



IAC-FH-NL-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/26847/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 24 February 2016**

**Decision &
Promulgated
On 16 March 2016**

Reasons

Before

**THE HONOURABLE LORD BURNS
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
DEPUTE UPPER TRIBUNAL JUDGE MAILER**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ROGER NATHAN SUUBI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Duffy, Home Office Presenting Officer
For the Respondent: Mr J Elliott-Kelly, Counsel instructed by Owens Stevens Solicitors

DECISION AND REASONS

1. This is the appeal of the Secretary of State (to whom we shall refer as the respondent) against the decision of the First-tier Tribunal promulgated on 11 September 2015 allowing the appellant's appeal against her decision to revoke his indefinite leave to remain.

2. The appellant is a citizen of Uganda born on 15 July 1990. He arrived in the United Kingdom in February 2000 aged 7 months and his family were granted indefinite leave to remain. In July 2010 he was convicted of four counts of possession of a prohibited firearm and possession with intent to supply diamorphine and cocaine. He was sentenced to three years' imprisonment following pleas of guilty. The sentencing judge found exceptional circumstances and did not therefore impose the minimum sentence of five years in respect of the firearms charge. The appellant served eighteen months and was released in November 2011 on licence.
3. The Secretary of State made a deportation order against him in May 2012 which he appealed unsuccessfully to the First-tier Tribunal. However, his appeal to the Upper Tribunal was allowed. The Upper Tribunal judge found that his removal to Uganda would be in breach of his rights under Article 8 of the European Convention of Human Rights. That decision was promulgated on 7 January 2013.
4. On 9 June 2014 the respondent decided to revoke the appellant's indefinite leave to remain under Section 76 of the Nationality, Immigration and Asylum Act 2002. He appealed that decision to then First-tier Tribunal on the basis that that decision also breached his rights under Article 8.
5. In the determination the First-tier Tribunal sets out the offences of which the appellant was convicted, describing them correctly as "serious offences" and noted that, since his release from prison in 2011, he had started a drama course in Essex University in October 2013. The course was of three years duration. He had obtained loans for tuition and maintenance in order to allow him to do so. It was also noted that he had got good grades for studies as set out in paragraph 15 of the determination. The removal of the appellant's indefinite leave to remain would mean that he would be unable to obtain funding for his final year at university and thus would be unable to complete his course. Accordingly it was found that there would be interference with his Article 8 rights. He would have lost the benefit of two years of study. He would have to seek a further purpose in life as he had built his rehabilitation around hopes of a future acting career. He had committed no further offences since his single conviction in 2010. He had been free of probation supervision for more than two years and had not been considered to be of any concern by the probation authorities.
6. In those circumstances the First-tier Tribunal Judge described the public interest in revocation of his indefinite leave to be "rather weak in the circumstances" and to be outweighed by the impact that decision would have on his life in the United Kingdom and future career. Accordingly, the judge found that the decision to revoke indefinite leave to remain to be disproportionate.
7. Mr Duffy for the respondent submitted before us that the First-tier Tribunal had erred in law. Since the Secretary of State's decision to revoke

indefinite leave was replaced by limited leave to remain, he would not be required to leave the United Kingdom. Accordingly interference with private life would be minimal. He pointed out that, in terms of Section 76 of the Nationality, Immigration and Asylum Act 2002, the Secretary of State had a wide discretion to revoke indefinite leave to remain since the appellant was liable to deportation but could not be deported for legal reasons. He was a foreign criminal and these were weighty considerations which justified the decision of the Secretary of State in this case. There was no adequate reasoning why the First-tier Tribunal Judge concluded that the Secretary of State's decision was disproportionate. The appellant would be able to continue to work with limited leave to remain albeit he would not be eligible for further student loans.

8. Ms Elliott-Kelly for the appellant pointed out that this challenge was one to the First-tier Tribunal's assessment of proportionality. She submitted that the conclusion to which the judge had come was entirely open to him on the facts found established. The appellant's previous criminal offending had been taken into account as were the original sentencing judge's remarks together with the assessment reports on the appellant.
9. As to the criticism that the judge had no regard to the public interest in the appellant being financially independent, that was of no materiality in the current case since the appellant had been eligible for a loan from the student finance organisation and was committed to repaying that loan in the future. He was thus not someone who was financially dependent upon the state. There was no direct reference to this issue in the determination but the judge refers to Section 117B in paragraph 32. In any event, even if that matter had not been taken into account, it did not constitute a material error in law.
10. We do not consider that the determination of the First-tier Tribunal Judge contains a material error of law. He had regard to the nature of the serious offences to which the appellant had pled guilty. These were tempered by the fact that he had remained out of trouble since his release in 2011 and had made substantial efforts in rehabilitation by attending his drama course at university. The consequence of revoking indefinite leave to remain would undoubtedly have the consequence that he would have to abandon his course and lose the benefit of at least two years study. That in turn would endanger the progress in rehabilitation that he had made. In our view, the judge was entitled to reason in that way and to conclude that the public interest element was outweighed by the impact on the appellant's life and future career. Such a conclusion was one which was open to the First-tier Tribunal Judge.
11. We also consider that, in the circumstances, if there was a failure to have regard in particular to the public interest consideration that the appellant was not a burden on taxpayers, that consideration was not a material one in the circumstances. This was not a case of someone in receipt of public

funds in the form of state benefits. He was in receipt of loans which are due to be repaid.

12. For these reasons we do not consider that the First-tier Tribunal fell into error and we will refuse this appeal.

Notice of Decision

The appeal is refused.

No anonymity direction is made.

Signed

Date

Lord Burns
Sitting as a Judge of the Upper Tribunal

**TO THE RESPONDENT
FEE AWARD**

We have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Lord Burns
Sitting as a Judge of the Upper Tribunal