Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07636/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24 August 2017	**On 25 August 2017**

Before
UPPER TRIBUNAL JUDGE JORDAN

Between

The Secretary of State for the Home Department

Appellant

and

Felix Kwesi Prah

Respondent

Representation:
For the Secretary of State: Mr Tarlow, Home Office Presenting Officer
For Mr Prah: Mr D. Balroop, Counsel, instructed by Greenland Lawyers LLP

DECISION AND REASONS

1. The Secretary of State appeals against the determination of the First-tier Tribunal Judge whose determination was promulgated on 30 May 2017. I shall have refer to Mr Prah as 'the appellant' as he was before the First-tier Tribunal.

2. The appellant is a citizen of Ghana who was born on 6 September 1964. He is 52 years old. He entered the United Kingdom on 4 August 1982 when he was about to attain his 18th birthday. He had previously spent an earlier period in the United Kingdom, according to paragraph 5 of a witness statement he had made. His father was a diplomat and he had spent some time in a school near Kensal Rise before his father was recalled.

3. The appellant has an appalling history of offending stretching back to 16 June 1986 at which point he had been in the United Kingdom for less than 4 years. It

continued until 17 July 2015 when he was convicted of threatening to kill the witness who had given evidence against him in one of his many shop-lifting escapades. The appellant was sentenced to 2 years imprisonment. His criminal offending, which spans 30 years and the entirety of his known presence in the United Kingdom, has resulted in his receiving 28 convictions for 61 offences. (In his sentencing remarks, Mr Recorder Holland QC spoke of there being more than 30 offences of shop-lifting, apparently related to drug abuse.) He is a persistent offender, justifying the respondent's decision to remove him as the Secretary of State was required to do under s.32(5) of the United Kingdom Borders Act 2007.

4. Mr Recorder Holland QC made the following comments when sentencing the appellant in 2015:

> "The threat to kill was an unpleasant and serious one and in its own right might have attracted a different charge…it was designed to be taken seriously and designed to punish [the witness] for what you saw as her role in your conviction and imprisonment."

5. The appellant's past offences included convictions, admittedly in 2003, for blackmail for which he was sentenced to 3 years imprisonment, burglary (2 years imprisonment concurrent) and common assault (4 months consecutive).

6. It is, therefore, something of a surprise to find that the appellant's deportation was felt by the First-tier Tribunal Judge to breach his human rights. It needs some explanation as to how this situation arose.

7. Section 117C of the Nationality, Immigration and Asylum Act, 2002 (as inserted) requires a judicial decision maker to take into account certain additional considerations when considering Article 8 in cases involving foreign criminals. The appellant falls within the definition of a 'foreign criminal' having been sentenced to more than 12 months imprisonment:

> '(1) The deportation of foreign criminals is in the public interest.
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
> (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
> (4) Exception 1 applies where—
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
> (b) C is socially and culturally integrated in the United Kingdom, and
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.'

8. The same phraseology now occurs in that part of the Immigration Rules which deals with deportation:

'398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, … the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraph…399A.
399A. This paragraph applies…if – (a) the person has been lawfully resident in the UK for most of his life; and (b) he is socially and culturally integrated in the UK; and (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.'

9. In *Bossade (ss.117A-D-interrelationship with Rules)* [2015] UKUT 00415 (IAC), the Upper Tribunal demonstrated how these principles should be applied. The Tribunal said:

"54. In the claimant's case, the question of whether he meets the requirements of paragraph 399A(b) requires us to weigh up all considerations relevant to social and cultural integration into the UK. In the claimant's favour, he has been in the UK since 1991 he was 4 and was granted ILR in 1998, which means he has been the UK lawfully for most of his life. His mother, sister and half-brother were naturalised as British citizens in 2003. He did not start offending until he was around 16. He has been to school in the UK. His mother tongue is English: that such a factor should count in the claimant's favour is lent force by the fact that s.117B(3)(b) of the 2002 Act identifies that persons able to speak English "are better able to integrate into society". The finding of fact made by the FtT was that he had shown an acceptance of his conduct and that he had engaged in programmes that will assist him in deviating from criminal conduct in the future.
55. On the other hand, his history of offending (repeated robbery) betokens a serious discontinuity in his integration in the UK especially because it shows blatant disregard for fellow citizens. His history of offending includes a conviction for robbery for which he received a sentence of 42 months imprisonment. The significant period of time he has spent in prison in consequence of his offending has excluded him from outside society for that period. We also agree with Mr Jarvis that even when not in prison the claimant's lifestyle over the period when he was committing offences was manifestly anti-social. This lifestyle and his period in prison have contributed to his not able to show he is financially independent. We have to decide whether he is socially and culturally integrated in the UK in the present. He is now 29. Whilst his recent acceptance of the reprehensible nature of his criminal conduct is an important factor, we consider the negative factors we have just mentioned indicate that his history of criminal offending broke the continuity of his social and cultural integration in the UK and he has not regained it. This means that currently he has not shown he is socially and culturally integrated."

10. The submissions of the appellant's counsel are recorded in paragraph 30 of the determination:

'In terms of social and cultural integration into the United Kingdom, it is submitted the appellant can speak English and he has had lawful leave to remain, which suggests that he has integrated over the passage of time, for this length of time, in terms of the rule.'

11. This is hardly a ringing endorsement of social and cultural integration. At any rate, it sets the threshold at a level so low that is almost meaningless. Importantly it entirely omits the criminal offending from the balance.

12. It is plain that the First-tier Tribunal Judge was almost exclusively focused on the length of time the appellant has spent in the United Kingdom. Hence the judge continues in paragraph 64 of the determination:

> "As regards whether the appellant is socially and culturally integrated in the United Kingdom, Mr Balroop has rightly said that perhaps 34 or 35 years, (even allowing for five years incarceration) would suggest that the appellant is socially and culturally integrated in the United Kingdom."

13. The judge went on to point out, however, there was a marked absence of anyone speaking on behalf of the appellant in terms of his cultural or social engagement. Indeed, the appellant described himself as a recluse. The judge continued in paragraph 65

> "Even if he was engaged in the fathering of some eight children, there is no-one speaking to the Tribunal concerning the appellant's engagement with those children or any of the five partners that he named in correspondence with the respondent."

14. The judge went on to record that there was no evidence that he had worked or contributed to society in terms of payment of income tax or National Insurance. He recorded the number of failed personal relationships.

15. The judge's conclusion is found in paragraph 68:

> "There is a background in terms of the probation report suggesting that [his offending] is receding. The appellant himself has said that he is slowing down, as it were. Whilst I am concerned that this is only a temporary lapse in his offending behaviour, given that the question of his proposed deportation may also have had a temporary curb on his offending and addiction, I am nonetheless drawn to the conclusion (in line with Mr Balroop's initial submission) that given this simple extensive period of time; three decades from the appellant entering the United Kingdom whilst he was still a minor, the appellant is socially and culturally integrated in the United Kingdom."

16. This approach is fundamentally flawed. It cannot possibly be said that a person who has, over almost the entire period of his presence in the United Kingdom shown a flagrant disregard to the laws of the country, has become integrated within it. The concept of integration contains within it a strong sense that a migrant has become embedded in the life of the host country in a positive way and that he has contributed to the well-being of the country, not necessarily by any acts of great merit or philanthropy but by the simple process of becoming a good citizen, participating in the values of this community, and thereby strengthening and advancing it. There is no question of integration in the sense referred to in the Rules if the migrant is guilty of serial offending and, in this case, *serious* serial offending over a long period of time. His behaviour has undermined

the community, not strengthened it. If his behaviour has undermined society and the cultural standards which society recognises as both essential and requiring preservation, it is simply perverse for the judge to have found that the appellant is socially and culturally integrated in the United Kingdom.

17. Mr Balroop submitted, according to paragraphs 54 and 55 of *Bossade* that the judge properly carried out a balancing exercise as envisaged by paragraph 399 by taking into account his presence in the United Kingdom; his settled status; his lawful presence; the presence of the other family members; his age when he started offending and the fact that he speaks English as being positive factors in favour of his becoming integrated into society. He submitted that the judge then balanced these factors against his offending and concluded that the balance was in favour of his having become integrated into the United Kingdom.

18. I reject that submission or that this properly reflects the First-tier Tribunal Judge's approach. As paragraph 55 of *Bossade* makes clear, the criminal offending, the time spent in prison and his inability to show that he was financially independent were negative factors such that the history of criminal offending in that case broke the continuity of his social and cultural integration in the United Kingdom which had not been regained. The same applies in the case of this appellant.

19. Had the First-tier Tribunal Judge considered what the Upper Tribunal had said in *Bossade,* he could not have come to the conclusion that this appellant was socially and culturally integrated into the United Kingdom. He is not. There is no evidence that his presence in the United Kingdom over three decades has been anything other than negative. Nothing in terms of his work, his contribution to society or his acceptance of its values provides any support for a finding that he should be treated as integrated into United Kingdom society such as to render his removal unlawful. The First-tier Tribunal Judge erred in law.

20. The three factors set out in s.117C (4) ('Exception 1') must each be established. Having failed on the requirement to establish integration, it is not, therefore, necessary to consider whether there are very significant obstacles in the appellant's integration into Ghana. However, given the superficial nature of his integration into the United Kingdom, there are no obstacles in his continuing the life that he has chosen to lead on return to Ghana.

21. The First-tier Tribunal Judge found that the obstacles were that he has no family to return to and that he has spent little, if any, time there. But then he has no family here to speak of so, there is no material difference. The judge conceded that Ghana is English-speaking and that he was brought up in a Ghanaian household. He accepted that the appellant was reclusive and would therefore lose little in terms of returning to another country. Notwithstanding this, he found that the appellant would be '*a stranger in his home country*' and that this amounted to very significant obstacles in his integration. I am bound to say that I am unable to identify these factors as being obstacles, far less very significant ones.

22. It was accepted by Mr Balroop that I had all the material necessary for me to remake the decision if I found that there was a material error of law.

23. I am satisfied that the First-tier Tribunal Judge materially erred. I allow the appeal of the Secretary of State. I set aside the determination of the First-tier Tribunal and remake it dismissing the appeal of Mr Prah on all grounds.

DECISION

1. The judge made an error on a point of law and I allow the appeal of the Secretary of State.
2. I set aside the decision of the First-tier Tribunal.
3. I re-make the decision and substitute a determination dismissing the appeal on all the grounds advanced.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL
24 August 2017