribunal did not go on to consider Article 8 ECHR outside of the Rules.

5. The Secretary of State was granted permission to appeal to the Upper Tribunal by Upper Tribunal Judge Lane in a decision of 4 December 2013. In doing so Judge Lane stated as follows:

> "The only arguable issue is whether at [26] the panel have given legally adequate reasons for finding there are no ties with Jamaica (as to which see paragraph 2(b) of the grounds and the submission that 'ties' include social and linguistic ones)."

6. The core of the First-tier Tribunal's reasoning is found within paragraphs 25 to 26 of its determination which read:

> "25. With regard to a DTO this only clicks in if it is for 24 months. The position was that this only just crept within conducive deportation with the first offence. The second offence did not attract automatic deportation. It was confirmed by Mr Evans that there was no challenge to Counsel's submission regarding the case falling within the new Rules subject to a finding as to ties.
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> 26. We find that the appellant in the light of his history and the period of time he has spent in the United Kingdom does fall within the new Immigration Rules subject to a finding as to whether or not the appellant has any ties to Jamaica. We find that he has no ties to Jamaica. That aspect of the case has not been challenged. The witnesses have given evidence as to there being no relatives in Jamaica. Assertions have been made in evidence which has been accepted to this effect. There is no property in Jamaica which has been retained. The only visits made to Jamaica do not lead to the conclusion that ties have been retained. The new Immigration Rules are prescriptive. There is no room for judicial discretion where such Rules are prescriptive. The appellant therefore succeeds in his appeal."

7. It is immediately apparent that the Tribunal did not direct itself to the reported decision of a Presidential panel of the Upper Tribunal in Ogundimu (Nigeria) [2008] UKUT 00060, and in particular paragraphs 123-124 of that decision, in which the Tribunal sought to give guidance on the meaning of the word 'ties' in paragraph 399A of the Rules. However, such failure would only amount to an error of law if the conclusions the tribunal reached were not consistent with the application of such guidance. The relevant paragraphs of the decision in Ogundimu state:

> "[123] The natural and ordinary meaning of the word 'ties' imports, we think, a concept involving something more than merely remote or 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 country or her country of origin. If this were not the case then it would appear that a person's nationality of a country of proposed deportation could of itself lead to a failure to meet the requirements of the Rules. This would render the application of the rule, given the context within which it operates, entirely meaningless.
>
> [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…"

8. The First-tier Tribunal identified a number of features of the claimant's case which led them to conclude that the claimant has no ties to Jamaica. These, found in paragraph 26 of the determination, are that the claimant has no relatives in Jamaica; that there is no family property there and, thirdly, that he has only visited Jamaica once since his arrival in the United Kingdom.

9. In her grounds of application the Secretary of State submits that the First-tier Tribunal failed to take into account a number of relevant factors when coming to its conclusions. The grounds themselves refer to two such claimed material factors; first, that the claimant grew up in the United Kingdom living with his Jamaican mother and therefore must have cultural ties to his homeland and, second, that the claimant speaks English, the language spoken in Jamaica. At the hearing before the Upper Tribunal Ms Isherwood sought to identify a third material factor said to have been excluded from the First-tier Tribunal's considerations, that being that the claimant's grandmother did not spend all her time in the United States as claimed and, consequently, might spend time in Jamaica thus providing a tie for the claimant to that country.

10. Turning to a consideration of those three factors: as to the first, the submission is founded on nothing more than speculation on the Secretary of State's behalf. The First-tier Tribunal set out the evidence before it in detail. Nothing in that evidence supports the contention that the claimant holds any such cultural ties to Jamaica. This was a matter upon which the Secretary of State's representative could have cross-examined upon before the First-tier Tribunal but there is no indication that such cross-examination took place or, if it did, that any evidence was provided which supports the Secretary of State's contention as now raised.

11. As to the second matter i.e. the fact that the claimant speaks English, it seems to us that this is an entirely a neutral factor, English being a language widely spoken in the Caribbean. In any event, the Tribunal were plainly aware that the claimant spoke English, he having given the entirety of his evidence in this language.

12. As to the final matter, first raised on the day of the hearing by Ms Isherwood, no explanation has been provided as to why this was not pleaded in the written grounds. In any event, it does not take the Secretary of State's case any further. There is no indication in the accepted evidence that the appellant's grandmother spent any time in Jamaica.

13. Therefore, whilst we accept the reasons of the First-tier Tribunal are brief, we find that (i) the conclusion it reached was open to it for the reasons given, (ii) its conclusion and reasons do not offend the guidance given by this Tribunal in Ogundimu and (iii) that there is sufficient reasoning in the determination for the losing party, in this case the Secretary of State, to understand why she lost.

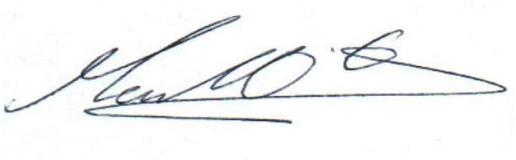
14. Ms Isherwood did not pursue the other grounds of application before us today and she was right not to do so. They are plainly not made out given the concession recorded in paragraph 25 of the First-tier Tribunal's determination.

15. For the sake of completeness, we indicate that had we had set aside the First-tier Tribunal's decision and re-made the decision on appeal for ourselves we would have come to exactly the same conclusion as the First-tier Tribunal. The claimant came to the United Kingdom aged just 6 years old, has been educated here and has lived here continuously since the date of his arrival, save for one short visit to Jamaica during which time he stayed in a hotel. He may speak a language spoken in Jamaica but he has no family there. To all intents and purposes he is a stranger to Jamaica and its way of life.

Decision

We find there is no error on point of law in the First-tier Tribunal's determination and we consequently dismiss the Secretary of State's appeal before us.

Signed:



Upper Tribunal Judge O'Connor
Date: 24 February 2014