



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

Appeal Number: HU/13605/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29<sup>th</sup> November 2017**

**Decision & Reasons Promulgated  
On 13<sup>th</sup> December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PARKES  
THE HONOURABLE LORD MATTHEWS  
(SITTING AS AN UPPER TRIBUNAL JUDGE)**

**Between**

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

Appellant

**and**

**MR SAMUEL AUGUSTUS WILSON  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms Heybroek

For the Respondent: Ms C Avery

**DECISION AND REASONS**

1. The Appellant, born on the 1<sup>st</sup> April 1973, is a citizen of Jamaica, and is male. Although he is in fact the Respondent for the purposes of the appeal before us, this being an appeal by the Secretary of State, we will continue to refer to the parties as they were in the First-tier Tribunal below.
2. The background to the case is the Mr Wilson who has been in the UK since 2001 was convicted on his own plea on the 4<sup>th</sup> August 2013, the day that

had been set down for trial when he pleaded guilty to an offence of occasioning actual bodily harm contrary to Section 47 of the Offences Act 1861. That was on the basis that he had acted in excessive self-defence. That was a plea on the day of trial and accordingly attracted very limited credit from the Sentencing Judge.

3. It is interesting to note that the facts that we have in relation to this are set out in the Court of Appeal Criminal Division's summary for an appeal against sentence, that is set out in paragraph 39 of the First-tier Tribunal decision. As it is clear from there, and we do not have to repeat it verbatim, that somebody had gone to the appellant's house armed and with a Staffordshire Bull Terrier and the appellant then left the house causing injuries described as "... a number of cuts to the scalp, hands and back. It was fortuitous that the injuries inflicted were not considerably worse".
4. In refusing the Appellant's application for further leave to remain on the basis of his family life the Secretary of State decided that he did not meet the suitability requirement because in paragraph 13 of her refusal letter she said this:

"It is noted that you have previously received convictions for criminality. These convictions were for offences relating to possession of a knife blade/sharp pointed article in a public place and assault occasioning actual bodily harm, for which you were sentenced on 18 November 2014 to imprisonment for 9 months by Maidstone Crown court. Taking this into account it is deemed your presence in the United Kingdom is not conducive to the public good because your offending has caused serious harm, as well as the fact your criminal conduct makes it undesirable to allow you to remain in the United Kingdom."

"Serious harm" is defined as follows:-

"An offence that has caused serious harm" means an offence that has caused serious physical or psychological harm to a victim or victims, or that has contributed to a widespread problem that causes serious harm to a community or society in general."

We note that paragraph 13 of the refusal letter makes no reference to the widespread problem to a community or society in general and pinned its colours firmly to the "serious harm" mast.

5. We are entirely satisfied that not only was paragraph 13 of the refusal letter unreasoned in her claims and conclusion that there was serious harm, but even if there had been some form of reasoning that will not have withstood any rationality challenge. There was a clear difference between a serious offence or behaving badly and the harm that it causes. The injuries described by the Court of Appeal as we described a moment

ago, we are more than satisfied, cannot be described as “serious harm”. The decision was therefore open to the Judge to make that the findings that were set out in his decision from paragraphs 36 onwards. It follows from that that the Appellant would meet the suitability requirements of Appendix FM and that is a very weighty consideration in the proportionality exercise.

6. The Judge was entitled to find on the basis that we have just outlined that the Appellant not having caused serious harm was suitable to remain and therefore removal would be a disproportionate interference with his article 8 rights and those of the family as well. Accordingly the Secretary of State’s decision was wrong, and the decision of the First-tier Tribunal is upheld.

#### NOTICE OF DECISION

The appeal of the Secretary of State is dismissed.

No anonymity direction is made.

Signed

Date 13<sup>th</sup> December 2017

Deputy Upper Tribunal Judge Parkes