



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

Appeal Number: HU/19957/2016

THE IMMIGRATION ACTS

**Heard at UT (IAC) Hearing in Field
House
On 20th June 2019**

Decision & Reasons Promulgated

On 9th July 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR M A H
(ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Ms G Brown, Counsel, instructed by Duncan Lewis & Co
Solicitors

DECISION AND REASONS

1. For convenience I shall employ the appellations “Appellant” and “Respondent” as at first instance. The Appellant is a Jamaican national whose appeal was allowed on Article 8 grounds by First-tier Tribunal Judge O’Garro in a decision promulgated on 25th April 2019.
2. The Secretary of State appeals that decision. It is said in the grounds that the Appellant is a Jamaican national who has been found to be a persistent offender and who seeks to avoid deportation on human rights grounds.

Reference is made to **AS [2017] EWCA Civ 1284**. The grounds note that because the Appellant could not meet the requirements of Exception 2 the judge considered very compelling circumstances and as confirmed in **Hesham Ali** the threshold is not merely compelling circumstances but very compelling circumstances to a level over and above the factors and exceptions in Section 117C and paragraphs 399 and 399A. It was submitted that the Appellant's offences did not fall into the category of juvenile delinquency and that the Appellant's persistent offending differentiates the Appellant's circumstances from those considered in the authority of **Maslov**. It was submitted that little or no weight should be given to the Appellant's rehabilitation as this had only occurred while the threat of deportation was present; reliance is placed on well-known case law. It was submitted that the judge had failed to give clear reasons as to how the high threshold of very compelling circumstances was met or how this was one of the very small minority of cases where the Rules are not met where the Appellant's Article 8 rights would outweigh the public interest.

3. Permission to appeal was granted by First-tier Tribunal Judge Buchanan in a decision dated 22nd May 2019. Thus, the matter came before me on the above date.
4. For the Secretary of State Mr Tufan relied on his grounds. The judge had been wrong to find that there were very compelling circumstances and the decision should be reversed in favour of the Secretary of State. It was notable that in paragraph 66 of the decision the judge had found the circumstances to be compelling but had not said that they were very compelling and had therefore not applied the right test.
5. For the Appellant Ms Brown relied on her skeleton argument.
6. It was submitted that the Secretary of State's Grounds of Appeal disclosed no error of law material or otherwise and amounted to a mere disagreement with the findings of the First-tier Tribunal Judge and were an attempt to reargue the appeal. It was submitted that the judge properly directed herself that the circumstances you considered to be very compelling (see paragraphs 59 to 65). The points to note were that the deportation proceedings commenced when the Appellant was 17 years old and had been residing in the UK since the age of 3 years. He was granted indefinite leave to remain in 2010. Save for the offences of robbery/attempted robbery and burglary most of the offending could be classified as juvenile delinquency. His offending was not so serious as to trigger automatic deportation under the UK Borders Act 2007. A prison sentence had never been imposed on the Appellant in respect of any of the offences.
7. There had been no serious offending since the date of the offences for which he was convicted in December 2014 and which were particularly relevant in causing the Respondent to commence deportation proceedings against him. He was a reformed person and "very" involved in this family

life with his partner and child. Reference is then made to well-known case law. In all the circumstances the Tribunal was requested to dismiss the appeal against the Appellant.

8. I reserved my decision.

Conclusions

9. The judge set out full reasons for his decision. It is not disputed that in paragraph 56 he applied the correct test saying that he “must consider if there are very compelling reasons to outweigh his deportation”. He went on to refer to **Hesham Ali** and to the words of Lord Reed. The judge made the point (paragraph 61) that most of his offending could be classified as juvenile delinquency. In paragraph 63 he noted that although his criminal activities did raise concern due to involvement with local gangs and the impact his criminal lifestyle had on the public he had never been given a custodial sentence and this had to be taken into account in considering the seriousness of his offending. In paragraph 64 he took account of the fact that the Appellant had had no serious offending since the deportation order was made some five years ago. He was older, more mature, very involved in his family life with his partner and child and a reformed person evidenced by his non-engagement with local gangs or in serious offending.
10. The judge found that his rehabilitation must be given due weight in the balancing exercise. It could not be overlooked (paragraph 65) that all his social and family ties were in the United Kingdom. He had a strong family and private life here and this is where all his close friends and relationships are including his partner and child with whom he has a subsisting and loving relationship. The judge accepted that family relationship is of particular importance. He accepted that the Appellant had no ties with Jamaica. Looking at everything in the round he found that the Article 8 rights of the Appellant prevailed on account of his particular circumstances. In paragraph 66 he says he found the circumstances to be compelling and criticism was made of that finding because he did use the word “very”. However, I consider that this expression was no more than a slip and I accept and agree with what Ms Brown said that this does not undermine the fact that the judge was applying the test of very compelling circumstances - which is what he said he was doing.
11. The judge considered all the facts in this case with care and clarity. He set out full reasons for coming to his decision. In my view there is no error of law in the judge’s decision which must stand.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

I shall continue the anonymity order.

Order Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This order applies both to the Appellant and to the Respondent. Failure to comply with this order could lead to contempt of court proceedings.

Signed *JG Macdonald*

Date 3rd July 2019

Deputy Upper Tribunal Judge J G Macdonald