Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/21913/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23rd February 2018	**On 26th April 2018**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR ABDUL SALIM MARAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: None
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. In a decision promulgated on 14th November 2017 an error of law was found in a First-tier Tribunal decision promulgated on 18th July 2017 which allowed the appeal of the appellant against a refusal to his protection and human rights claim in the face of a deportation order made under Section 32(5) of the UK Borders Act 2007. As set out in the Secretary of State's reasons for refusal letter the appellant's deportation was required by Section 32(5) unless an exception applied because he was a foreign criminal who had been sentenced to a period of imprisonment of at least twelve months and as such his deportation was conducive to the public good.

2. The appellant is a citizen of Sierra Leone with a mother who was a citizen of New Guinea and he was born in 1993. He is now 25 years old. He was granted indefinite leave to remain in the UK on 27th September 2001.

3. In the First-tier Tribunal decision the chronology of his criminal activity was set out as follows

'5. The respondent set out her position in full in the reasons for refusal letter.

6. The chronology of criminal activity is as follows:

26.10.11 using threatening, abusive, insulting words or behaviour with intent to cause fear or provocation of violence.

Fine £50, costs £85, Victim surcharge £15

3.3.14 using vehicle while disqualified, driving other than in accordance with a licence, failing to surrender to custody

Fine £110 (plus £70 for failing to surrender), costs £85, victim surcharge £20, Disqualified from driving – 6 months, licence endorsed.

11.11.14 Robbery

42 months imprisonment.

12.3.15 Burglary and theft (not a dwelling)/Burglary and theft (dwelling)

3 months imprisonment (concurrent) Victim surcharge £80

7. The sentencing remarks of the Judge dealing with the case on 22 December 2014 are included in the respondent's bundle:

> *"… you entered the Talk Talk shop on the Norwood High Street and you robbed it … I am perfectly satisfied that that robbery was pre-planned by you … you threatened the owner … you implied that you had a weapon of some sort … you stole the contents of a charity box … you are entitled to some credit although not full credit in light of the fact that your initial reaction was not to accept your guilt in that case … you were allowed bail … the judge indicated to you that the report would be an all options report … in the face of all that, on the 18 December, you went into another shop … and you stole … to the value of just over £1,000 … that must be in my judgement a serious aggravating feature … the planning … is a serious aggravating feature … the threat that you used is an aggravating feature … the taking of the charity box is an aggravating feature in my judgement … the commission of the (second) offence on the back of the fact that you had been granted your bail was a serious aggravating feature … mitigation … you are still a young man … you have nothing of a similar nature … you have a young family …"*

4. The First-tier Tribunal Judge decision was set aside because the judge appeared, when allowing the appeal, to have failed to take into account her adverse findings with respect to the appellant and failed to factor in the relatively short period of time since the appellant was released when considering his re-offending or lack of it. Her conclusion at paragraph 89 such that "*overall I do not find very serious reasons to justify*

his expulsion" ran counter to the overall findings of the judge and the decision was inadequately reasoned in the light of the public interest considerations and guidance given in **Hesham Ali v SSHD [2016] UKSC 60**.

5. In essence an error of law was also found because the judge had not explained why the fact the appellant having lived here all his life in the UK and was presumed to have been born here would necessarily override the public interest factor in deporting him. At the hearing before me Mr Tufan submitted that there was in fact no evidence that the appellant was born here and even if that was the case **Uner and the Netherlands [2006] ECHR 873** confirmed that even where someone was born in a country but was a citizen of another country he could still be expelled. Mr Tufan also submitted that the appellant had provided no evidence that the children with which he asserted he had a relationship were indeed his biological children.

6. At the resumed hearing before me the appellant did not attend and his solicitors Samuel Ross Solicitors notified the Tribunal on 19th February 2008 some four days prior to the hearing that they had received no further instructions from the appellant and would not be representing him at the hearing on 23rd February 2018. There was no application by the appellant for an adjournment and he did not attend the hearing before me. There was some evidence that in fact the appellant had been reconvicted on 15th September 2017 for possession with intent to supply of a class A drug (heroin), pleaded guilty and was imprisoned for 32 months. At the same time he was convicted of possession of crack cocaine and again was concurrently imprisoned for 32 months. I considered whether to adjourn the hearing but concluded that the appellant had been notified of the date, time and venue of the hearing by way of his previous solicitors and had made no application for an adjournment or an application to be produced. As can be seen from my error of law decision I preserve the findings of the judge made between paragraphs 47 and 86. There were no challenges to those findings and I refer to my error of law decision in which I summarised the First-tier Tribunal Judge's findings as follows

> "6. *The [First-tier Tribunal Judge] judge throughout the determination made various findings which were not helpful to the appellant such that the appellant was deliberately untruthful in his relationship with his father, [paragraph 53], that his relationship with his children was new and overall appeared slender and that the judge was not satisfied that at the date of the hearing it amounted to a genuine and subsisting parental relationship because of the absence of involvement before release from prison, [paragraph 61]. The judge found it would not be unduly harsh for the child to remain in the UK without the person who is to be deported, [paragraph 61], and further, that the relationship with the appellant's said partner was not as long-lived, as submitted. Overall in view of the inconsistencies on their evidence of their relationship the judge was not satisfied that the appellant and his partner were in a genuine and subsisting relationship, [paragraph 66]. The judge concluded, [paragraph 69], that it would not be unduly harsh for the said partner to remain in the UK without the appellant. At paragraph 71, the judge concluded the appellant had not maintained close ties with Sierra Leone but the judge was not satisfied there would be very significant obstacles to his integration into Sierra Leone because he had good health, literacy and numeracy skills and experience of working.*

> 7. *Further, at paragraph 73 the judge found that the appellant would be financially supported with the advice and contacts of his family and the wider community from Sierra Leone and he was at present in receipt of financial support from his family and this would continue, [paragraph 73].*
>
> 8. *As such the judge found that there were no exceptions engaged [paragraph 75] and proceeded to consider the facts as to whether there were very compelling circumstances to outweigh the requirement of deportation.*
>
> 9. *The judge then applied Section 117C as she was obliged to do and noted that the relationship formed with Ms C was during a period when the appellant had lawful leave in the UK but that there was no other evidence of significant private life. She also noted that as an adult he had a relationship with his mother and siblings but there was "some dissembling in the evidence given about how familiar they each were with the movements of the other", paragraph 84.*
>
> 10. *The judge had not accepted that the relationship with the partner and the children was subsisting but moreover that deportation would not be unduly harsh:*
>
> > *"86. Turning to Exception 2, as set out in section 117C(5), I find that he has no genuine and subsisting relationship with a qualifying partner. In reaching this conclusion I rely on my previous finding that he has a current relationship with her and a current relationship with his 2 children, however, both are recent and I am not satisfied that they qualify as subsisting. For the reasons set out above I find that the effect of the deportation will not be unduly harsh on his partner or the children.""*

7. The appellant could not in view of the findings cited above satisfy the exceptions to paragraph 398 such that he had a genuine and subsisting parental relationship with a child or with a partner. The judge clearly found that it would not be unduly harsh for the child to remain in the UK without the person who is to be deported further to paragraph 399(a)(2)(b).

8. Turning to paragraphs 399A to 399C I set them out as follows

> *399A. This paragraph applies where paragraph 398(b) or (c) 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.*
>
> *399B. Where an Article 8 claim from a foreign criminal is successful:*
>
> > *(a) in the case of a person who is in the UK unlawfully or whose leave to enter or remain has been cancelled by a deportation order, limited leave may be granted for periods not exceeding 30 months and subject to such conditions as the Secretary of State considers appropriate;*
> >
> > *(b) in the case of a person who has not been served with a deportation order, any limited leave to enter or remain may be curtailed to a period not exceeding 30 months and conditions may be varied to such conditions as the Secretary of State considers appropriate;*

(c) indefinite leave to enter or remain may be revoked under section 76 of the 2002 Act and limited leave to enter or remain granted for a period not exceeding 30 months subject to such conditions as the Secretary of State considers appropriate;

(d) revocation of a deportation order does not confer entry clearance or leave to enter or remain or re-instate any previous leave.

399C. Where a foreign criminal who has previously been granted a period of limited leave under this Part applies for further limited leave or indefinite leave to remain his deportation remains conducive to the public good and in the public interest notwithstanding the previous grant of leave.

9. Although the appellant had lived in the UK lawfully for most of his life, bearing in mind his terms of imprisonment and the fact that he has been once again imprisoned there is no evidence that he is socially and culturally integrated into the United Kingdom. The various provisions under 399A are conjunctive and as the First-tier Tribunal Judge found, (findings preserved) there would be no very significant obstacles to his reintegration into Sierra Leone. I make a broad evaluative assessment in relation to his integration in the United Kingdom. Most of his life was spent in the UK and most of it lawfully resident but a finding in relation to his lack of offences since his release from prison in May 2016 does not assist him, considering the very short period since his release and his further recent conviction and imprisonment as cited above. He may have cultural and family ties in the UK and his ties in Sierra Leone may be less secure and I take into account that Sierra Leone may have a severely depressed economy and that its life expectancy, income and standard of living bear no comparison with the counterparts in the United Kingdom, but the country guidance authorities on Sierra Leone do not identify a general risk on return because of the country conditions. The appellant cannot comply with the exceptions to paragraph 398

10. The Supreme Court in **Hesham Ali v SSHD** [2016] UKSC 60 confirmed that the Strasbourg case law assisted in determining the relevant factors to be taken into account but with reference to the Immigration Rules identified at [38] that

> *"Cases not covered by those rules (that is to say, foreign offenders who have received sentences of at least four years, or who have received sentences of between 12 months and four years but whose private or family life does not meet the requirements of rules 399 and 399A) will be dealt with on the basis that* ***great weight should generally be given to the public interest****"*

11. As **LW Jamaica [2016] EWCA Civ 369** rehearsed, essentially to found "compelling reasons" for not deporting an appellant, considerably more is required than just the passage of time. Indeed the question of passage of time was considered in that authority and it was found at paragraph 36 that

> *"The relationship between the length of residence, the length of sentence and the gravity of the offending (consider, for example, murder, rape and terrorism) would require careful consideration on a fact-specific basis, always keeping in mind that the reasons need to be compelling to outweigh the very strong public interest in the deportation of foreign criminals".*

12. Elias LJ opined at paragraph 38 that he was not saying that on the facts it might not be open to a Tribunal to conclude that there were compelling reasons for not deporting an appellant based on long residence "so as to make deportation unconscionable despite his sentence for dealing in class A drugs", but – and an important but – it mattered to public confidence that any such decision was reached appropriately, after due regard is had to the great weight to be attached to the public interest in the deportation of foreign criminals and with "exceptional circumstances" properly understood as meaning "compelling reasons".

13. This appellant has indeed lived in the United Kingdom for most of his life since he was born in 1993. He is now nearly 25 years old and has not lived in Sierra Leone. He has been convicted of robbery in October 2014, when an adult, and sentenced to 42 months' imprisonment and was convicted on 12th March 2015 for burglary and theft and sentenced to three months' imprisonment. Again he has been convicted for a serious offence of possession and supply of class A drugs and sentenced to two years and eight months in prison as recently as September 2017. That was despite him being placed on licence on 12th May 2016. His sentence was due to expire on 12th May 2018. His "initial single sentence plan" (ISSP) in relation to his previous sentence and dated 19th January 2015 appears to have been updated as at 8th August 2015 and assessed his overall risk of serious harm level to be medium.

14. The pre-sentence report dated 15th December 2014 identified in relation to the offence of robbery on 5th October 2014 that it was

> *"A very serious offence where an innocent member was subjected to threats of harm and had items and money stolen from his place of work [a shop] where the appellant approached the victim and demanded money and threatened to hurt him if he did not comply with his demands".*

15. The conclusion in that report by the probation officer held

> *"... it is my assessment that unless Mr Marah addresses the motivations for this offence he will continue to offend in this manner".*

16. In that report it is recorded that the appellant left school with seven GCSEs, went on to college to study electronics and he was in a second year of a four year degree studying information systems and engineering.

17. The report also identified that the appellant had no problems in terms of his mental health, had never self-harmed and had never had suicidal ideation. He had not been prescribed with any medication for any mental health problems and he stated that he had never tried any drugs and did not consume alcohol. Nonetheless the appellant was assessed at that date as posing a medium risk of harm to the public and a medium risk of re-offending. The risk he posed, and on the evidence, still poses is robbery and threatening and abusive behaviour. The appellant was recorded as not open to discussing his offending in interview and the probation officer was not aware of the factors motivating his behaviour. It was possibly linked to financial motives.

18. What is abundantly clear is that despite his time in prison the appellant re-offended shortly after his release, has been convicted and again sentenced to imprisonment for a serious offence.

19. I have taken into account the Immigration Rules which set out the Secretary of State's position. I have adopted the approach to Article 8 as set out in **Hesham Ali** and find that in all the circumstances, there are no compelling circumstances in this appeal and nothing presented to undermine the justification for deportation.

Notice of Appeal

Mr Marah's appeal is dismissed on human rights grounds.

Signed *Helen Rimington* Date 19th March 2018.

Upper Tribunal Judge Rimington

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed *Helen Rimington* Date 19th March 2018.

Upper Tribunal Judge Rimington