



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10055/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 7 June 2018

Decision & Reasons Promulgated
On 18 June 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

YOUAN [T]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not present or represented

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Youan [T], was born on 7 July 1987 and is a male citizen of Jamaica. He committed several criminal offences in the United Kingdom for which he was sentenced to five years' detention in a Young Offenders Institution. The appellant had entered the United Kingdom in 1990. A deportation order was made against him on 11 June 2015. The appellant applied for permission to bring proceedings in judicial review but this application was refused and he was also refused leave to appeal. On 7 September 2016, the appellant was deported to Jamaica. He appealed against that

decision to the First-tier Tribunal (Judge Myers) which, in a decision promulgated on 13 February 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I granted permission in the Upper Tribunal on 9 August 2017 in the following terms:

The appellant appealed against a deportation decision from abroad, the decision having been certified under Section 94B of the Nationality, Immigration and Asylum Act 2002 (as amended). It is arguable, in the light of *Kiarie and Byndloss* [2017] UKSC 42, that the appellant may have been deprived of a fair hearing of his appeal. All the grounds of appeal may be argued.

3. I have a letter from the solicitors formerly acting for the appellant asking that their name be removed from the Tribunal record. I agreed to that application. The appellant remains abroad in Jamaica and no other representative attended the Upper Tribunal hearing.
4. I am grateful to Mrs Pettersen, who appeared for the Secretary of State, and who indicated that she did not oppose the appeal. Following the Supreme Court decision in *Kiarie and Byndloss*, the Upper Tribunal has given further guidance in *AJ (s 94B: Kiarie and Byndloss questions) Nigeria* [2018] UKUT 00115 (IAC). The head note of that decision reads as follows:

(1) In the light of Kiarie and Byndloss v Secretary of State for the Home Department [2017] UKSC 42, the First-tier Tribunal should adopt a step-by-step approach, in order to determine whether an appeal certified under section 94B of the Nationality, Immigration and Asylum Act 2002 can be determined without the appellant being physically present in the United Kingdom.

(2) The First-tier Tribunal should address the following questions:

- 1. Has the appellant's removal pursuant to a section 94B certificate deprived the appellant of the ability to secure legal representation and/or to give instructions and receive advice from United Kingdom lawyers?*
- 2. If not, is the appellant's absence from the United Kingdom likely materially to impair the production of expert and other professional evidence in respect of the appellant, upon which the appellant would otherwise have relied?*
- 3. If not, is it necessary to hear live evidence from the appellant?*
- 4. If so, can such evidence, in all the circumstances, be given in a satisfactory manner by means of video-link?*

(3) The First-tier Tribunal should not lightly come to the conclusion that none of the issues covered by the first and second questions prevents the fair hearing of the appeal.

(4) Even if the first and second questions are answered in the negative, the need for live evidence from the appellant is likely to be present. A possible exception might be where the respondent's case is that, even taking a foreign offender appellant's case at its highest,

as regards family relationships, remorse and risk of re-offending, the public interest is still such as to make deportation a proportionate interference with the Article 8 rights of all concerned.

(5) If the First-tier Tribunal concludes that the appeal cannot be lawfully determined unless the appellant is physically present in the United Kingdom, it should give a direction to that effect and adjourn the proceedings.

AJ and Kiarie and Byndloss were reported after Judge Myers dismissed this appeal in the First-tier Tribunal. However, whilst I intend no criticism of Judge Myers whatever, she has erred in law. She has failed to even consider whether the appellant's appeal may be fairly determined whilst he remains in Jamaica and she has, of course, failed to address the questions which she should have asked and which are set out in the head note of *AJ* (see above). I accept that the questions may not necessarily need to be raised in the exact terms indicated by the Upper Tribunal but the problem here is that the First-tier Tribunal has not considered at all issues concerning the fairness of the appeal being conducted from abroad. In the circumstances, I find that the decision is unsafe. Because the appellant has been deprived of a fair hearing it will be necessary to return this appeal to the First-tier Tribunal for that Tribunal to re-make the decision. Since there is little likelihood that the appellant will be back in the United Kingdom by the date of the next First-tier Tribunal hearing, that Tribunal will need to address carefully the questions posed in *AJ*.

Notice of Decision

5. The decision of the First-tier Tribunal which was promulgated on 13 February 2017 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Myers) for that Tribunal to re-make the decision.
6. No anonymity direction is made.

Signed

Date 14 JUNE 2018

Upper Tribunal Judge Lane

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 14 JUNE 2018

Upper Tribunal Judge Lane