Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/19176/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1 June 2022	**On 14 July 2022**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

TAPIWA WASHINGTON SACHIKUNDA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. A Badar, Counsel, instructed by Ronald Fletcher & Co LLP
For the Respondent: Ms. A Nolan, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a national of Zimbabwe and is aged 26. He appeals against a decision by the respondent to refuse him leave to remain in this country on human rights grounds. The decision is dated 13 November 2019. The respondent intends to deport the appellant to Zimbabwe.

2. The appellant's appeal was initially allowed on article 8 ECHR grounds by Judge of the First-tier Tribunal Singer whose decision was dated 2 March

2021. The respondent was granted permission to appeal and by a decision sent to the parties on 24 August 2021 I set aside the decision of the First-tier Tribunal, but only in respect of the consideration of section 117C(4)(c) of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') and as to whether very significant obstacles exist in respect of the appellant's integration in Zimbabwe consequent to his deportation.

Background

3. The appellant lawfully entered this country on 27 December 2004 when aged 9 years and 2 months. He accompanied his mother when joining his father who held a valid Work Permit and was employed as a nurse. His leave was subsequently varied, and the family were eventually granted indefinite leave to remain on 19 October 2009. By the time of the hearing before me, the appellant has lawfully resided in this country for 17 years and 5 months.

4. He applied to be registered as a British citizen in September 2010, but the respondent refused the application in October 2010 on the basis that neither of his parents were British citizens.

Criminal convictions

5. On 22 May 2013, when aged 17, the appellant was convicted at Croydon Crown Court of robbery and was sentenced to a detention and training order for 18 months.

6. The respondent did not pursue deportation following this conviction but did serve the appellant with a warning letter which advised that should he come to adverse attention in the future she would be obliged to consider the question of his deportation.

7. Between 7 January 2015 and 27 August 2015, the appellant was convicted on three occasions in relation to drug offences and received sentences comprising of fines and community orders.

8. On 24 June 2016 the appellant was convicted and sentenced at Blackfriars Crown Court in relation to:

    - Having a blade/article which was sharply pointed in a public place and possessing a class B controlled drug with intent to supply for which he was sentenced to 12 months in a Young Offenders Institution.
    - Possessing a class B controlled drug with intent to supply for which was sentenced to 6 months in a Young Offenders Institution, consecutive to the sentence detailed above
    - Possessing a blade/article which was sharply pointed in a public place for which he was sentenced to 6 months in a Young Offenders Institution, consecutive to the sentence detailed above.

9. The sentencing judge concluded that the appellant had decided to make a living out of selling class B drugs. It was noted that the appellant had previously been stabbed but the sentencing judge concluded that the appellant's fears were of people he knew and who knew him because he was a drug dealer. Additionally, it was observed that the appellant had previous convictions for carrying a knife. The sentencing judge concluded that there was no alternative to detention because of the lifestyle choice that the appellant had made.

Deportation order

10. Following these convictions, the respondent signed a deportation order on 6 September 2016. On the same day she served a decision refusing the appellant's application for leave to remain on human rights grounds and issued a certificate under section 94B of the 2002 Act.

11. The appellant submitted further representations on 17 February 2017. By a decision dated 21 March 2017 the respondent considered that the representations did not amount to a fresh claim under paragraph 353 of the Immigration Rules ('the Rules').

12. Consequent to the Supreme Court judgment in *R (Kiairie and Byndloss) v. Secretary of State for the Home Department* [2017] UKSC 42, [2017] 1 W.L.R. 2380 the respondent withdrew her decisions dated 6 September 2016 and 21 March 2017.

Further convictions

13. On 20 March 2018 the appellant was convicted at West Sussex Magistrates Court of possessing a class B controlled drug for which he was sentenced to no separate penalty. He was further convicted of obstructing a search for drugs for which he was fined £75 and ordered to pay costs of £85.

14. On 1 March 2019 the appellant was convicted at Central London Magistrates Court for possessing a class B controlled drug for which he received a fine £75 and was ordered to pay costs of £85. He was also convicted of trespass on a railway for which he received no separate penalty.

15. On 28 March 2019 the appellant was convicted at South London Magistrates Court for possessing a class B controlled drug for which he was fined £20. He was convicted of driving a vehicle while uninsured and was sentenced to a fine of £100 with his driving licence being endorsed with 6 penalty points. He was also convicted of driving otherwise than in accordance with a licence for which he received no separate penalty.

Human rights decision

16. By a decision dated 13 November 2019 the respondent refused the appellant's outstanding human rights applications, observing that it was

not accepted that he fell within any of the exceptions set out in section 33 of the UK Borders Act 2007.

Further conviction

17. On 19 November 2019 the appellant was convicted at West Sussex Magistrates' Court of possessing a class B drug. He was fined £80 and ordered to pay costs of £85. The conviction related to an offence committed on 16 July 2019 and the parties confirmed at the hearing before me that this was the last date on which the appellant committed a criminal offence.

Preserved Findings of Fact

18. By my decision dated 24 August 2021, I preserved findings of fact made by Judge Singer at [46]-[68] of his decision. I identify the principal preserved findings below:

    a. The appellant has been lawfully resident in the United Kingdom: section 117C(4)(a) of the 2002 Act; paragraph 399A(a) of the Rules.

        - The respondent conceded at para. 32 of her decision letter that the appellant had been lawfully resident in the United Kingdom for most of his life, at [50]

    b. The appellant is socially and culturally integrated in the UK: section 117C(4)(b) of the 2002 Act; paragraph 399A(b) of the Rules.

        - He has lived in the United Kingdom since the age of 9, at [56]
        - He attended primary and secondary school in this country, at [56]
        - He secured educational qualifications in this country, at [56]
        - He has worked in this country, at [56]
        - He used to be friends with people who encouraged his drug habits, at [57]
        - He has stopped associating with friends who had been a bad influence upon him, at [57]
        - The sudden death of his sister was highly traumatic, and led him to seek solace in greater use of cannabis, at [57]
        - He sought help from a doctor and was prescribed anti-depression pills but was afraid of taking them because of what happened to his sister, at [57]

- He has taken steps to reduce his stress and engaged in music, at [57]
- The appellant made money from selling drugs, at [58]
- His family provide real, effective and committed support, at [58]

19. The Judge concluded that the appellant is socially and culturally integrated in the United Kingdom, at [62]:

> '62. However, weighing the competing arguments, and evaluating the evidence as a whole, I do accept that the majority of the Appellant's social identity has been formed in the United Kingdom, and that he is socially and culturally integrated in this country. He came here as a 9 year old child. I accept the evidence given that he speaks English not Shona (though I do accept that he understands some words in Shona). While I recognise that the Appellant's period of imprisonment represents time spent excluded from society (during which he had little opportunity to develop social and cultural ties), having regard to the judgment of the Court of Appeal in CI (Nigeria) [2019] EWCA Civ 2027, I do not consider that his criminal offending between 2013 and 2019 and his imprisonment, have served to break his social and cultural integration in the UK which he has developed since his childhood.'

20. As to the appellant's health, the Judge concluded at [68]:

> '68. The Appellant has not provided a psychiatric report in this case, although I do accept (because the evidence given was sufficiently compelling and it was not challenged in cross-examination) that he has been suffering from depression and anxiety and is taking Escitalopram 20mg twice a day as described. It is likely, I find, that, even if the exact drug the Appellant is taking is not necessarily available in Zimbabwe, there are other similar medication which could be available, having regard to the country information evidence at 11.1.6. It is for the Appellant to prove his case and he has not adduced expert evidence to comment on whether the drugs that *are* stated to be available there (citalopram, fluoxetine, paroxetine, tramadol, clomipramine and amitriptyline) would or would not be suitable alternative treatments.'

Decision

21. For the purpose of this appeal, the appellant is to be treated as a person convicted of an offence for which he has been sentenced to a period of imprisonment of less than 4 years but at least 12 months: section 117C(3) and (4) of the 2002 Act.

22. Mr. Badar and Ms. Nolan agreed that the issues before me were narrow. I was first to consider whether the appellant met the third limb of Exception 1 as established by section 117C(4) of the 2002 Act. If the Exception to the public interest was not met, I was to proceed to consider whether very

compelling circumstances exist over and above those identified in Exceptions 1 and 2: section 117C(6) of the 2002 Act.

23. Section 117C(4) of the 2002 Act provides that Exception 1 is established as applying when:

> '(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.'

24. In very helpful oral submissions both representatives agreed that when considering the third limb of Exception 1 the starting point for my consideration is the judgment of Lord Justice Sales (as he then was) in *Kamara v. Secretary of State for the Home Department* [2016] 4 WLR 152, at [14]:

> 'In my view, the concept of a foreign criminal's 'integration' into the country to which it is proposed that he be deported, as set out in Section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or Tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable period of time a variety of human relationships to give substance to the individual's private or family life.'

25. At the hearing both the appellant and his mother gave evidence. Having heard them, I am satisfied that they were truthful and honest witnesses and were clearly being as helpful as they could be to this Tribunal.

26. The appellant was attacked, stabbed and robbed in Croydon. Medical evidence confirms that by November 2019 he was diagnosed to be anxious and depressed. His depression was considered as being possibly rooted in PTSD. He was originally prescribed Diazepam (2mg) and Escitalopram (20mg) in respect of his mental health concerns. He continues to be prescribed the latter, which is prescribed in relation to major depressive episodes.

27. The appellant's sister died in January 2019 following an overdose of anti-depression tablets which had been prescribed to her. The appellant found her death very difficult to deal with and fell into a cycle of anxiety and depression, and for a time was sceptical as to taking antidepressant medication because of a fear that he would suffer the same fate as his sister. Because of the adverse impact to his mental health, he resumed

smoking cannabis. However, over time he sought to address his mental health concerns and stopped smoking cannabis. He has resumed taking antidepressant medication. He states that he is now feeling better than he was at the time of his sister's death though when he has bad days, he feels like the world is ending and whilst not feeling suicidal those days are "really bad".

28. The appellant has family residing in Zimbabwe. His grandmothers are in their 70s and live in villages some distance away from major cities. His maternal grandmother resides with one grandchild in a two-bedroom property and his paternal grandmother resides with several grandchildren. Neither property has access to electricity, share communal toilets and no running water.

29. When the appellant and his family relocated to the United Kingdom in 2004, they left their family home in Mutare, Manicaland, to be occupied by a maternal aunt who presently resides there with her husband and their three children. I was informed, and I accept, that life is presently very difficult for his aunt and her family. Both the appellant and his mother gave detailed and consistent evidence as to the appellant's uncle not having settled employment and so the family are reliant upon remittances from the appellant's family in the United Kingdom. To help meet their needs, aunt and uncle undertake work as vendors, buying small items and seeking to sell them at a slightly higher price. The family of five live in a four bedroomed property. I am satisfied that if the appellant were to return to Mutare he would be able to reside at this property which is owned by his parents. However, he would either be required to sleep in a living room or, alternatively, two of his cousins would be required to share a bedroom to permit him to have a room of his own. I accept that he would be joining a family that is living a precarious financial existence.

30. In answer to questions from Ms. Nolan the appellant and his mother confirmed that the appellant has limited contact with relatives in Zimbabwe, primarily because the cost of phoning Zimbabwe is such that telephone calls are short, no more than five minutes, and it is rare that he is asked to join in the conversations held by his mother.

31. Ms. Nolan sought to rely upon the appellant's ability to speak Shona. I am satisfied that the appellant's command of this language, as accepted by Judge Singer, is so limited that he will be monolingual on return. I am satisfied that this will adversely impact his ability to engage in low level labouring work where, as acknowledged by Ms. Nolan, his co-workers are more likely to be uneducated and so speak the Shona language and no other.

32. Ms. Nolan also relied upon the appellant's ability to secure his antidepressant medication in Zimbabwe, a point not disputed by Mr. Badar.

33. When considering matters in the round, I am required to consider whether very significant obstacles arise in respect of the appellant's relocation and

integration into Zimbabwean society. I accept that he has been here since the age of 9, is thoroughly anglicised and monolingual. In evidence before me he spoke with a clear London accent. Whilst that fact alone would not cause difficulties as to his personal safety in Zimbabwe, it does mark him out as being a member of the diaspora and so possessing limited personal connection with Mutare as well as wider Manicaland. He has limited qualifications and would be residing with a family that has struggled for some time to find economically viable employment. I accept that there may be employment opportunities available to him, though the circumstances of his aunt and uncle strongly suggest that there are limited economic opportunities outside of vending. I find that if he were to seek employment as a labourer, he would be required to compete for scarce employment with those who are local in Mutare, have connections and most likely are already working in or have recently worked in that sector of employment. In respect of working as a vendor, he can draw upon the knowledge of his aunt and uncle but may well require remittances from abroad to secure a viable means of meeting his day-to-day essential needs as is the position for his relatives. I accept the evidence of his mother that the family finances are strained because they remit in the region of US$200 to US$240 each month to aid the appellant's grandparents and grandchildren who are dependent upon them. Further sums are remitted to other family members. I accept that there will be significant strain on his parents and other family members to provide additional sums to meet his needs.

34. Ultimately, when evaluating the appellant's ability to integrate upon return and as to whether very significant obstacles exist, I am required to bear in mind that he has long-term mental health problems in the form of anxiety and depression, for which he is being treated. I find that he can secure anti-depression medication in Zimbabwe. However, I observe that even when taking his medication, he has suffered considerable difficulties in being able to cope with significant adverse problems when they arise. There is clear evidence, not challenged by the respondent, that he was unable to cope for a significant time with the circumstances of his sister's untimely death. The GP notes are clear that the combination of his still suffering from the serious attack upon him and the death of his sister led to significant adverse effects on his mental health. Whilst he was eventually able to utilise coping mechanisms, the adverse impact of his anxiety and depression hindered his ability to fully engage in society for a time. His GP notes confirm that his mental health concerns following the death of his sister were such that an NHS crisis team became involved, following his expression as to feelings of hopelessness.

35. In the circumstances, whilst I find that he can return to accommodation in Mutare, he will be living for at least several weeks, and most likely for many months or years, in crowded conditions with family members who live a financially precarious life. I find that he unlikely to be able to secure labouring work in the short to medium term that would be capable of meeting his financial needs, and that if he engages in vending, he will be unlikely to make sufficient money in the short to medium term, if ever, to

enable him to move out of the crowded conditions. He will also be required to engage with a society which he has very irregular experience, having returned to Zimbabwe on only a small number of occasions since he arrived in the United Kingdom in 2004, and on each occasion as a short holiday. Whilst other family members may be able to provide him with emotional support, I am satisfied that they would not be able to provide him with required financial support. He would therefore be reliant upon the small additional remittances that his mother and other family members in this country could provide to him. Such circumstances are, I am satisfied, very likely to expeditiously result in an exacerbation of his mental health concerns, leading to the downward spiral of anxiety and depression which will further inhibit his ability to engage and integrate into Zimbabwean society.

36. I conclude that his lack of personal knowledge of the country, his inability to speak Shona and his anxiety and depression are such that he will not be enough of an insider in terms of understanding how life in the society in Zimbabwe is carried on and enjoy capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable period of time a variety of human relationships to give substance to his private life.

37. I have given very careful consideration to Ms. Nolan's submissions. However, I find that the appellant has established for the purposes of section 117C(4)(c) of the 2002 Act that there would be very significant obstacles to his integration into Zimbabwe and in those circumstances Exception 1 is satisfied. As Exception 1 is an exception to the public interest in deportation, the appellant's appeal must be allowed.

38. Having found that the appellant satisfies Exception 1, I am not required to consider whether very compelling circumstances exist so that the public interest in the appellant's deportation to Zimbabwe is outweighed.

Notice of decision

39. The decision of the First-tier Tribunal involved the making of a material error on a point of law and was set aside by a decision of the Upper Tribunal dated 24 August 2021.

40. The decision is remade. The appellant's appeal is allowed on article 8 ECHR grounds.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 14 June 2022