Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01482/2013

THE IMMIGRATION ACTS

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

MR GERALD KATO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Adams, Counsel, instructed by Freemans Solicitors
For the Respondent: Mr J Parkinson, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the appellant, Mr Gerald Kato, against the determination of the First-tier Tribunal, comprising Judge S J Clarke and Mr Bompas, promulgated on 14 January 2014. The appellant in the proceedings before the First-tier Tribunal is a national of Uganda. His date of birth was 28 September 1990. He actually came to the United Kingdom on 26 May 2009 when he had become 18 but he entered under provisions that enabled him to enter as a child, that application having been made before he reached his 18th birthday.

2. At the time of the determination, he was 23 years of age. His parents are UK citizens. The appeal was in respect of a decision to make a deportation order on 25 June 2013, by virtue of Section 5(1) of the Immigration Act 1971 and under Section 32(4) of the UK Borders Act 2007, the removal of the appellant being considered by the respondent to be conducive to the public good.

3. The appellant was convicted on 19 September 2012 at Kingston-upon-Thames Crown Court of a conspiracy and/or supply of a controlled drug of Class A and he received a sentence of 20 months' imprisonment. He was granted a home detention curfew on 31 January 2013 on licence conditions with an evening curfew and his custodial sentence ended formally on 24 May 2013.

4. Following that conviction, he was notified of his liability to automatic deportation on 4 January 2012, which also gave him the opportunity to raise any exceptions or reasons why he should not be deported from the United Kingdom and the appellant raised private life under Article 8.

5. As we have already indicated, he came here to join his mother and stepfather and also there was an 18 year old sister and 13 year old brother. They also were British citizens.

6. The appellant's younger brother, Liam, is deaf and dumb and the appellant was employed as a carer to help him socialise, such as taking him to table tennis every Thursday night, football on weekends and to social centres and clubs.

7. The First-tier Tribunal recited that the respondent applied paragraph 398B of the Immigration Rules because the appellant was sentenced to a period of imprisonment of less than four years but at least twelve months. The respondent then went on to consider the application of paragraph 399 or 399A. Neither of those applied but the position still had to be considered as one of exceptionality under Article 8 of the ECHR pursuant to the authority of MF (Nigeria) v Secretary of State for the Home Department [2013] EWCA Civ 1192.

8. The respondent had considered whether there were exceptional circumstances, particularly arising from the position of Liam, as noted above, but decided that the circumstances were not compelling within the rationale of MF (Nigeria) and therefore concluded that the public interest in the removal of the appellant as having committed a serious criminal offence outweighed any Article 8 aspects.

9. The Tribunal of course was not bound by the determination of the respondent and had to decide for itself whether the deportation was conducive to the public interest and whether there were exceptional circumstances meaning compelling reasons why deportation should not be ordered in this particular case.

10. Permission was granted by Judge Simpson of the First-tier Tribunal and he said in paragraph 4 of that decision:

> "The grounds do identify an arguable material error of law in that the judge failed to consider the implications of MF (Nigeria) and Kabia or to consider the guidelines in Maslov v Austria."

11. In particular, it is said in the grounds that the Tribunal did err in law because it had not dealt adequately or at all with certain matters, for example it had not dealt sufficiently with the nature and gravity of the offence. However, in what we would regard as an admirably clear and succinct decision, the Tribunal did deal at some length, at paragraph 12 and then also at 24 and 25, with the very serious nature of the offence resulting in a sentence, as we have recorded, of 20 months' imprisonment.

12. It is also said that the Tribunal did not deal adequately with the risk of re-offending but again the Tribunal at paragraph 28 specifically noted that the letter dated 30 July 2013 from the Probation Officer had assessed the appellant as only opposing a low risk of harm and low risk of re-offending. Therefore, it appears to us that the Tribunal had firmly in mind an element that was certainly positive in favour of the appellant but, notwithstanding that positive factor, which it should be noted is found frequently in cases of this kind, the Tribunal did not regard that as sufficiently compelling, either standing alone or in conjunction with other factors.

13. It is also said that the Tribunal did not have sufficient regard to the fact that the appellant had not offended since he had left prison on 31 January 2013. We should note in that connection that the period during which he had been at liberty following serving the prison sentence, as explained, had only been one year and therefore cannot intrinsically carry very substantial weight, although, of course, some credit needs to be given for that period where no further offences appear to have been committed. However, again, the Tribunal, as we have said in a careful and thorough decision, albeit succinct, at paragraph 3 did recognise the position.

14. It is also said that the Tribunal did not deal with the position in regard to the appellant's return to Uganda. However, this was a matter that was

before the Tribunal and was considered by them. At paragraph 23 the Tribunal noted that the appellant had not lived continuously in the UK for at least half his life but he had ties to Uganda, the country where he spent his childhood, and he holidayed in 2010 there for one month. He has extended family members there, and there is a family home to which he may be able to return to at first when deported. The Tribunal noted that the appellant has contacts remaining in Uganda and would return with employable skills. Therefore it seems to us that the Tribunal did fairly direct itself to the evidence and reach findings of fact on that matter which were open to it.

15. And then, and this is perhaps the foremost point advanced by Mr Adams of Counsel on behalf of the appellant, there was Liam's position. It is said that the Tribunal did not deal with this or deal with this in an adequate way, having regard to the evidence. However, the Tribunal did address this matter in paragraphs 26 and 27. In particular, the Tribunal said that Liam had had at least one other carer in the past but Mr and Mrs Gunn would also provide more care to their son and take him to activities themselves if they so wished. Whilst the best interests of Liam were the Tribunal's primary consideration, the Tribunal concluded that it was not unjustifiably harsh for the appellant not to be the person to provide the care that Liam needs and they added that even if Mrs Gunn were not to find another carer, that was still not sufficient to conclude that it was unjustifiably harsh because the two parents could care for the child and the sister was caring for him before she went to university where she would enjoy vacations from her studies.

16. Therefore, we would make the following observations in regard to those passages. Firstly, the Tribunal plainly was directing itself to the relevant evidence and again made conclusions of fact that were reasonably open to it on that evidence and secondly it carried out an evaluation of the degree of hardship that Liam might regrettably suffer as a result of the deportation of the appellant, but was weighing the severity of that suffering with the public interest in the deportation, given the crime that had been committed and the other circumstances pointing towards deportation that the Tribunal had identified. We see that as a classic case of the Tribunal exercising judgment on a relatively sensitive matter but properly bearing in mind the test required by MF (Nigeria), namely that in circumstances of this kind it is necessary to identify compelling reasons why the public policy in deportation of those who have committed offences of this gravity should not be effective.

17. In short, in our judgment, this First-tier Tribunal decision is indeed a model of clarity and succinctness. It deals properly with all the matters that were before it and the Tribunal reached a determination that was reasonably open to it having regard to the facts and matters before it.

18. For those reasons, we conclude that the Tribunal committed no error of law in reaching the determination that it did and the appeal is dismissed and the determination of the First-tier Tribunal is affirmed.

Signed Date

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