Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00649/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 19 October 2015	**On 21 October 2015**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SC
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr K. Norton, Senior Home Office Presenting Officer
For the Respondent: Ms A. Smith, Counsel instructed by Birnberg Peirce & Partners

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order but make clear that anonymity has not been granted in order to protect the respondent's reputation following his convictions for criminal offences. Unless and until a tribunal or court directs otherwise, the respondent is granted anonymity. No report of these proceedings shall directly or indirectly identify

him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Background

1. For the sake of continuity I will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.

2. The appellant appealed against the respondent's decision to make a deportation order under section 32 of the UK Borders Act 2007 following a number of convictions for a variety of offences. The index offence that led to the deportation decision was a conviction for assault occasioning actual bodily harm for which the appellant was sentenced to a period of two years detention in a young offenders institution. First-tier Tribunal Judge Kamara allowed the appeal in a decision dated 06 March 2015.

3. The respondent's grounds of appeal seek to challenge the decision on the following grounds:

   (i) The First-tier Tribunal Judge erred in her findings relating to the availability of internal relocation [38]. She conflated the proper test as outlined in *Januzi v SSHD* [2006] UKHL 5 with issues associated with the appellant's health. There was no finding relating to the availability of healthcare in rural locations.

   (ii) Similarly, the First-tier Tribunal Judge erred in her findings relating to the exception to deportation outlined in paragraph 399A of the immigration rules. She conflated the issue of the appellant's health (without making findings relating to the availability of treatment) with the appellant's ability to integrate [48].

   (iii) The First-tier Tribunal Judge erred in apparently seeking to make a "freestanding" assessment of Article 8 outside the rules [49-67]. At the hearing Mr Norton confirmed that he no longer relied on the point in the form stated in the original grounds but argued that the error made in relation to the second ground would infect any findings made in relation to the First-tier Tribunal Judge's overall proportionality assessment.

4. The matter comes before the Upper Tribunal to determine whether the First-tier Tribunal decision involved the making of an error on a point of law.

5. I heard submissions from both parties, which have been noted in my record of proceedings and where relevant are incorporated into my findings.

Decision and reasons

6. After having considered the grounds of appeal and oral arguments I am satisfied that the First-tier Tribunal decision did not involve the making of an error on a point of law.

7. The First-tier Tribunal Judge set out the appellant's immigration history, his history of criminal offending and the reasons for deportation [2-6]. She went on to conduct a careful and detailed analysis of the evidence before her and gave clear reasons to explain what weight she placed on each piece of evidence [14-34]. No challenge has been made to those findings of fact. It appears that there was no real dispute as to the appellant's history of criminal convictions or the conclusions drawn by the professional risk assessments. She gave clear and cogent reasons for concluding that the appellant had failed to rebut the presumption that he posed a danger to the community and upheld the certificate that was made under section 72 of the Nationality, Immigration and Asylum Act 2002 ("the NIAA 2002") [30-32].

8. The appellant had been recognised as a refugee in line with his mother in October 2003 when he was just 11 years old. Because she had found that the section 72 certificate applied the First-tier Tribunal Judge quite rightly concluded that the appellant could only rely on human rights grounds to resist deportation and went on to consider whether the appellant would still be at real risk of serious harm if returned to his country of origin for the purpose of Article 3 of the European Convention of Human Rights ("ECHR"). In assessing whether there was evidence to show that the appellant would continue to be at risk the First-tier Tribunal Judge took into account the findings made by the Tribunal in his mother's successful asylum appeal in September 2003 [23]. She also explained in some detail why she placed weight on the expert psychological assessment carried out by Ms Kralj [25-28]. She also took into account social services records as part of her overall assessment of the appellant's difficult family situation and past history of abuse. Those findings are not challenged, were well reasoned and were open to the First-tier Tribunal Judge on the evidence.

9. After having conducted a careful review of the evidence the First-tier Tribunal Judge concluded that she accepted the appellant's account of past ill-treatment in his country of origin and concluded that he had been targeted as a result of his mother's sexual orientation [34]. She also accepted that the evidence showed to the low standard of proof that his mother and other members of the family had suffered various attacks in the past, both in his country of origin and in the UK [34-35]. She made clear reference to the background evidence relating to the situation for those who are gay in the appellant's country of origin, and in light of that evidence, it was open to her to conclude that the situation had not changed in any significant way since the appellant and his mother were recognised as refugees [33]. The First-tier Tribunal Judge quite properly considered all relevant matters in the round, including the appellant's own past history of abuse, and concluded that there continued to be a real risk of the appellant suffering serious harm as a result of his mother's sexual orientation if he were to be removed to his country of origin [36].

10. Having found that the appellant and his mother had been subjected to ill-treatment amounting to serious harm in the past the First-tier Tribunal Judge's findings in paragraph 36 were consistent with the approach outlined in paragraph 339K of the immigration rules, which states that the fact that a person has been subjected to persecution or serious harm in the past will be regarded as a serious indication of the person's real risk of suffering serious harm unless there are good reasons to consider that such serious harm would not be repeated.

11. The First-tier Tribunal Judge went on to consider whether the authorities in the appellant's country of origin were able and willing to provide effective protection. She directed herself to the relevant country guidance and in light of that guidance it was open to her to conclude that no effective protection was likely to be available to the appellant in his country of origin [37]. The respondent does not seek to challenge any of the findings outlined above.

12. The respondent focuses her challenge on the First-tier Tribunal Judge's subsequent findings relating to whether the appellant could avoid serious harm through internal relocation. Her findings on this issue are contained in paragraph 38 of the decision:

> "38. In terms of the issue of internal relocation, I do not accept that it is reasonable to expect the appellant to seek to reside in another area of Jamaica in order to avoid his own and his mother's persecutors. The appellants' only links in Jamaica are in the area of Kingston where he used to live with his mother and maternal grandparents. Neither remain in Jamaica. Firstly, the appellant has not lived in Jamaica since 2001, visited the country subsequently or been in contact with any party there. Secondly, the appellant is deeply traumatised and in need of long-term psychological treatment (he is also described by Ms Kralj as institutionalised) and thirdly, most employment opportunities are likely to be available in the capital. Therefore, in order to avoid persecution, the appellant would be faced with moving to a rural location in order to avoid the general population, where he would be unsupported, homeless, destitute, unemployed and in need of psychological treatment."

13. Mr Norton argued that these findings were either flawed or inadequate. The fact that the appellant had not been to his country of origin since 2001 was irrelevant to whether it would be reasonable to relocate to a rural area. There were no findings as to whether healthcare would be available in the area of relocation. He said that the reasoning was inadequate to show that internal relocation "gives rise to an Article 3 breach". He said that the test set out in *Januzi* is a stringent test and the First-tier Tribunal Judge had failed to consider the relevant issues properly.

14. I find that the First-tier Tribunal Judge's reasoning discloses no material error of law. She referred herself to the correct test set out in *Januzi* i.e. whether there was a safe area, and if there was, whether it was reasonable to expect the appellant to relocate to another area of a small island in order to avoid serious harm. It is clear from her findings that she considered whether it would be possible for the appellant to relocate to a

rural location in particular because it would be necessary "in order to avoid the general population". Her findings in paragraph 38 cannot be considered in isolation. The background evidence, which she had already considered, showed that there is widespread discrimination and violence against LGBT people and she had accepted that this extended to family members in this case. As such it was reasonable for her to infer that the only possible area of safety might be a rural area. That conclusion was open to her on the evidence.

15. Paragraph 339O of the immigration rules makes clear that consideration of the availability of internal relocation is the same in an asylum claim as well as in a claim for humanitarian protection (which includes a claim to be at risk of serious harm for the purpose of Article 3 of the ECHR). In examining whether a person should reasonably be expected to stay in another part of the country of origin the respondent will have regard to (i) the general circumstances prevailing in that part of the country and (ii) to the personal circumstances of the person. This approach is entirely consistent with the test outlined in Article 8 of the Qualification Directive (2004/83/EC) and the authorities, UNHCR guidance and academic papers considered by the House of Lords in *Januzi* [20].

16. Mr Norton is correct in saying that each of the factors outlined by the First-tier Tribunal Judge in paragraph 38 would not, taken alone, be sufficient to conclude that internal relocation would be unreasonable. However, it is clear from an overall reading of the decision, which informs the findings at paragraph 38, that the First-tier Tribunal Judge applied the correct test of "reasonableness", had considered the general circumstances prevailing in the country of origin and had also considered the appellant's personal circumstances. It was not necessary for the First-tier Tribunal Judge also to make findings relating to the availability of medical treatment in the possible area of relocation. In arguing this the respondent conflates the test that should be applied in an Article 3 case brought solely on medical grounds with the more holistic assessment required when assessing whether it would be reasonable, in the circumstances of a particular appellant, for them to seek safety through internal relocation.

17. The First-tier Tribunal Judge accepted the appellant's past history of abuse and serious harm, and had given weight to the psychological assessment of Ms Kralj, which indicated that he was "deeply traumatised". It was open to the First-tier Tribunal Judge to make a cumulative assessment of a number of factors that, taken as a whole, rendered internal relocation unreasonable. The fact that the appellant had not lived in his country of origin since he was 10 years old, had no remaining links to the country, was vulnerable as a result of past persecution, and that it was reasonable to infer that he could only avoid persecution by going to a rural area where employment opportunities would negligible compared to urban areas, were all matters that the First-tier Tribunal Judge was entitled to take into account. For these reasons I conclude that is not arguable that the First-tier Tribunal Judge's findings relating to internal relocation were flawed for lack of reasoning or disclose any material errors of law.

18. Having found that the First-tier Tribunal Judge's findings relating to risk on return under Article 3 do not disclose any errors of law I find that, even if her findings relating to the appellant's private life under Article 8 could be criticised, any potential errors would not be material to the overall outcome of the appeal because the appellant succeeds on Article 3 grounds. In any event, the grounds relied on a similar point relating to the assessment of healthcare facilities, but for the same reasons given above, it was open for the First-tier Tribunal Judge to consider the appellant's circumstances as a whole before concluding that there were very significant obstacles to reintegration.

19. The appellant's appeal against deportation has been allowed on human rights grounds but it is clear why a deportation decision was made given his history of persistent criminal offending and the current risk assessments. The evidence shows that the appellant has had a very difficult, violent and traumatic childhood. Although his past experiences of extreme violence may have informed some of his aggressive and violent offending behaviour it provides no excuse for the offences that he committed. Ms Kralj's report states that he would benefit from treatment for his significant and enduring symptoms of Post-Traumatic Stress Disorder as well as other forms of support and assistance. The appellant would be wise to seek professional advice and assistance as soon as possible in order to help him try to overcome his past experiences and reform his behaviour. If he does not take steps to tread a different path it will be open for the respondent to review the position if he were to be convicted of further criminal offences in future, especially if they were of a serious nature.

20. I conclude that the First-tier Tribunal decision did not involve the making of a material error on a point of law and that the decision shall stand.

DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law

The First-tier Tribunal decision shall stand

The respondent's appeal to the Upper Tribunal is dismissed

Signed  Date 21 October 2015

Upper Tribunal Judge Canavan