



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

Appeal Number: PA/06689/2018

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice
Centre
On 1st August 2019**

Decision & Reasons Promulgated

On 22nd August 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**KEVIN ANDERSON
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Holt (Counsel)

For the Respondent: Ms H Aboni (Senior HOPO)

DETERMINATION AND REASONS

This is an appeal against the determination of First-tier Tribunal Judge J. W. H. Law, promulgated on 1st October 2018, following a hearing at Nottingham Justice Centre on 20th September 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

The Appellant is a male, a citizen of Jamaica, and was born in 1979, and is a. He appealed against the decision of the Respondent dated 14th May 2018 refusing his application for asylum and human rights claims pursuant to paragraph 339C of HC 395 (as amended). The background to the claim is that on 25th July 2003 the Appellant had been convicted of possession of class A drugs with intent to supply and sentenced to six years' imprisonment. Subsequently in 2005 he was sentenced to imprisonment for absconding.

The Appellant's Claim

The essence of the Appellant's claim is that he cannot return to Jamaica, of which he is a citizen, because of threats that he had received, and the death of his stepfather, because he would be treated as a "informer" upon return to that country. There was also a claim that he suffered from high blood pressure and depression. Moreover, he was in a relationship with a Miss [J], who was a British citizen, and who had visited him in prison.

The Judge's Findings

The judge set out the contents of the refusal letter, which had rejected any claim that the Appellant's stepfather had been killed in 2015 on account of the Appellant's activities, because it was said here that the stepfather's death was based on circumstances "wholly unrelated to your claimed problems both here in the UK and in Jamaica". Moreover, there was sufficiency of protection available to him in Jamaica. In any event, the protection claim that he had put forward had been "vague" (see paragraph 4 of the decision). The judge also had regard to the Appellant's claimed relationship with Miss [J], but concluded that the Respondent had said that it was not accepted that this was a genuine and subsisting relationship, as she had not been living with the Appellant and had a pre-existing relationship as well (see paragraph 6 of the decision).

The judge went on to make his own conclusions. In a detailed determination, the judge had regard to the contents of the claim before concluding that under Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, the Appellant's claim was not a credible one. The human rights and private life claim was also thereafter rejected. The judge made reference to copious decisions before rejecting the claim entirely.

Grounds of Application

The grounds of application state that the judge had erred in law, given what had been said in the established Court of Appeal decision in **JT (Cameroon) [2008] EWCA Civ 878**, where the judge had fallen into error of approach in the Section 8 issue in a manner that was "compartmentalised", because what was required was a holistic decision in this regard.

On 23rd January 2019 permission to appeal was granted by the Tribunal on the basis that the grounds of application had relied upon the judge's reference (at paragraph 34) to the fact that "I am required to regard the Appellant's failure

to claim asylum at an earlier opportunity as damaging to his credibility and I do so". The judge had then proceeded (at paragraph 35) to say that, "I am therefore not satisfied that the Appellant is reasonably likely to be telling the truth when he says he has been threatened and his stepfather killed". In granting permission, the Upper Tribunal said that it was arguable that the conclusion reached relating to the death of the stepfather and threats arising out of his drugs offence, drawn by the First-tier Tribunal Judge, relates solely to the judge's consideration of the evidence in the context of Section 8 rather than the evidence overall. In particular, the judge had arguably failed to give due weight to the expert report, which dealt with the possibility of internal relocation, and wrongly rejected it.

Submissions

At the hearing before me on 1st August 2019, Mr Holt submitted that the point he wished to raise before the Tribunal, was another point, but nevertheless a good one. It had been flagged up in the decade-old decision of the Court of Appeal in **JT (Cameroon)**, where the Court of Appeal had recognised that Parliament had granted Section 8 matters "a status and compartment of their own rather than taken into account, as they shall have been, as part of a global assessment of credibility" (see paragraph 16 of **JT (Cameroon)**). What was needed, as the Court of Appeal explained, in order to ensure that Section 8 did not offend against the separation of powers principle of our constitution law, was that "a global assessment of credibility" should be undertaken, failing which there are "plainly ... dangers" in interpreting Section 8 as a compartmentalised provision in its own right (see paragraph 19 of **JT (Cameroon)**).

Against that background, Mr Holt submitted that there were three questions here. First, whether the judge compartmentalised Section 8. He submitted that the judge plainly had done so. He had not undertaken a global assessment because after he had approached Section 8 (at paragraph 34), he had concluded that the Appellant's failure to claim asylum at an earliest opportunity had damaged his credibility. He had then gone on to say that "I am therefore not satisfied that the Appellant is reasonably likely to be telling the truth when he says he has been threatened and his stepfather killed" (see paragraph 35). Second, Mr Holt submitted that the further question was whether the judge had rejected the asylum claim in full before getting to deal with other matters. Here also, the judge had done precisely this, given the way in which he had expressed himself at paragraphs 34 to 35. Thirdly, there was a question as to whether the judge failed to give proper consideration to the expert report. Here also, the judge had fallen into error because the expert report was not considered by the judge after Section 8 was mentioned by him. Thereafter, there was no further consideration.

For her part, Ms Aboni submitted that the judge's decision was unassailable because he had set out the relevant matters from paragraphs 30 to 33, before then going on at paragraph 34, to deal with Section 8 of the 2004 Act. The judge had already come to conclusions of fact between paragraphs 30 to 33,

and it was not the case that he had not looked at matters in a manner of global assessment of credibility.

No Error of Law

I am satisfied, notwithstanding Mr Holt's attractive and well-structured submissions before me, that the judge did not engage in an error of law. In what is a clear, comprehensive, and well-structured determination, the judge has not fallen foul of the strictures of the Court of Appeal in **JT (Cameroon)**. The reason for this is as follows.

First, there is the question of the expert report. The judge quite properly deals with this right at the very outset of his consideration of the protection appeal. He refers to a report by Dr Damion Blake, dated 13th September 2008. He makes it clear that "most of it is not specific to the Appellant", whilst still recognising that page 4 of that report recognises that the Appellant's claim has "some plausibility". This demonstrates a nuanced and careful approach taken to the evidence in the report. The judge then concludes that "the evidence does not support the view that internal relocation is an unsafe or unreasonable option in Jamaica in general" (paragraph 30). That is a firm conclusion with respect to internal relocation, on the basis of the expert report by Dr Blake.

Second, the judge then considers the claim that the Appellant is at risk of ill-treatment and persecution. The judge rejects this. There were two matters. First, there was the burial in respect of Denton Anderson where the order for burial appears at page 5 of the main bundle, but it is an unverified copy document and there is no stamp on it. Second, there was no evidence as to how it came into the Appellant's possession. Plainly, the matter is adequately considered here. In fact, the judge then goes on to give reasons for rejecting the claim. He observes, on the basis of cited authority, that, "I find this evidence of the death of Denton Anderson is not evidence on which reliance should properly be placed" (see paragraph 32).

Third, the judge then goes on to say that "that leaves me with the Appellant's own testimony, namely that his stepfather was killed by or at the request of the gang members or associates who threatened him in 2005" (paragraph 33). Here too, the judge observes that "there has been no satisfactory explanation as to why threats arising from the loss of drugs in 2002 should not be carried out until thirteen or fourteen years later".

In fact, the judge goes on to say that the claim was not credible because in cross-examination the Appellant had said that the job in the UK was arranged for him by his stepfather and "it is not clear why the alleged traffickers would kill one of their own" (paragraph 33). The fact is that all this is decided by the judge in the clearest possible terms, before he deals with Section 8 (from paragraphs 34 to 35).

Even then, the judge makes allowance for error on his part. He observes (at paragraph 36) that "in case that conclusion should be found to be mistaken, I have gone on to consider whether a person with the Appellant's claimed profile

would be at risk on return“, before concluding that he would not be at such a risk. All in all, therefore, there is no error of law in the well-crafted decision of the judge. The decision shall stand.

Decision

The decision of the First-tier Tribunal did not involve the making of an error of law. The decision shall stand.

No anonymity direction is made. The appeal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Juss

17th August 2019