Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/10006/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18 January 2018	**On 8 March 2018**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

DR
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Vencatachellum, Counsel
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Jamaica born in 1989. He is said to have arrived in the UK in 1998 as a visitor. He has overstayed ever since.

2. On 29 August 2017 the respondent made a decision to refuse a human rights claim, following a decision to make a deportation order against him pursuant to section 5(1) of the Immigration Act 1971 on the basis that his presence in the UK was not conducive to the public good. The further

rationale for that decision is revealed at [21] of the respondent's decision whereby she stated that he had been convicted of an offence which has caused serious harm and that he is a persistent offender.

3. The appellant appealed against that decision and his appeal came before First-tier Tribunal Judge Lawrence at a hearing on 3 November 2017. He dismissed the appeal.

4. The basis upon which permission to appeal against Judge Lawrence's decision was sought and granted relates to his having refused the appellant's application for an adjournment of the hearing. That was essentially also the basis upon which matters were advanced before me, although some reference on behalf of the appellant was made to the evidence before Judge Lawrence, and what further evidence could have been provided.

5. So far as the appellant's offending is concerned, to summarise, he has committed offences since 2005, being offences of dishonesty, violence, possession of drugs (both Class A and B) and breach of various court orders. In particular, on 15 April 2015 he was convicted in the Crown Court at Wolverhampton for possession of a blade or sharply pointed article, and wounding or inflicting grievous bodily harm. He received a sentence of 12 months' imprisonment on each count, but suspended for 24 months.

6. On 3 April 2017 in the Crown Court at Wolverhampton he was convicted of a breach of that suspended sentence, and remanded in custody. It is important to point out that in terms of the breach of the suspended sentence, he was ordered to serve a term of imprisonment of four months which was un-served in relation to the offences for which he received the suspended sentence.

7. On 24 May 2017 he was convicted again in the Crown Court at Wolverhampton for possession of a knife or a sharply pointed article and battery for which he received a sentence of six months' imprisonment for possession of the knife and five months' imprisonment for battery. Those sentences were made to run consecutively, making a total sentence of eleven months' imprisonment, although the respondent's decision letter wrongly states at [17] that the sentences were concurrent. There was also a matter of possession of cannabis for which he received a concurrent sentence of one month's imprisonment.

8. The offence of battery involved an attack on his partner, CN, causing what the sentencing judge described as a "nasty disfigurement" to her eye.

The decision of the First-tier Tribunal

9. Judge Lawrence referred to the Tribunal having received a letter from the appellant's then solicitors stating that they had only received instructions on 30 October 2017 (the hearing was listed for 3 November 2017), that

the respondent's bundle had not been received and inquiries needed to be made "before an appeal can be lodged" (the judge's words). Judge Lawrence noted that the application had been refused (prior to the hearing) on the basis that the respondent's decision disclosed the case and that that had been served on the appellant on 29 August 2017. Judge Lawrence said at [5] that nothing further was heard from the appellant's solicitors after that refusal of the application.

10. At [7] he referred to the appellant's oral application for an adjournment. It records that the appellant said that he had spoken to a solicitor "with an Asian sounding name" that he could not pronounce but she had informed him that she was active in pursuing information from Children's Services and could not therefore attend. He said that he thought the hearing was listed for a case management hearing, and asked for the hearing to be adjourned.

11. Judge Lawrence said that he informed the appellant that "he knew his case" when the decision was served on him in August 2017. It was further said that the appellant had had since July 2016 (a previous decision) to prosecute his case. Although the appellant said that he knew nothing about immigration which was why he had not been active in preparing his case, that did not sit with the use of the term 'Case Management Hearing'. The appellant told Judge Lawrence that the solicitor that he had approached had asked him to use that term.

12. It was noted that the appellant said that he had prepared a statement, had photographs taken with his children and had e-mails that he wished to rely on. These were provided to the judge who considered them. It appears that the appellant confirmed to Judge Lawrence that he was basing his case for remaining in the UK on his relationship with his children and that alone.

13. Judge Lawrence then concluded at [8] that the documents provided by the appellant addressed those issues. He then refused the application for an adjournment and put the case back to the afternoon so that the documents could be copied and served on the Presenting Officer.

The grounds and submissions

14. The grounds contend that the judge was wrong when he said that nothing further was heard from the appellant's solicitors after the first application for an adjournment. In fact, they wrote again on 31 October 2017. The requests for an adjournment were made on the basis that the appellant had only recently instructed solicitors (on 30 October 2017) and that they had not had sufficient time to advise him and prepare for his hearing. He had not had legal representation before then, having lodged his notice of appeal himself. He had not received the respondent's bundle of documents and had not had sufficient time to collate important documentary evidence in support of his claim, including reports from his probation officer and Social Services.

15. It is further contended that the appellant had not had ample notice of the hearing as the notice of hearing was dated 9 October 2017 which would provide insufficient time to obtain expert reports and compile a bundle of documents ready for submissions seven days in advance of the hearing. Further, it is contended that the reasons for refusing the application for an adjournment on the second occasion, namely that the Home Office bundle should have been served on the appellant "days ago", would still have provided the appellant with insufficient time to address the Secretary of State's allegations.

16. Ms Vencatachellum's submissions reflected the grounds. It was submitted that the appellant's partner, ST, to whom he is now engaged, would have been in attendance, and wanted to give evidence had they understood that the hearing before Judge Lawrence was the full hearing. The appellant had understood that it was a case management hearing. The judge's decision was arrived at on the basis of the non-attendance of any witnesses.

17. Submissions were made in terms of the appellant's private life, he having spent most of his life in the UK, arriving when he was aged 9. Although it was accepted that his relationships are complicated, and that there is a restraining order in respect of a former partner, the e-mail that was before the judge, to which he referred at [28], states that she is not opposed to supervised contact between the appellant and her children. It was submitted that the appellant ought to have been entitled to adduce evidence in relation to his relationship with his children.

18. Mr Bramble submitted that the issue came down to one of 'fairness' to the appellant. He accepted that there was some indication in the documents before him that there were people prepared to speak on his behalf as witnesses. He referred to the respondent's 'rule 24' reply which nevertheless suggested that the judge had dealt with the adjournment application appropriately.

Assessment

19. There were two applications for an adjournment made in advance of the hearing before Judge Lawrence, one on 30 October 2017 and the second on 31 October 2017. The first was refused on the basis that the appellant had had ample notice of the hearing, according to the endorsement on the Tribunal's file cover and the written instruction within the file. The second was refused on the basis that the renewed application merely reiterates the earlier application. It states that the respondent's bundle should have been served on the appellant days ago and in any event the case he had to address was set out in detail in the decision letter dated 29 August 2017.

20. It is as well to set out the basis upon which the application for an adjournment was made in the letter dated 30 October 2017. It states that the solicitors were only instructed by the appellant that afternoon and

were still without a full set of papers in order to advise the appellant. The letter continues that the appellant had said that whilst he was aware that the matter was listed for hearing on 3 November 2017, he mistakenly believed the appeal was listed for a CMR only, and only learnt of the appeal being listed for a full hearing after he faxed a copy of the notice of hearing to the solicitors. The letter goes on to state that they are without the respondent's bundle of documents and the appellant had said that he had not been served with a copy of the same. It states that the appellant had not previously instructed solicitors.

21. The letter continues that in addition to the appellant's mother, girlfriend and other relatives wishing to attend to give evidence in support of his appeal, the appellant had three children with two previous partners "who are British citizens". The appellant had instructed that immediately before his incarceration he was having contact with all three children and had an extremely good relationship with them. The appellant had informed them that all of his children's mothers support his appeal and were willing to provide statements to that effect. The solicitors also understood from the appellant that Social Services had been involved with two of his children following the incident that led to his conviction on 15 April 2015.

22. The letter concludes by asking that the hearing be adjourned so that he could obtain reports from Social Services with whom the children are already involved, assessing their best interests, and that reports from the Probation Service relating to the appellant's rehabilitation and risk of reoffending could be obtained, as well as a copy of the respondent's bundle. The letter concludes by stating that as a result of the appellant's continued detention, at that time at an immigration removal centre, he had experienced difficulties in instructing solicitors to assist him with the appeal and now had to rely upon friends to assist him with seeking legal representation.

23. In considering Judge Lawrence's decision, it is apparent that the appellant gave inconsistent evidence, reacted adversely to cross-examination, and appeared to minimise his offending. Judge Lawrence concluded that he was not a witness of truth and stated at [47] that he would "[tell] any lie to suit his particular existing immediate circumstance". In this regard he noted that the appellant had adopted a multitude of names and dates of birth. His assessment of the appellant as a witness was not however simply, or even mainly, based on that fact. It seems to me that Judge Lawrence had very good reasons to consider that the appellant was not a truthful witness.

24. His lack of credibility plainly undermined his claim that he has a relationship with his three children. In addition, Judge Lawrence referred at [25] to a card that purported to come from the children but plainly was produced by an adult.

25. He similarly was entitled to be sceptical about the appellant's claim that he is in a relationship with ST and that they are engaged to be married. It

is also to be noted that the appellant had badly assaulted one of his previous partners CN and in respect of whom there is a restraining order 'until further order'.

26. The question is however, should the appeal have been adjourned for the reasons advanced.

27. It is not difficult to understand why Judge Lawrence decided to refuse the application for an adjournment. The appellant had had notice of the respondent's decision well before the hearing. The decision is dated 29 August 2017. Notice of the hearing was sent to him on 9 October 2017 when he was detained, for the hearing on 3 November 2017. The appellant seems to have waited until almost the last moment before instructing a legal representative. Indeed, until Ms Vencatachellum appeared to represent the appellant before me, it does not appear that he had taken any steps to instruct a representative in relation to the hearing before the Upper Tribunal. That suggests a consistent pattern of inactivity on the part of the appellant.

28. I bear in mind that in relation to the hearing before Judge Lawrence, the appellant was in detention. That however, does not mean that he was unable to obtain legal representation, either on his own or with the assistance of anyone else with whom he is said to have a close relationship in the UK. In addition however, on the basis of the documents that Judge Lawrence had before him, and which he assessed, namely e-mails and statements from ST, her mother, and CN (who he assaulted) there was information which supported the contention that he has a relationship with his children in the UK. Those three children are all under the age of six.

29. I do not conclude that it was essential for Judge Lawrence to have had before him any risk assessment from Children's Services, such an assessment being required before the appellant is able to have contact with his two children whose mother is CN. Furthermore, I have some scepticism about whether any such report would be favourable to the appellant in terms of advancing his appeal.

30. Nevertheless, I do consider that Judge Lawrence's assessment of the appellant's appeal, and his relationships in the UK, was an unbalanced one in the sense that he did not have before him evidence which could, conceivably, have affected his decision, namely evidence from witnesses about his relationship in particular with his children. The best interests of those children must be to the fore in any assessment of the issues.

31. On that basis, and reflecting on the issue of 'fairness', I am satisfied that Judge Lawrence was wrong to refuse to accede to the application for an adjournment, and that this compromised the fairness of the proceedings. In those circumstances, his decision must be set aside. A further consequence is that the appeal must be remitted to the First-tier Tribunal for a hearing *de novo*.

32. However, the appellant must be in no doubt that it is his responsibility to ensure that his appeal is ready to proceed when it is listed. Failure on his part to ensure that the appeal is ready to proceed, whether in terms of legal representation or the production of relevant reports or the calling of witnesses, is unlikely, given the history referred to above, to result in any future Tribunal resolving adjournment issues in his favour. If it was not clear before, it must be clear now that it is up to him to ensure that the appeal is ready to proceed.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the appeal is remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge Lawrence, with no findings of fact preserved.

Because this appeal involves minors, the following anonymity direction is made.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Upper Tribunal Judge Kopieczek
7/03/18