**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: DA/00828/2014

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 12th March 2015** | **On 26th March 2015** |
| **(Extempore Judgment)** | |

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MR RUPERT JUNIOR GEDDES**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr P Ibhakgbemien (A&C Solicitors)
For the Respondent: Ms K Pal (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a Decision and Reasons of First-tier Tribunal Judge Brown, promulgated on 19th November 2014 following a hearing at Taylor House on 13th November 2014.

2. The facts of the case are that the Appellant, now 25 years old, is a citizen of Jamaica. He came to the UK as quite a young child in 1996. Initially he had no leave but he was granted Indefinite Leave to Remain in 2002. In January 2007, when he was 17½ approximately, at Inner London Crown Court he was convicted of wounding with intent to cause grievous bodily harm and sentenced to six years' detention in a young offenders institution. There were also two warnings recorded against him on previous occasions but those are not particularly relevant to these proceedings.

3. As a result of that conviction the Secretary of State made a Decision to deport him. That Decision was made under the 1971 Act under Section 3(5)(a) on the basis that his deportation was conducive to the public good. It was not made under the UK Borders Act 2007, Section 32 and quite simply the reason for that is because as the Appellant was under the age of 18 at the date of conviction the Secretary of State could not invoke that procedure because of Section 33(3).

4. The Appellant's appeal against the Decision to deport him was that which came before Judge Brown and it is his Decision to dismiss the appeal which is under challenge today. The grounds seeking permission to appeal are three in number. I shall take them in the order they appear in the grounds rather than the order that they have been addressed today.

5. The first ground argues that the Judge failed to properly consider the exceptions in Section 117C of the Nationality, Immigration and Asylum Act 2002 as it has been amended by Section 19 of the Immigration Act 2014. The grounds argue that because the Appellant has been in the UK for most of his life and integrated into the UK there are significant obstacles to his removal and therefore the appeal should have been allowed. The grounds say that it is clear from the facts of the case and from the arguments put forward that he had spent most of his life in the UK, coming at the tender age of 5 (7 in the determination) and has not left the UK since. The grounds also say it is clear that there would be significant obstacles to his family life continuing in Jamaica which has been proved on the balance of probabilities.

6. Before me it was argued that there were very compelling circumstances in this case on the basis that the Appellant has spent most of his life here, that he has no connection whatsoever to Jamaica, that all his contacts are in the UK and that it would be unduly harsh for him to be deported. He said there were insurmountable obstacles to his starting life over in Jamaica. It would be difficult for him to find a job. He would not have means to survive whereas here he has a livelihood. His partner, he argued, because she was a recognised refugee from Syria prior to being granted British citizenship, would be unable to live in Jamaica with him.

7. There are a number of difficulties with the claims with regard to Section 117C. Section 117 has to be taken into account when considering proportionality. Section 117B contains matters which have to be taken into account in every case and Section 117C contains the additional factors that must be taken into account when looking at deportation. Section 117C also distinguishes between deportation of a foreign

criminal who has committed an offence for which he was sentenced to less than two years, more than two years and more than four years.

8. For a foreign criminal who has been sentenced to in excess of four years there is a very stringent test and we are told in the Statute that the public interest requires deportation unless there are very compelling circumstances over and above those that are described in the two exceptions. The first exception (s.117C(4)) which Mr Ibhakgbemien argued applied is that (a) the Appellant had been lawfully resident in the UK for most of his life, (b) is socially and culturally integrated in the UK and (c) there would be very significant obstacles to the Appellant's integration into his home country.

9. In this case (a) and (b) are clearly satisfied. The issue is (c); whether there are very significant obstacles, not obstacles, not significant obstacles, but very significant obstacles to his integration. That is a very different test than saying that it is not fair or it is harsh to remove him because he is used to life here; he is settled here. The issue is whether he can integrate in Jamaica and the Judge in the Decision refers to the following facts:- the Appellant is of Jamaican origin; he has a brother in Jamaica who he does not believe the family has lost contact with; he is young and healthy; he has been working in the UK and there is no reason why he could not do so in Jamaica; he speaks the language. The Judge found there are no significant obstacles and certainly no very significant obstacles. Thus even had he been sentenced to less than four years imprisonment the exception contained in s.117C(4) would not have availed him. As he has been sentenced to more than four years he would have to show factors over and above those contained in the exception. There are none.

10. The second exception (s.117C(5)), although before me the two have been conflated together, relates to a relationship with a qualifying partner or a genuine and subsisting parental relationship with a qualifying child and that the effect of the applicant's deportation would be unduly harsh, not on the applicant but on the qualifying partner or the children. In this case they are all qualifying because they are British citizens. However, as the Judge pointed out in the Decision the children in this case are very young, the language in Jamaica is English, the removal of the Appellant, who the Judge considered did have a genuine relationship with the children, would no doubt be harsh; it would not be unduly harsh. Similarly, whilst neither the partner nor children can be required to leave the UK and indeed they are not; it is a matter of choice for them whether or not they go to Jamaica with him. If they wish to continue family life with him there is no reason why they cannot go to Jamaica. The bare assertion that the Appellant's partner cannot go to Jamaica because she was a refugee from Syria has no merit whatsoever. She is a British citizen; she can travel; she can make application to remain with her Jamaican partner and the children. The children may well also be Jamaican citizens. There is no error of law in relation to Section 117.

11. Although not referred to in the grounds, reference was made to Section 55 before me, no doubt because it was referred to by the Judge granting permission. Section 55 of course is a requirement that the best interests of the children have to be considered as

a primary consideration. Section 117 takes that into account because one of the exceptions refers to children. The Judge did not make specific reference to Section 55. However, I find that even had he done so it could have made no difference whatsoever. Taking it at its highest, the best interests of the children in this case require the Appellant to stay in the UK. However, taken cumulatively, all of the other factors, particularly the fact that the Appellant was sentenced to six years imprisonment and therefore was guilty of a very serious offence required his deportation and outweighed the best interests of the children.

12. The second ground on which permission was sought was that the Judge applied the law incorrectly and that the Secretary of State had no power to deport him under the UK Borders Act 2007 because he was under 18 at the date of conviction. That displays a breathtaking ignorance of what this case was about because it is quite clear from the Letter of Refusal that the Secretary of State was well aware of that fact, which is why this was a conducive deport, not one taken under the provisions of the UK Borders Act 2007. There is no error there.

13. Thirdly, there is reference to the Judge making an error of fact in his Decision on the basis that he said that the applicant was last in Jamaica at age 16 and it is asserted that he has not travelled to Jamaica since he came to the UK as a young child. I find that a rather curious assertion because it is clear from the Record of Proceedings of the hearing where the same representative represented the Appellant that in cross-examination by the Presenting Officer the Appellant said: "Brother deported to Jamaica after his conviction. Mother, auntie, uncle, sister in the UK. Back to Jamaica when my father died when aged 16. Not back since." That clearly was his evidence and therefore there is no error in the Judge referring to it.

14. Overall the Judge in this case has taken all the factors into account which he was required to. The barrier to climb for anyone convicted and sentenced to more than four years is extremely high. Section 117C(6) makes clear that the existence of children and the Appellant's deportation being unduly harsh on them in itself is not enough. There is nothing additional about this case that would warrant the appeal being allowed. Therefore I find that there is no material error of law in the Decision and Reasons of the First-tier Tribunal Judge. I uphold the Decision.

15. I would add that the ignorance I refer to at paragraph 12 above seems to have found its way into the Judge's mind as well because at paragraph 30 he said that the deportation was correctly made under Section 32 of the UK Borders Act. That is a mistake on his part but it is absolutely immaterial as at the end of the day the deportation is lawful, not having been made under that Act and the error does not taint the remainder of his findings.

16. For all those reasons the appeal to the Upper Tribunal is dismissed.

Signed Date 25th March 2015

Upper Tribunal Judge Martin