Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/00225/2018**
(V)

THE IMMIGRATION ACTS

Heard at : Field House **Decision & Reasons Promulgated**
On : 25 November 2020 **On 03 December 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

and

KESHAN TROY FAIRWEATHER
Respondent

Representation:
For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer
For the Respondent: Mr A Chohan, instructed by Consult Immigration

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

2. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Fairweather's appeal against the decision to refuse his human rights claim following the making of a deportation order against him. For the purposes of this decision, I shall

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hereinafter refer to the Secretary of State as the respondent and Mr Fairweather as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Jamaica born on 22 November 1989. He entered the UK on 6 August 2000, aged 10 years, with six months leave to enter as a visitor and joined his father who had left Jamaica for the UK four years previously after separating from his mother. The appellant was granted indefinite leave to remain on 4 February 2003, as the dependant of his father. His mother came to the UK in 2001 and they were reunited shortly after.

4. On 26 November 2004, aged 15 years, the appellant was cautioned for possessing an article with a blade and on 13 July 2005 he was cautioned for handling stolen goods. On 14 November 2007 he was convicted on two counts of possession of cannabis and on 4 September 2010 he was convicted for driving whilst disqualified. On 7 October 2010 he was convicted for failing to surrender to custody. On 3 November 2010 he was convicted for driving whilst uninsured and on 22 February 2013 he was convicted for committing an act with intent to pervert the course of justice and for using a vehicle whilst uninsured. He was given a 7 month sentence of imprisonment and disqualified from driving for 12 months. On 14 December 2016 he was convicted of wounding/ inflicting grievous bodily harm and was sentenced to 6 months imprisonment which was suspended for 18 months.

5. On 5 December 2014 the appellant was notified of an intention to make a deportation order against him under section 5(1) of the Immigration Act 1971, on the grounds that his deportation was deemed to be conducive to the public good. On 2 February 2015 he was served with a Notice of Decision to refuse a human rights claim, certified under section 94B of the Nationality, Immigration and Asylum Act 2002. On 11 February 2015 the appellant became the subject of a Deportation Order.

6. Written representations were made on the appellant's behalf on 6 March 2015 and 9 September 2015 setting out an Article 8 claim on the basis of his family and private life in the UK with particular reference to his relationship with his partner and his son, C, born on 6 February 2010.

7. Following the judgment in Kiarie and Byndloss, R (on the applications of) v Secretary of State for the Home Department [2017] UKSC 42, the certified decision was withdrawn and a fresh decision was made on 6 October 2017 to refuse his human rights claim.

8. In that decision, the respondent referred to information from the Metropolitan Police which was considered to demonstrate that the appellant's presence in the UK was not conducive to the public good due to his affiliation with people known to be linked to gang-related crime in the London area. The respondent noted in particular the appellant's affiliation with the Beaumont Crew based in Waltham Forest Borough. The respondent also had regard, in addition to the appellant's criminal convictions, to his non-convictions for offences relating to actual bodily harm, possessing an offensive weapon,

robbery, handling stolen goods, attempted robbery, malicious wounding, possession of cannabis and possession of a firearm and considered him to be a persistent offender. The respondent accepted that the appellant's son C was under 18 and was British, but did not accept that he had a genuine and subsisting relationship with him. It was noted that they did not live together. The respondent accepted that it would be unduly harsh for C to live in Jamaica with the appellant but did not accept that it would be unduly harsh for C to remain in the UK without the appellant if he was deported. The respondent did not accept that the appellant had a genuine and subsisting relationship with C's mother and considered that he could not meet the requirements of paragraph 399(a) of the immigration rules. As for the appellant's private life, the respondent did not accept that he could meet the requirements of paragraph 399A since, whilst it was accepted that he had been lawfully resident in the UK for most of his life, it was not accepted that he was socially and culturally integrated in the UK or that there would be very significant obstacles to his integration in Jamaica. The respondent did not consider there to be very compelling circumstances outweighing the appellant's deportation.

9. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Bart-Stewart on 2 December 2019. The judge heard from the appellant, his partner, his mother and his mother's partner. The appellant denied any association with gangs and said that he knew some of the people concerned as he had been at school with some of them, but he had distanced himself from those people. He had changed whilst in prison. He was working in the UK and he had a close relationship with his son and his one-year old daughter. He had been with his partner for 13 years, although they had had their ups and downs during that time. He had been living with his partner and their two children since July 2018.

10. The judge had regard to the 16 incidents recorded in a Metropolitan Police statement and to the appellant's explanation for them. The judge found there to be a pattern of offending which was more than antisocial behaviour and involved violence and intimidation and considered there to be a reasonable assumption that the appellant was involved in a gang rather than just a benign group of friends. The judge did not consider, however, that the appellant was a middle to high level member of a criminal gang as claimed, but she found that there had been a pattern of offending which had escalated to serious violence in more recent years, with the last conviction being on 14 December 2016. She noted the appellant's frequent use of his step-brother's name when giving information to the police and to his history of serious violence toward women. She noted that the sentence for the last conviction had included a 10 year restraining order. On the totality of the evidence the judge accepted that the appellant had been involved in criminal activity in the UK which had caused serious harm or the potential to cause serious harm and to cause fear in the community and the general public.

11. Turning to the appellant's relationships with his partner and children, the judge noted that he did not live with them, but with his father. However she accepted that he had family life in the UK on the basis of his relationship with his partner and children and that he had a significant involvement in the

children's lives. She considered that it would be unduly harsh to expect the children to relocate to Jamaica with the appellant, but did not consider that it would be unduly harsh for the children to remain in the UK with their mother if the appellant was deported. The judge accepted that the appellant had been lawfully resident in the UK for most of his life and that he was socially and culturally integrated in the UK but found there to be no very significant obstacles to his integration in Jamaica. The judge found that the exceptions to deportation did not therefore apply. However, she concluded that the appellant had dissociated himself from the lifestyle of involvement with gangs, that there was no evidence that he was involved in the usual gang related offending, that his offences were not on the most serious scale, that he was genuinely remorseful for his offending, that he did not pose a serious future risk to the public and that the public interest did not require his deportation. She accordingly allowed the appeal.

12. The respondent sought permission to appeal that decision to the Upper Tribunal. Permission was refused in the First-tier Tribunal but was granted in the Upper Tribunal on 20 February 2020 on the basis that the judge had arguably failed to give adequate weight to the public interest in deportation.

13. The matter then came before me to decide if the judge had erred in law and both parties made submissions.

14. Mr Lindsay relied on the grounds of appeal which he stated were twofold, namely that the judge had failed adequately to consider the public interest in the appellant's deportation and that the judge had erred in her consideration of 'very compelling circumstances'. He focussed on the first of those and submitted that the judge had failed to consider the three reasons given in the deportation decision as to why the appellant's deportation was conducive to the public good. The three reasons were: at [21], that the appellant posed a serious future risk to the public; at [22], that he was affiliated with people known to be linked to gang-related crime in London; and at [31], that he was a persistent offender. With regard to the first, the judge had failed to consider the high risk the appellant posed to women with whom he was in a relationship, given his past domestic violence against former and current partners. As for the second, the judge had failed to identify which evidence showed that the appellant had disassociated himself from gangs other than his own evidence and had failed to make any credibility findings in that regard. With regard to the third, the judge had made no finding as to whether the appellant was a persistent offender at the time she made her decision.

15. Mr Chohan submitted that the judge had considered all of those matters and had given reasons for reaching the conclusions that she did. She had identified the very compelling circumstances outweighing deportation. The respondent's grounds of appeal were simply a disagreement with her decision.

16. In response Mr Lindsay submitted that the judge had explained, at [131] to [133], which circumstances she considered to be very compelling, but they were not sufficient to allow the appeal.

Discussion and Findings

17. This is a case where it is important to distinguish between an error of law and what is in fact a disagreement with the judge's decision. That is particularly so, as the judge undertook a detailed assessment of the evidence and set out the statutory provisions at each step of her findings and indeed Mr Lindsay agreed that that was the case.

18. It seems to me that ultimately the Secretary of State's case falls within the latter category of a disagreement and that, whilst another judge may have reached a different decision, Judge Bart-Stewart was entitled to reach the decision that she did on the evidence available to her. Mr Lindsay focussed on the ground asserting a failure by the judge to give adequate consideration to the public interest in deportation. However it seems to me that the judge had the public interest very much in mind and it is clear from her conclusion at [133] that, when considering all the evidence and relevant factors together, she gave it the weight that was required.

19. Mr Lindsay submitted that the deportation decision gave three particular reasons why the appellant's deportation was conducive to the public good and that the judge failed to consider all three. The first of those was the serious risk the appellant posed to the community in the future, as referred to at [21] of the decision letter. Contrary to Mr Lindsay's assertion, however, that was a matter carefully considered by the judge throughout her decision, where she had particular regard to his history of violence towards women with whom he was involved and to the risk to his children of witnessing domestic violence. Furthermore, she undertook, at [120] to [126], a detailed assessment of the OASys and BBR reports and the nature of the appellant's offending, concluding with her express findings at [132] and [133] as to the risk he posed in the future. I therefore disagree entirely with Mr Lindsay that that was not a matter properly considered by the judge, whether or not her conclusion was one with which the Secretary of State agreed.

20. The second reason was the appellant's affiliation to gang-related crime. However, again, that was a matter which the judge considered in detail and in response to which she made clear and cogently reasoned findings. At [74] the judge found that the pattern of behaviour by the appellant, as set out in the Metropolitan police statements, raised a reasonable assumption that the appellant was involved in a gang rather than just a benign group of friends. However, at [87] she found there to be no evidence to show that the appellant continued to be associated with those individuals and she went on to find that the subsequent offences he had committed were unrelated to gang activity. That is apparent from the judge's findings at [94] and subsequently at [119], [130] and [132], where she rejected the Secretary of State's claim that the appellant was a high to mid-level leader of criminal gangs or that he was involved in serious crime and found no evidence of him being involved in such activity.

21. As for the third reason for the decision being made by the respondent that the appellant's deportation was conducive to the public good, namely that he

was a persistent offender, again I find myself in disagreement with Mr Lindsay's submission that the judge failed to make findings in that regard. Mr Lindsay directed me to the judge's reference, at [73], to the appellant's pattern of offending and to him previously being a persistent offender, and submitted that she had failed to make any finding as to whether he was a persistent offender at the time of her decision. However the judge gave a clear indication that the appellant's pattern of gang-related offending ended after 2011, and I refer in particular to [86] and [87] in that regard. At [94] she referred to his offending thereafter, up until his last offence in March 2015, taking a different form, namely using his step-brother's name and committing domestic violence, and at [120] she again considered the pattern in his offending and the nature of that offending. At [132] the judge summed up her findings on the appellant's offending. Whether or not the judge made a specific finding on whether the appellant was currently a "persistent offender", the fact remains that she had full regard to the pattern, nature and seriousness of his offending and took that into account when making her decision and she made her decision within the relevant legal framework in paragraph 398 of the immigration rules. Mr Lindsay relied upon the case of Chege ("is a persistent offender") Kenya [2016] UKUT 187 in submitting that the judge had erred by failing to make relevant findings, but I find there to be nothing in the judge's assessment of the appellant's case to be contrary to the principles and guidance in that case.

22. Accordingly I do not find that the Secretary of State's grounds are made out in relation to the judge's assessment of the public interest. As for the second ground, the judge's assessment of "very compelling circumstances", it seems to me that this ground has more arguable merit than the first, given that the judge considered an accumulation of factors at [126] and [130] to [133] rather than any particular significantly outstanding feature of his life. Interestingly, that was not the ground upon which Mr Lindsay focussed or made his initial submissions. Nevertheless, it is clear from the judge's self-direction at [119] and [129] that she had regard to the relevant statutory provisions in section 117C of the Nationality, Immigration and Asylum Act 2002 and to the relevant elevated threshold for 'very compelling circumstances' and that that was what she had in mind when assessing the appellant's overall circumstances. The judge found that the accumulation of the appellant's young age at which he came to the UK, together with his close family ties in the UK and lack of family ties and support in Jamaica, when set against his offending history and the lack of risk he posed to the public, were very compelling circumstances. Whilst it may be that another judge could have reached a different conclusion in that regard, I do not consider that Judge Bart-Stewart can be said to have erred in law by concluding as she did.

23. Accordingly I find that the judge's decision to allow the appellant's appeal was one which was open to her on the evidence available, that it was made in accordance with the relevant legislative framework and caselaw and that it did not involve any material errors of law.

DECISION

24. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring the decision to be set aside. The decision of the First-tier Tribunal to allow the appellant's appeal therefore stands.

Signed S Kebede
Upper Tribunal Judge Kebede Date: 26 November 2020