Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06228/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 November 2017	**On 26 April 2018**

Before

THE HONOURABLE LORD MATTHEWS
SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CHRISTOPHER ANTHONY GREEN
(anonymity direction not made)

Respondent

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

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter "the claimant", against the decision of the appellant, hereinafter "the Secretary of State" on 5 May 2017 refusing him leave to remain on human rights grounds.

2. The claimant is subject to automatic deportation and he made no response to a notice given to him on 20 April 2017 informing him that the Secretary of State considered him to be a person to whom Section 32(5) of the UK Borders Act 2007 applied and inviting him to show that he fell under one of the specified exemptions set out in Section 33 of that Act.

3. The Secretary of State was given permission to appeal on grounds extending to nine substantive paragraphs but they are all essentially variations on the same theme. It is the Secretary of State's case that the judge's decision did not show proper regard to the requirements of Section 117C of the Nationality, Immigration and Asylum Act 2002. This Section and sub-Section should be well-known to immigration practitioners but for convenience we set out below the terms of Section 117C(6):

> "In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2."

4. We consider his criminal record in more detail below but the claimant was sentenced to 4 years detention in an institution for young offenders on 27 March 2015 for possessing heroin and crack cocaine with intent to supply. It is clear from Section 117D(4)(c) that such a sentence is within the meaning of "imprisonment" under Section 117C(6).

5. Exception 1 applies where the person can satisfy three conditions, namely lawful residence in the United Kingdom for most of his life, being socially and culturally integrated in the United Kingdom and there being "very significant obstacles to his integration into the country to which he will be deported". Exception 2 applies where the person to be deported has a "genuine and subsisting relationship with a qualifying partner" or a child and the effect of deportation on the partner or a child would be unduly harsh.

6. We consider the learned First-tier Tribunal Judge's decision in some care below but the short point is that he was satisfied that this is a case where there are "very compelling circumstances, over and above those described in Exceptions 1 and 2" of the kind required by the Act.

7. The Higher Courts have been critical of judges who have apparently ignored the provisions of Section 117C(6). We make it clear that this is not such a case. It is apparent beyond all possible argument that the First-tier Tribunal had in mind the requirements of that Section. The criticism is not of any failure to follow relevant legislation. The criticism is that it was not followed lawfully. We will not therefore have very much to say, if anything, about the First-tier Tribunal Judge's self-directions.

8. The decision shows that the claimant is a national of Jamaica. He was born in 1994 and he was brought to the United Kingdom shortly before his 7th birthday in August 2001. He entered the United Kingdom on 11 August 2001 when he was just a little over 7 years old.

9. He was admitted as a “non-visa national visitor”. His leave was extended and he was given indefinite leave to remain on 8 January 2007. It is a feature of this case that he has always had permission to be in the United Kingdom.

10. He has misbehaved; sometimes quite seriously.

11. He first came to the attention of the authorities for possessing a blade in a public place in June 2008 and was made the subject of a referral order. A similar order was made for an offence of theft very soon afterwards. He was discharged for a public order matter after pleading guilty in November 2008 and was similarly dealt with for a matter of theft in March 2009.

12. In July 2009 he was again found to be in possession of a blade in a public place and he was placed under young offenders’ supervision for six months.

13. In February 2010 he was found possessing an offensive weapon in a public place and in March he was detained and subject to a training order. In March 2010 he committed offences of robbery and attempted robbery and was subject to supervision and curfew requirements. He did not comply with the detention and training order and was also dealt with for theft.

14. In March, and on two occasions in May, 2011 he was involved with supplying crack cocaine and heroin and in January 2012 he was sent to detention and training for two years reduced to eighteen months on appeal.

15. In January 2014 he was found in possession of heroin and cocaine with intent to supply and possessing cannabis. This led to his being sentenced to detention in a young offenders’ institution for four years in March 2015 as indicated above. He was also subject to an ASBO and was made the subject of a community order for failing to comply with that. He has not been convicted of any offences since.

16. The claimant has previously been the subject of deportation proceedings. In a decision promulgated on 13 May 2013 the President, the Honourable Mr Justice Blake, and Deputy Upper Tribunal Judge J F W Phillips upheld a decision of the First-tier Tribunal allowing his appeal against deportation.

17. The First-tier Tribunal noted the claimant’s rather difficult start in life. He lived in Jamaica with his paternal great-grandmother in an area of Kingston described as a place of “poverty and violence”. He had some occasional contact with his mother and less with his father who was abusive. When he came to the United Kingdom in 2001 he joined his maternal grandmother. His mother had moved from Jamaica to New York and remains there.

18. The judge noted that the claimant had “grown up in the United Kingdom”.

19. His grandmother had moved to a different house in an effort to keep him out of bad company but the move brought no appreciable benefit.

20. He has also formed an association lasting some twelve years with a school friend who will be identified simply as "Ms W-T". Their relationship has changed in its nature but has not been continuous. Ms W-T has taken advantages of educational opportunities and is engaged in degree level study. She has apparently serious ambitions to study at master's level.

21. He also has a long-term friend who we identify as "NS". This friendship has not been entirely helpful to the applicant and his association with NS seems to have been the cause of some of his trouble. Together they were members of a gang known as "QC gang".

22. The drugs offences for which he was sentenced to four years in custody, possibly ironically but definitely disgracefully, were committed as a fund-raising exercise when he was not allowed to engage in honest employment because he was still subject to deportation.

23. The First-tier Tribunal Judge noted that the claimant was being supported by the father of his friend NS who clearly impressed the judge. His friend's father had set up a business creating opportunities for his own son and for the claimant to work as a personal physical trainer.

24. The claimant had taken advantages of improving opportunities in prison and there were reasons to think that he had resolved to change his behaviour.

25. He has some contacts in Jamaica. In particular he has two aunts who live in Kingston. He has had no contact with his father for many years.

26. Although the judge was careful to recognise there would be difficulties for the claimant which would be elevated in part to "hardship" the judge was not satisfied there would be very significant obstacles to the claimant's integration into his country of nationality if he were made to live there.

27. This is not a case where it is contended that the claimant has a subsisting relationship with a qualifying partner or qualifying child within the terms of the Section and so the judge was clearly satisfied that the claimant did not come within the scope of Exception 1 or Exception 2 yet in a case such as this he could only allow the appeal where there were "very compelling circumstances, over and above those described in Exceptions 1 and 2."

28. The First-tier Tribunal's core findings are set out at paragraphs 32 and 33 which we set out below:

> "32. I take into account in favour of the [claimant], as calling for a measure of compassionate understanding, his relative youth. Indeed it is of no little weight that his offending was entirely as a juvenile or young offender. I attach weight of some substance to the length of his presence in the United Kingdom, which has been lawful until the issue of the first deportation order, against which he successfully appealed. His presence since then has likewise been lawful with leave carried over by operation of law. I attach weight both to the existence of his relationship with Ms W-T, inchoate or tenuous as that might yet remain, and to the obstacles that he would encounter to integration in Jamaica, including official and monitions of a degree of risk to persons

> re-settling in Jamaica. Although these do not either of them constitute sufficient bases in themselves to engage either 399 or 399A individually, they are nevertheless factors of significant weight as part of an overall assessment of the existence of very compelling circumstances justifying exceptional treatment beyond the individual application of either of those Rules.
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> 33. A further factor, exceptional not only in the sense of being most individual and unusual, and potentially also in the sense of justifying exceptional treatment, is the progress of the [claimant] towards rehabilitation. The support which he enjoys from his former gang member and present friend, N--- S---, and from the principal involvement of Mr S---, the elder, constitutes evidence of very real prospects of complete rehabilitation, well beyond a mere vague aspiration. That prospect is, if anything, enhanced by the continued support of so accomplished and determined a young woman as Ms W-T. The [claimant], from the moment he was given the opportunity by his admission to bail, has taken positive steps to work towards his hope of occupation in his own business as a personal trainer, entering formal training for that purpose. He does have a strong and now influential family and wider network in this country, including his grandmother and aunt, who vouch for him in his current bail, his uncle, his girlfriend, and his mentor, Mr S---. He is complying with ongoing conditions of probation."

29. In short it is the judge's view that the claimant, inspired by his own efforts and encouragement from his time in custody and new circle of friends including particularly Mr S, has realistic hopes of reforming his character and earning an industrious honest living. That is pleasing to read but we do not see how this factor, even when bolstered with the other points identified by the judge, can be described properly as "very compelling circumstances, over and above those described in Exceptions 1 and 2."

30. The Secretary of State relies on the analysis of the decision in **N (Kenya)** given by the Court of Appeal in **OH (Serbia) v SSHD [2008] EWCA Civ 694** to the effect that the risk of reoffending is only one facet in the public interest and in the case of very serious crimes not the most important facet. Other important facets include the need to deter foreign nationals from committing serious crime and expressing society's revulsion and building confidence in the treatment of foreign citizens who committed serious crimes. These concepts have been subject to modest degrees of refinement and reformulation but the principles remain the same. It is unlikely that good prospects of rehabilitation are ever going to be enough to establish the necessary very compelling compassionate circumstances.

31. Whilst any decision that there are "very compelling compassionate circumstances over and above" the statutory exceptions is likely to involve a wide-ranging and composite consideration of the facts, we reject any suggestion that the claimant's youth is, of itself, a particularly significant factor. There are considerable hurdles in the way of sending young offenders to long periods of custody and fact that such sentences are included in the definition of imprisonment steers us away from accepting that a person's youth is a weighty factor in his favour.

32. We have read Ms Elliott-Kelly's Rule 24 notice carefully and respectfully just as we have listened to her submissions. In some ways she is undoubtedly right. We must not interfere with the judge's decision just because we do not think it is the one we would have reached had we heard the appeal, which of course we did not. The judge has identified factors that are relevant, particularly his lawful presence in the United Kingdom and his committing offences before he entered adulthood. Where we cannot agree is that the judge gave sufficient reasons for concluding that the points he identified amounted to very compelling circumstances. The simple fact is that in our judgment they do not.

33. It follows therefore that we find the First-tier Tribunal erred and set aside its decision. The First-tier Tribunal's decision is thorough. It appraises accurately and fairly the evidence that was given. We know what this case is about. There is no point in ordering a further hearing. We remake the decision and although we accept the findings made we conclude that they do not amount to very compelling circumstances over and above those described.

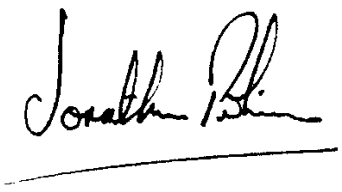
34. We are of course applying statute law. The claimant's deportation is in the public interest because Parliament says that it is and that is all the explanation that is needed. Whereas the Rules may not be a complete code we cannot go behind statute. Even so we have asked ourselves if there is anything here that might need further consideration separately and independently in an Article 8 balancing exercise and we conclude there is not.

35. We understand the judge's reason for allowing this appeal. Whereas the claimant has links with Jamaica he has spent most of his life in the United Kingdom. To the extent that a person's criminality is shaped by his environment the claimant is shaped by the less attractive facets of United Kingdom society. His misbehaviour is no more the fault of the people and government of Jamaica than his arrival in the United Kingdom as a small boy is the fault of the claimant. The First-tier Tribunal Judge was entitled to find that his best chance of being rehabilitated comes from being permitted to remain in the United Kingdom where he has lived lawfully for most of his life. Nevertheless we cannot agree that these facts amount to "very compelling circumstances over and above those described in Exceptions 1 and 2."

36. We therefore substitute a decision dismissing the claimant's appeal against the decision of the Secretary of State.

Decision

The First-tier Tribunal erred in law. We set aside its decision and substitute a decision dismissing the claimant's appeal against the decision of the Secretary of State.



Signed

Jonathan Perkins, Upper Tribunal Judge Dated: 25 April 2018