Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01336/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 13th August 2015	**On 26th August 2015**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR STEVEN JARED MARTIN SPRINGER
(Anonymity Direction not made)

Respondent

Representation:
For the Appellant: Mr K Norton (Senior Home Office Presenting Officer)
For the Respondent: Ms S Iqbal (Rana & Co Solicitors)

DETERMINATION AND REASONS

1. This appeal by the Secretary of State to the Upper Tribunal first came before me on 15th May 2015.

2. The Appellant before the First-tier Tribunal, Mr Springer, as a citizen of Trinidad and Tobago born on 7th October 1992 and he had appealed against the Secretary of State's decision to deport him.

3. In my decision following the initial hearing on 15th May 2015 I noted that Mr Springer had come to the UK with all of his immediate family aged four

and had remained since. The whole family had Indefinite Leave to Remain. By the time of the hearing before the First-tier Tribunal the Appellant was in a relationship with a young British woman. She lived with her parents, not the Appellant. The First-tier Tribunal had found that it would be unduly harsh for her to live in Trinidad and Tobago because of compelling circumstances over and above those described in paragraph 6.2 of appendix FM. It thus found the requirements of paragraph 399 (B) met. It also found that it would be unduly harsh for Mr Springer's girlfriend to remain in the UK without him.

4. The Secretary of State challenged that finding in her lengthy grounds seeking permission to appeal to the Upper Tribunal.

5. I found that the First-tier Tribunal had erred in allowing the appeal in that it had failed to attach any weight to the public interest in deportation and failed to explain why this relationship was such as to engage the exception. The relationship between the Appellant and his girlfriend amounted to no more than that; a relationship between boyfriend and girlfriend and of relatively short duration. They did not live together and thus it could not be said that removing Mr Springer would be unduly harsh on his girlfriend. Her family life was with her parents and the First-tier Tribunal had not given adequate reasons for its conclusion that the exception applied.

6. On that basis I found a material error of law in the First-tier Tribunal's decision and set it aside. I noted however that the panel had also erred in failing to give any consideration to the exception contained in paragraph 399A which clearly require consideration given the length of Mr Springer's residence in the UK.

7. Having set aside the decision the First-tier Tribunal I directed that there be a resumed hearing on the matter of whether paragraph 399A and section 117C (iv) of the Nationality, Immigration and Asylum Act 2002 applied.

8. I also directed both parties to provide any evidence on which they relied including witness statements and skeleton arguments 14 days prior to the resumed hearing.

9. As is regrettably all too often the case, neither party complied with those directions and I had neither skeleton arguments nor any further evidence. As a result the hearing on 13th August was on the basis of submissions only.

10. Hereafter, for the purposes of clarity and continuity, I shall refer to Mr Springer as the Appellant and to the Secretary of State as the Respondent.

11. The background to this case is as follows:-

12. The Appellant entered the United Kingdom in 1997 and was given leave to remain until March 1999. He was granted indefinite leave to remain in line with his mother in May 2000.

13. The Appellant's offending started on 12th September 2007 when he was aged 14 and continued until the offence which resulted in the decision to deport him on 4th April 2013. Between those dates he amassed 17 convictions for 19 offences. His offences included offending whilst on bail and drugs offences. On several occasions he gave false names and different dates of birth and it is fair to say that his offending has escalated in gravity. I set out his record:-

    (i) 12 September 2007 - Theft from a person - Referral Order, 8 months

    (ii) 17 December 2008 - Affray - Community Rehabilitation Order, 12 months Community Punishment Order, 40 hours

    (iii) 14 January 2009 - Theft-shoplifting - Community Order, 12 months Supervision with a Requirement of Unpaid Work, 40 hours

    (iv) 1 April 2009 – Breach of Community Punishment Order - Order to continue

    (v) 17 June 2009 - Theft-shoplifting - Community Rehabilitation Order, 12 months - subsequently revoked

    (vi) 14 May 2010 – Robbery - Community Rehabilitation Order, 18 months, Curfew requirement, 6 months

    (vii) 28 July 2010 Destroy or damage property - Youth Rehabilitation Order, Attendance Centre Requirement, 18 hours

    (viii) 13 December 2010 - Common Assault - Conditional Discharge, 12 months

    (ix) 10 October 2011 - Failed to comply with requirements of Community Order - Order to continue and Fine

    (x) 14 October 2011 - Possessing controlled drugs with intent to supply (Class B) - Young Offenders Institution , 12 weeks suspended 12 months

    Breach of Conditional Discharge for supply of drugs - Young Offenders Institution, 12 weeks suspended for 12 months

    (xi) 1 March 2012 - Aggravated vehicle taking and Commission of offence while on suspended sentence - Young Offenders Institution, 12 weeks consecutive

    (xii) 28 March 2012 - Being carried in motor-vehicle taken without consent - Young Offenders Institution, 10 weeks consecutive

    (xiii) 18 April 2012 - Possession class B drugs with intent to supply - Young Offenders Institution, 6 weeks consecutive

    (xiv) 28 August 2012 - Possession class B drugs - Community Order, Curfew and Electronic Tagging

(xv) 29 November 2012 - Fail to comply with requirements of Community Order - Order to continue with Curfew and Electronic Tagging

(xvi) 20 December 2012 - Failing to comply with requirements of Community Order - Order revoked

(xvii) 4 April 2013 - Theft from person - 12 months Young Offenders Institution.

14. Deportation of foreign national criminals is governed by the Immigration Rules and in particular paragraphs 398 - 399 thereof. It is common ground that the provisions of paragraph 398 (B) applies to this Appellant because he has been sentenced to a period of imprisonment of less than four years.

15. It is also common ground, given my findings at the error of law hearing, that paragraph 399 does not apply to this Appellant and indeed no argument was put forward in that regard by Ms Iqbal.

16. The issue is whether paragraph 399A benefits this Appellant. Paragraph 399A applies where paragraph 398 (b) applies, as it does in this case and it applies where:-

(a) the person has been lawfully resident the UK for most of his life; and

(b) he is socially and culturally integrated in the UK; and

(c) there will be very significant obstacles to his integration into the country to which it is proposed he is deported.

17. If paragraph 399A does not benefit the Appellant paragraph 397 provides that it will only be in exceptional circumstances that the public interest in deportation is outweighed.

18. Ms Iqbal’s submissions in relation to paragraph 399A were as follows:-

19. The Appellant came to the UK at the age of four or five and has never been to Trinidad since. He has no knowledge of the culture or society there because he has never been. He has been raised in British society and his entire family is in the UK apart from four siblings who live in the United States. He is socially integrated in the UK and his education has been entirely in the UK. He has completed Cadet School and apprenticeships for personal training and has had a part-time job at a hairdressers. While he was detained he used that time to achieve awards to help him in reforming his character and gain the skills to continue to integrate into UK society. All his friends and family are in the UK and settled or British citizens. He has no family members in Trinidad. He did have a brother there but he passed away in 1999. There would be significant obstacles to his return to Trinidad as the only link he has to that country is his nationality.

20. Ms Iqbal argued that in the past the Appellant has been suicidal and has self harming issues, which he blamed on lack of parental attention as he was growing up. He had self-harming issues throughout his childhood which were witnessed by the police, as evidenced in the bundle, when he was aged 14 or 15. His evidence is that his self harming behaviour started when he was very young because of problems he had at home and also racism that he encountered at school. He has significant psychological issues and attention seeking behaviour. He suffers from panic attacks.

21. In relation to the submission as regards the Appellant's mental health I note that there is no medical evidence before me in the form of a psychologist's or psychiatrist's report, only medical notes which do not support the claim that he has serious psychological or psychiatric issues.

22. Miss Iqbal then referred me to a document in her bundle entitled "Beyond Boundaries" which she relied upon as indicating that persons deported to the Caribbean suffered problems. However, a proper reading of that document indicated that the discrimination suffered was by the deporting country, not the receiving country.

23. Mr Norton's submissions were based on paragraph 399A (b) and (c). He accepted that the Appellant has been lawfully resident in the UK for most of his life. He submitted that he could not be said to have integrated in the UK because integration involves being a member of society which carries a two-way obligations. The number and frequency of his convictions does not show that the Appellant kept his side of the contract and thus he cannot be said to be socially integrated.

24. With regards to integration in Trinidad, he submitted that there were no very significant obstacles and that such medical evidence as there was, was self reported.

25. Miss Iqbal responded to those submissions with regard to integration being a two-way contract arguing that the Appellant had from a very early stage admitted his crimes and taken his punishment and has now taken very significant steps to reform himself as evidenced by the certificates that he earned whilst in detention. He had shown significant remorse and used his time in detention positively. If he were to be deported he would be expelled from everything that he has ever known, which would amount to a life sentence for crimes that he has already served time for. She argued that the justice system in the UK aims to rehabilitate offenders and is very successful at that and in the five months since he has been released from detention he has not been in trouble. She referred to the fact that when attacked in detention he did not retaliate and argued that he no longer presents a threat to society. She argued that the justice system has clearly worked in that it has reformed him such that he is now of good character. She argued there were significant obstacles to his integration in Trinidad given that his only link with that country is his nationality and she submitted he did indeed satisfy the requirements of paragraph 399A of the Rules.

26. I am greatly assisted in this case by the wisdom of my colleagues in the Upper Tribunal in the case of Bossade (ss. 117A-D-interrelationship with Rules) [2015] UKUT 00415 (IAC). In that case the Tribunal was dealing with an Appellant in a similar situation to this one. He had come to the UK as a child and had been living here lawfully and had been educated here. In that case the country of removal was the DRC and unlike the Appellant in this case, he did not speak the language of the country.

27. At paragraph 24 of its judgement the Upper Tribunal indicated that the gravamen of the new paragraph 399A (b) is integration in the UK. Integration must be shown to exist in two respects: social and cultural. Neither one nor the other is sufficient. The term integration imports a qualitative test: in order to assess whether a person "is" socially and culturally integrated in the UK, one is not simply looking at how long a person has spent in the UK or even whether that period comprises lawful residence: the fact that the Appellant spent some or all of his time in the UK unlawfully may be of relevance in deciding whether he has integrated in these two ways.

28. At paragraph 25 of the judgement the Upper Tribunal held that the new Rules (398 & 399) “make even clearer than the pre-28 July 2014 Rules that the deportation of foreign criminals is always in the public interest and can only be outweighed in very limited circumstances. In general terms the imposition of a custodial sentence is an indication that the person concerned does not respect the values of the host society (cf in the context of EU law on deportation of foreign criminals, Case C-400/12 Secretary of State v MG ECJI: EU: C 2014:9 at [31]). Further, whilst in prison a person cannot be a useful member of society at large, during that time such person cannot as a general rule show integration to society”.

29. So far as 399A (c) is concerned it is made clear that the new rules are far stricter than the old. There must be “very significant obstacles. The Upper Tribunal in Bossade, said at paragraph 57, that the paragraph 399A (c) test is more stringent: it is not met simply by showing, that a person has no close family ties in the country to which it is proposed he is deported; it requires "very significant obstacles to ... integration" to be shown.

30. In Bossade, notwithstanding the fact the Appellant did not speak the language of the Democratic Republic of Congo, he did not have issues of physical or mental disability to prevent him from learning the language and whilst he identified with British culture rather than that of the Democratic Republic of Congo that would not prevent his integration.

31. I agree with the Secretary of State's view in this case that the Appellant cannot be said to have integrated into British society. He has a very long history of offending behaviour which is escalating in its gravity. He has not been a useful member of society from the age of 14 to date. He has wholly rejected the values of UK society by committing crimes, many of which involve breaches of previous punishment orders and neither has he contributed to the UK in any useful way. There is no evidence that he has

had any meaningful employment and indeed given the frequency of his offending that would have been difficult. I reject the submission that the fact that he has not offended for five months indicate he is a reformed character.

32. Neither do I find there to be very significant obstacles to his integration in Trinidad. He speaks the language and is of Trinidadian nationality and ethnicity. The skills he has acquired in the UK will be of benefit to him there. I reject as entirely speculative that he would suffer discrimination there and there is no credible evidence that he has physical or mental health issues that would prevent integration.

32. For these reasons I find that the Appellant in this case does not meet the requirements of paragraph 399A in full, in particular he does not fulfil the requirements of either paragraph 399A (b) or (c).

33. The Appellant is only able to succeed in avoiding deportation if he is able to show pursuant to paragraph 398 that the public interest in deportation is outweighed by very compelling circumstances over and above those described in paragraphs 399 and 399A. In this case there are none and indeed none were argued in front of me.

34. The Secretary of State's appeal to the Upper Tribunal is allowed such that the Appellant's appeal against the Secretary of State's decision to deport him is dismissed.

Signed Date 24th August 2015

Upper Tribunal Judge Martin

Direction regarding anonymity

There was no application anonymity in this case and I see no justification in making such a direction.

Signed Date 24th August 2015

Upper Tribunal Judge Martin