Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/17247/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6 January 2020	**On 15 January 2020**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

WILTON MARK BROWN
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Karim of Counsel instructed by Law Lane Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before me following the grant of permission to appeal by Upper Tribunal Judge Kamara on 28 November 2019 against the determination of First-tier Tribunal Judge Mulholland, promulgated on 4 October 2019 following a hearing at Taylor House on 29 August 2019.

2. The appellant is a Jamaican national born on 15 March 1968. He entered the UK on 20 June 1999 on a visit visa (although conflicting information and dates are provided by the appellant's representatives; AB:32) and on 26 November 1999 he applied for leave to remain as a student. However, before the application could be decided and within a few months of his arrival (in September 1999) the appellant fell into criminal ways and on 8 December 1999 faced criminal charges. On 23 August 2000 he was convicted, following a guilty plea, of two counts of supplying Class A drugs, and one count of breaching bail conditions, and was sentenced to two years for each drugs offence, to be served concurrently, and to three months' imprisonment for the breach of bail. He was recommended for deportation by the court. He did not appeal the conviction or the sentence. His student application was refused on 16 May 2001 and a deportation order was signed. On 19 June 2001 he was deported.

3. Shortly after the appellant's arrival in the UK, his son was born in Jamaica in September 1999. Six months after the appellant's deportation, his partner and son left Jamaica and came to the UK and have been living here since. They are now British citizens. In July 2017 the appellant and his partner married in Jamaica and on 19 January 2018 an application was made for revocation of the deportation order. This was refused on 23 July 2018. That decision gives rise to these proceedings.

4. The appellant's grounds argue that there was procedural unfairness because the judge relied on EYF (Turkey) [2019] EWCA Civ 592 without putting this to the parties. It is maintained that the appellant did not, therefore, have the opportunity to make submissions on the judgment.

5. It is also argued that it was unfair to rely on the aliases used by the appellant in the past and detailed in the PNC because this was not a matter relied on by the respondent in her refusal letter.

6. It is argued that the judge did not refer to the letter of good character and pictures of the appellant's farm contained in the appellant's bundle and that she was wrong to criticise the appellant for not working and for his character when these matters were not relied on in the decision letter.

7. It is argued that having relied on EYF the judge failed to give sufficient consideration to the guidance therein that the lapse

of a ten-year period makes it easier to argue that the balance has shifted in favour of revocation and, further, that she failed to have regard to paragraph 391(a) of the Immigration Rules. It is maintained that 18 years had passed, the appellant had been outside the UK, had not committed further offences and that no public interest factors were pointed to.

8. The final ground maintains that there had been an inadequate assessment of the appellant's wife's evidence or to her private and family life.

9. There has been no Rule 24 response from the Secretary of State.

The Hearing

10. The appellant is in Jamaica and so was not in attendance for the hearing. Mr Karim made submissions on his behalf. He relied on the grounds and argued that the judge had been wrong to rely on EYF without putting this to the parties and had also been wrong to rely on the use of aliases and other matters which had not been a part of the respondent's decision. He argued that there was evidence in respect of the appellant's work and character in the bundle and no challenge was made to these by the respondent. He maintained that there was no reference by the judge to the passing of the ten-year period and no consideration of paragraph 391(a). He submitted that the appellant's wife's evidence and the impact of the decision on her private and family life had not been sufficiently considered. He asked that the determination be set aside and remitted to the First-tier Tribunal for a fresh decision to be made.

11. Mr Whitwell submitted that the determination was sustainable. He referred to the reasons given by First-tier Tribunal Judge Holmes when he refused permission to appeal. He submitted that EYF was a binding case, it was handed down three months prior to the hearing, both sides were represented, and the judge was entitled to consider the relevant law. The PNC was part of the evidence before the judge and she was entitled to take it into account in respect of the appellant's contention that he was a reformed character. In any event, the appellant was given the opportunity to participate in the hearing by video link but declined to do so. The judge found that there was no evidence of bank statements to show the appellant's income despite the submission of photographs of a farm. EYF had to be read as a whole; it was not authority for the contention that revocation was automatic after ten years. The judge had

considered all the factors. It was not relevant that another judge may have reached a different conclusion. The evidence of the witness was recorded and considered throughout the findings. The omission of a reference of paragraph 391(a) was a matter of form over substance. There was no material error and the appeal should be dismissed.

12. Mr Karim replied. He stated that the absence of a reference to a provision of the rules may not be an error, but the judge did not even consider the matter of the passing of over ten years. There was no regard at all to that and the shifting of the balance. The aliases used were prior to deportation and did not go to the issue of whether or not be had been of good character since and was not a point taken by the respondent in any event. The lack of a bank statement was not relevant to the issue of revocation.

13. At the conclusion of the hearing, I reserved my decision which I now give with reasons.

Discussion and Conclusions

14. I have considered all the evidence and the submissions made before coming to a decision. My conclusions are reached in no particular order of priority.

15. I do not accept the argument that the judge failed to consider the passing of the ten-year period. She clearly refers to this at paragraph 21 of the determination. Moreover, she had before her various authorities relied on by the appellant including Smith (paragraph 391(a) – revocation of deportation order) [2017] UKUT 166 (IAC) which, as can be seen from the title, deals with the 391(a) issue. She also confirms that she had taken this and the principles of the authorities into account (at 8). These are in fact referred to further at paragraphs 22-24. Towards the end of paragraph 22 she again notes the issue of the ten-year period and at paragraph 36 she notes that 18 years have passed since the offence and that this is *"a weighty consideration in his favour"*. The passage of time is referred to again at paragraphs 39 and 50. To allege that she had no regard to the passage of time or the shift of the balance is thus wholly incorrect. I find that the judge was patently aware of the implication of the passage of time, and that she correctly noted that whilst the balance can shift towards revocation after this time, such a shift is not to be presumed.

16. Nor do I find any merit in the complaint about reliance on EYF in this case. The principles from that authority relied on by the judge are uncontroversial and, indeed, are supported by the other authorities which were relied on and adduced. The judgment contained nothing new and did not raise any matter that would have required additional submissions given that it essentially reiterated what is contained in paragraph 391(a) and 391A. The judge proceeded on the basis that there could be a shift in the balance towards revocation but that each case should be considered on a case by case basis and that is the approach she followed. Both parties would have been aware that was the correct approach and had the opportunity to make submissions on it. Had EYF raised matters that were unexpected or which the representatives would have been unfamiliar with, then Mr Karim's complaint may have had weight. In this case, however, it does not.

17. Mr Karim also complained in his submissions of the judge's failure to point to any public interest factors however this is simply not the case. The judge considers this at paragraphs 27, 32, 35 and 50.

18. Much is made of the judge's consideration of the appellant's use of aliases as confirmed by the PNC. The submission appears to be that the judge should have either put this to the parties at the hearing so that they cd respond to it or else not have relied on this at all because the respondent did not raise it in her decision letter. I do not consider this argument has any merit. The PNC formed part of the evidence before the Tribunal. Whether or not the respondent relied on matters arising from it is irrelevant. The evidence was before the judge and she was required to consider it. If there were matters that concerned her arising from the evidence, then she was entitled to set these out in her determination. She properly noted that the respondent had not referred to the seven aliases and two dates of birth used but also properly found that the appellant was represented and so would have been aware of this (at 38). Given that he himself used these bogus identities, that is a safe presumption. It was for him to address issues in his past and his prior poor behaviour in a witness statement, given that he chose not to partake in the hearing. I note that the sponsor was given an opportunity to respond to the issue of the identities (at 44) so the judge's concerns were clearly raised at the hearing. No request was made at that stage for an adjournment so that the appellant's response could be obtained and no objections to the judge's reference to that was raised.

19. Mr Karim also argued that the photographs of the appellant's farm and the letter of good character from the Jamaican police were not considered by the judge, but this is not so. The appellant's contention that he works on a farm was noted by the judge (at paragraphs 13, 39 and 48) and was accepted (at 48). It is not correct, thus, that she found he was not working as was argued. Mr Karim questioned why the judge wanted bank statements. This is, however, clear from the determination. She plainly wanted to see evidence to demonstrate that the appellant had a regular income. Contrary to what has been argued, the judge also had regard to the letter of good character (at 39).

20. The final complaint is that the appellant's wife's evidence was not properly assessed and that there was no adequate consideration of her family life and presumably that of her son. This complaint is without any foundation. At paragraphs 41-65 the judge undertakes a thorough private/family life assessment both within and outside the rules. This is a family where the appellant's partner and child left him in Jamaica and came to the UK. It is not a case where they were separated as a result of the deportation order. In fact, the deportation had the effect of reuniting them. Their marriage took place some 16 years after the appellant's partner left Jamaica for the UK, entered as a visitor and overstayed after a failed student application. The judge noted that there was no evidence of any family life in Jamaica (at 43). Their adult son failed to attend the hearing and gave no statement in support. The judge clearly had concerns over the relationship (at 44) in view of the appellant's marriage to someone else until 2014-2015, a ten-year old son (his current wife is not the mother), and his wife's vagueness about several matters. She also noted there was no evidence of any ongoing contact and no explanation for why she would choose to leave the appellant when she had a young son or why she preferred to remain here unlawfully instead of returning to be with the appellant (at 45-46). It was open to the judge to reject the claim that the relationship between the appellant and the sponsor had been ongoing since 1997 and given the departure of the appellant for the UK shortly before the birth of their son and then her departure from Jamaica shortly after the appellant had returned there, that is a sustainable finding.

21. The judge accepted that the appellant and the sponsor married in 2017 and their and their son's circumstances are considered at length. It is difficult to see what more the judge could have done. Her assessment is detailed, thorough and conducted according to the appropriate authorities and the law (at 46-66). It was entirely open to her to find that deportation took priority over family life, noting that that family life had been conducted

from overseas for almost the entire duration of the relationship. She also found that the sponsor had the option of relocating to Jamaica to be with the appellant. those are all findings properly made and open to her on the evidence. Given the detailed assessment, it is difficult to see how it can be argued that inadequate consideration was given to the sponsor's evidence or circumstances.

22. Having, therefore, considered all the factors and evidence put forward, and having regard to the shifting balance towards revocation after ten years, the judge considered the case on its individual factors and concluded that *"despite the passage of time since the appellant committed serious crimes by supplying drugs (crack cocaine), the public interest requires that the deportation order be maintained"* (at 50). That conclusion is wholly sustainable.

23. The grounds are without merit. There are no material errors of law in the judge's decision making.

Decision

24. The decision of the First-tier Tribunal does not contain any errors of law. The decision to dismiss the appeal stands.

Anonymity

25. No request for an anonymity order was made.

Signed

Upper Tribunal Judge

Date: 13 January 2020