Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/22496/2018

THE IMMIGRATION ACTS

Heard at Field House
On 1 April 2019

Decision & Reasons Promulgated
On 10 April 2019

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

AKHEEM [W]
[NO ANONYMITY ORDER]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant:	Mr Cyprian Amgbah, a legal representative with UK Law Associates
For the respondent:	Mr Esen Tufan, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal on 20 June 2018 to refuse him leave to remain in the United Kingdom on human rights grounds and to refuse to revoke a deportation order made on 23 November 2017. The appellant is a citizen of Jamaica.

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Background

2. When in Jamaica, the appellant lived with his maternal grandparents. He arrived in the United Kingdom on 7 September 2001, at nearly 6 years old, travelling on a visit visa with his mother. Following an application by his mother for leave to remain in July 2002, he was granted leave to remain, and then on 24 February 2004, when he was 8 years old, he was granted indefinite leave to remain in line with his mother, who had married a British citizen. While he was still very young, under 5 years old, the appellant underwent surgery (probably in Jamaica) for a cerebral abscess, which left him blind in one eye and with limited sight in the other eye. The condition was identified and diagnosed by a CT scan while the appellant was in Jamaica. He is registered as partially sighted and later developed seizures.

3. The appellant visited Jamaica three times between the ages of 5 and 15, travelling with his mother and staying with his maternal grandparents. His last visit was in 2010, when his aunt and cousin also came along.

4. The appellant's grandfather has now died, and his grandmother is 76 years old and in poor health. A letter from her general medical practitioner in St Ann's Bay, Jamaica, says that the grandmother has high blood pressure (arterial hypertension with hypertensive heart disease); osteoarthritis of the right knee; peripheral vascular disease and neuropathic pain. A computerised tomography (CT) scan of his grandmother's brain in April 2013 showed cerebral and cerebellar atrophy, chronic small vessel disease, and early or mild vascular calcification. The report concluded that:

   > "As a result of [the grandmother's] chronic illnesses mentioned, I can say that she is incapable of performing everyday tasks, plus we have to keep in consideration that her age will be a triggering factor for the progression of her chronic illnesses."

   There is no medical evidence that the appellant's grandmother's brain problems have increased since April 2013 and the other ailments are mild and appear typical of those which afflict many older people. She has a carer who looks after her but there is nothing from the carer to say what support is required.

5. On 20 March 2012, a transition learning difficulty (TLD) assessment was carried out. The report noted that the appellant's school leaving date was 22 June 2012 and that he could not work full time before that date. The appellant was living at home with his mother, step-father and sister; he played football and trained at Tooting and Mitcham Football Club. He enjoyed the company of friends, watching television and playing on his PlayStation 3. He had been supplied with an enlarger mouse and large font books at school, and had access to a scribe but rarely needed it. The report described him as an 'independent traveller' who had his own Oyster card.

6. The appellant in his TLD assessment said that he wanted to progress to a sports course in college, or as a back-up, a motor vehicle engineering course. He saw his future as 'doing something in football' but had made no applications to any further

education colleges. He had not worked yet, but had helped his elder brother with package delivery.

7. The appellant had some employment history in the United Kingdom: in 2013/2014 he worked with children as a sports coach. From February to June 2014, he took a course leading to a BTec sports qualification. In 2016 he worked for three months in a bakery. He had also worked in a warehouse, as an agency employee, for a short period. The appellant's ambition was to work as a football coach or agent.

8. The appellant was entitled to disability living allowance until 2016. In 2017, he was invited to interview by ATOS Healthcare to see whether he qualified for a Personal Independence Payment. It is unclear what was the outcome of that application but it may have overlapped with his offending in that year.

9. The appellant takes epilepsy medication, without which he has seizures. He had regular seizures until 2016, then a two-year gap before his most recent seizure in 2018, which may have been caused by non-compliance with his epilepsy medication.

10. The appellant continues to live at home with his mother, who cooks, washes, and does his laundry for him. His sister lives there too; the refusal letter states that the appellant's brother, who is now a naturalised British citizen, is no longer living with his mother and sister but has his own home. The respondent's mother takes him to appointments and reminds him of them. His mother's evidence was that although the appellant could sometimes go to places unaccompanied, because of his sight difficulties, he usually needed her to accompany him. The respondent did not accept that there was dependency between the appellant and his mother, or his sister, amounting to family life between them as adults.

11. The appellant has a new British citizen girlfriend who is expecting their child in April 2019. The relationship began just a year ago, in April 2018. The couple do not live together but the appellant stays over at her house, or she stays at his home, and they spend three or four nights a week together.

12. The appellant's girlfriend works full time and she considered that she would need to rely on him to help care for the child when it was born in April 2019. Neither of them suggested that the appellant's limited vision would make this difficult.

Offending history

13. Before his 18th birthday in November 2013, the appellant was convicted of three offences: on 14 August 2012, assaulting a constable (he was fined £75 and given unconditional bail); on 18 December 2012, handling stolen goods (unconditional bail and a Youth Rehabilitation Order); and on 4 April 2013, using disorderly behaviour or threatening, abusive or insulting words likely to cause alarm or distress (he was fined £50).

14. The appellant's adult offences begin with a conviction two years later, on 9 November 2015, when he was just under 20 years old: he was convicted of assault

occasioning actual bodily harm, for which he received a 12-month community order, a supervision requirement, and was required to undertake a programme for 21 days.

15. Unfortunately, before the 12 months expired the appellant was convicted again, on 4 October 2016, for possession of a Class B controlled drug (cannabis/cannabis resin), for which he received a community order, a 30-day rehabilitation requirement, a 19-day programme requirement, and was placed on an electronic tagging curfew for three months. This was varied in September 2017 due to the commission of an additional offence, the theft of a motor vehicle. The rehabilitation requirement was varied to 30 days, with a 19-day thinking skills programme.

16. In the meantime on 10 July 2017, the appellant was again convicted of possession of cannabis/cannabis resin and received another community order with electronically tagged curfew. On 26 September 2017, the appellant was convicted not only of the motor vehicle offence but also of failure to comply with the requirements of the 4 October 2016 conviction.

17. On 26 October 2017, when the appellant was nearly 22 years old, he was convicted of battery of his then partner, carried out in the presence of her 4-year old child, and of assaulting a constable. The appellant received a custodial sentence of 4½ months and was made the subject of an indefinite restraining order, protecting his former partner from harassment. The appellant pleaded not guilty and continues to deny responsibility for this offence, blaming his former partner for what occurred.

18. On 19 October 2018 the appellant was again arrested for possession of a Class B controlled drug but no further action was taken. He was served with a deportation order and detained. The appellant made a human rights appeal to the First-tier Tribunal.

First-tier Tribunal decision

19. At the beginning of the First-tier Tribunal hearing, the Tribunal was provided with notification of breach of immigration bail conditions and a printout of his Police National Computer record.

20. The First-tier Tribunal heard oral evidence from the appellant, from his mother, brother, sister, and his current girlfriend. He produced evidence concerning the death of his grandfather in Jamaica and a doctor's letter evidencing the poor health of his grandmother there.

21. The respondent accepted that the appellant had been lawfully resident in the United Kingdom for most of his life and was socially and culturally integrated here, but considered that there were no significant obstacles to his reintegration to Jamaica if he were to be deported there.

22. The appellant had made no enquiries as to employment or accommodation in Jamaica; the First-tier Judge found that he was still in contact with his grandmother and could live with her and continue with medication to control his seizures. The

appellant had received medical care while a child in Jamaica, before he came to the United Kingdom, and there was also a letter from his grandmother's doctor; no evidence had been produced indicating that the appellant's sight problems and epilepsy could not be managed in Jamaica.

23. The appellant and his girlfriend did not have a child yet at the date of hearing and the First-tier Judge considered that despite the difficulties which the girlfriend would have in coping with the coming child alone, and in the appellant creating a relationship with his new child, once it was born, the appellant was already the subject of a deportation order when the relationship began and was, therefore, in the United Kingdom precariously.

24. The First-tier Judge applied *KO (Nigeria) v Secretary of State for the Home Department* [2018] UKSC 53 and held that the effect of deportation would not be unduly harsh for the appellant's girlfriend. The child had not yet been born and therefore was not a relevant consideration. The Judge did not accept that the appellant required any more care than others who did not have a vision problem and found that there was no family life between the appellant and his mother or his brothers and sisters.

25. The appeal was dismissed. The appellant appealed to the Upper Tribunal.

Permission to appeal

26. Permission to appeal was granted by Upper Tribunal Judge Kamara on the basis that it was arguable that the First-tier Judge did not consider paragraph 398 of the Immigration Rules HC 395 (as amended) nor assess whether there were exceptional circumstances which might outweigh the public interest in deportation.

Rule 24 Reply

27. The respondent in a Rule 24 Reply set out the relevant paragraphs in the First-tier Judge's decision, noting that the burden of proof was on the appellant to show that deportation was not proportionate. Paragraph 398(c) of the Rules applied as the appellant was a persistent offender.

28. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

29. The respondent does not dispute that the relationship between the appellant and his current partner is genuine, albeit too short for her to be a GEN.1 partner under the Rules. The respondent accepts that the appellant has spent most of his life in the United Kingdom and is integrated here.

30. For the appellant, Mr Amgbah said that the issue for the Tribunal was whether under paragraph 399A and section 117C(3) with reference to Exception 1 at section 117C(4). In each case, as lawful residence for most of the appellant's life and social and cultural integration were not in issue, the sole question for the Upper Tribunal was whether the First-tier Judge had been entitled to find that there would not be very

significant obstacles to the appellant's integration in Jamaica (paragraph 399A(c) and section 117C(4)(c)).

31. Mr Amgbah relied on his grounds of appeal and did not wish to add to them, save to confirm that he accepted that the appellant is a persistent offender.

32. Mr Tufan also relied on his Rule 24 Reply, emphasising the appellant's offending history.

33. I reserved my decision, which I now give.

Analysis

34. The question whether there are significant obstacles to reintegration is one of fact for the First-tier Tribunal as the fact-finding Tribunal. The appellant's grounds of appeal challenge the finding of fact that the appellant is able to care for himself, although his mother does a lot for him (as many mothers do when their sons still live at home). The appellant's grounds suggest that it was not open to the Judge to find that the appellant had not demonstrated that he could not live with his grandmother, at least initially, because she was old and had a carer; and he contended that insufficient weight had been given to the medical evidence and in particular reports of seizures while in detention last year.

35. The appellant sought to distinguish the learning difficulty assessment in 2012 in the light of alleged deterioration in the appellant's condition as he matured from the age of 17 to the age he was at the date of the First-tier Tribunal decision (23 years old). There is no satisfactory evidence in the materials before me to support that. I note from the detention records that the appellant is described as having used a stick in the past for his blindness, suggesting that he did not need it now, and that he has played and trained in football for a local club (which requires some level of vision).

36. The appellant also challenged the finding by the First-tier Tribunal that there was no family life between the appellant, his mother, and his brother and sister, because of his increased dependency. The Judge gave adequate and sustainable reasons for his findings and the grounds of appeal do not demonstrate an error of fact at the level of an error of law (see [90] in the judgment of Lord Justice Brooke in *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982).

37. Contrary to the appellant's submissions, the First-tier Tribunal's decision is properly, intelligibly and adequately reasoned. The medical evidence relied upon, both as to himself and his grandmother, does not amount to exceptional circumstances nor is there evidence that treatment does not exist in Jamaica for his condition. In fact, the contrary appears to be the case, as he was treated for his epilepsy when a very young child in Jamaica.

38. It was unarguably open to the First-tier Judge to find that there were no significant obstacles to the appellant integrating in Jamaica if he were to be deported there.

DECISION

39. For the foregoing reasons, my decision is as follows:

    The making of the previous decision involved the making of no error on a point of law

    I do not set aside the decision but order that it shall stand.

Date: 5 April 2019 Signed Judith AJC Gleeson

Upper Tribunal Judge Gleeson