Upper Tribunal
(Immigration and Asylum Chamber)

VHR (unmeritorious grounds) Jamaica [2014] UKUT 00367 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 10 July 2014	
Delivered orally	.....

Before

THE HONOURABLE MR JUSTICE HADDON-CAVE
UPPER TRIBUNAL JUDGE HANSON

Between

VHR
(ANONYMITY DIRECTION IN FORCE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Chelvan, Counsel
For the Respondent: Mr S Walker, Home Office Presenting Officer

Appeals should not be mounted on the basis of a litany of forensic criticisms of particular findings of the First Tier Tribunal, whilst ignoring the basic legal test which the appellant has to meet.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Trevaskis sitting at Newport with Dr J O de Barros, promulgated on 7 April 2014. The First-tier Tribunal dismissed the appellant's appeal against a decision by the Secretary of State to make an automatic deportation order triggered by the appellant's conviction for wounding committed in July 2010. The deportation order was made on 2 December 2013 pursuant to Section 32(5) of the United Kingdom Borders Act 2007.

2. The appellant is a citizen of Jamaica who was born in 1973. He claims to have entered the United Kingdom in December 2001. He applied for leave to remain but was removed as an overstayer in August 2004. In 2005 he applied for entry clearance and re-entered the United Kingdom in August 2005. In 2008 he applied for indefinite leave to remain as the spouse of a settled person, which was granted in September 2008.

3. He is the father of various children in the UK, the third of which was born in November 2010, C, whose mother is an Irish national, RB, who is his current partner.

4. On 29 July 2010 the appellant committed a section 18 wounding, i.e. wounding with intent to do grievous bodily harm. He was convicted on 15 December 2011 and sentenced to four years' imprisonment. The sentencing judge, His Honour Judge Roach, sitting at Bristol Crown Court, said this:

> "The wounding is serious, plainly. Serious because you used a knife which you had on you and serious because the injuries that the victim received are significant. That man is left-handed. He has loss of sensation now in his hand. He cannot make a fist. He cannot use it properly. The prognosis is uncertain but I sentence you on the basis that he will regain the use of his hand."

5. The judge concluded that the starting point for the sentence was four and a half years reduced by six months for the appellant's late plea. The appellant served two years in prison and was released in January 2014. He was then subject to an automatic deportation order as set out above.

6. Mr Chelvan, who appears today on behalf of the appellant in this appeal, puts aside the majority of the previous grounds of appeal and argues this appeal on the basis of three grounds. He submits in essence that the First-tier Tribunal (a) had not referred to salient parts of the evidence, in particular the evidence of the appellant's partner and the appellant's partner's mother, (b) had not taken into account other evidence put forward by the appellant as regards the strength of the "bond" of the appellant with his disabled son C, and (c) had failed to give sufficient

reasons for its decision such as to give uncertainty, as Mr Chelvan put it, to the decision and the reasons for it.

7. In our judgement, the problem with Mr Chelvan's approach and this appeal is that he has sought to comb through the judgment as if it was a statute and pick bits here and there out of context whilst ignoring the overall findings of the Determination and Reasons and the conclusions.

8. We see these sorts of manufactured appeals quite often in the Upper Tribunal and deprecate them. It is not necessary for judges to record, analyse, rehearse and repeat the entire interstices of the evidence. The task of the First-tier Tribunal is to make reasoned findings on the key issues in the case and a clear decision.

9. Mr Chelvan has with some tenacity and skill, it might be said, subjected these Determination and Reasons to forensic criticism which in our judgement is quite unwarranted and unreal. We highlight the key paragraphs of the Determination and Reasons in order to demonstrate the vacuity of Mr Chelvan's artificial criticisms.

10. First, in paragraphs 16 to 20 the Tribunal recorded in some considerable detail the evidence of the appellant's partner and her mother. It did so fairly. This was in the course of a lengthy recitation of the evidence in paragraphs 2 to 21 of the Determination and Reasons.

11. Second, after then setting out the respondent and appellant's submissions in considerable detail, together with the relevant case law, the Tribunal said this under the heading DETERMINATION:

> "35. We have considered all the evidence presented to us by the respondent and the appellant, both in their respective bundles and as presented to us at the hearing."

12. Third, the Tribunal then went on to state the relevant test in a case of automatic deportation, (which is a test that Mr Chelvan has essentially sought to ignore) namely the need to demonstrate that the exception under section 33 of the UK Borders Act 2007 applies, *viz* that section 32(4) and (5) do not apply as an exception in this section. At no stage during Mr Chelvan's submissions did he properly grapple with that threshold. He confined himself to rummaging around in the lower branches of the evidence to say airily that the findings had been unfair, unsupported or not explained in the reasons, etc.

13. Fourth, a key passage in the Determination and Reasons is to be found in paragraph 37. This was in the context of the Regulations and the findings regarding the relationship of the appellant with his partner RB. The Tribunal found that the relationship between the appellant and RB was not a durable one so that the appellant did not qualify as an extended family member. The Tribunal went on to say this:

> "The only period of cohabitation was from January 2014 until the date of hearing; the appellant retained his own flat until he was forced to give it up as a result of being imprisoned; he said he had no plans to marry her; he has effectively been providing babysitting services since [C] was born, at first on a non-resident basis, and latterly on a residential basis because he lost his own flat, and needed an address for bail purposes on his release."

14. Mr Chelvan argued that this finding was in the context of the EEA Regulations and, therefore, the Tribunal should have gone on later in the Determination and Reasons to consider the appellant's relationship with C afresh. We disagree. This was plainly a general finding by the Tribunal, which went to the heart of this case, (a) in the general family context, (b) in the context of the relationship with RB and (c) in the context of the relationship between the appellant and his children including C. What is abundantly clear from this central finding is that the Tribunal concluded that the appellant was essentially opportunistic, had no plans to marry RB, he had mainly been providing effectively babysitting services on a non-residential basis and the only reason that he then cohabited was because he needed an address for bail purposes on his release.

15. When we come to consider the concluding findings later in the judgment it is clear that this central finding was one which the Tribunal had at the forefront of its mind.

16. Fifth, at paragraph 39 of the Tribunal's Determination and Reasons the Tribunal set out in some detail the sentencing remarks of the learned sentencing judge. Mr Chelvan sought to criticise the Tribunal for referring to the sentencing remarks without quoting the following finding of the sentencing judge:

> "I accept you are a caring family man. I accept that your young son is devoted to you and has his own difficulties and will be hurt by the separation from you…"

17. We do not think that that criticism of the Tribunal is in any way justified, or, frankly, sensible. We note that in the relevant copy of the sentencing remarks which we have in our papers before us, the very sentence which we have quoted is one which was actually highlighted by the Tribunal itself who clearly, as is apparent from paragraph 39 of the judgment itself, had read the entire sentencing remarks and taken them on board.

18. Sixth, at paragraph 47 under the heading of "best interests" the Tribunal said this:

> "It has not been suggested that the children should not continue to live with their mothers. If the appellant is deported, their contact with him will continue by indirect means using modern communication methods. There will be some loss of help with care for the children, particularly [C], but there is no evidence that this will have insurmountable adverse consequences for them. Having regard to their ages they are all focused on their mothers. We repeat our finding that the appellant and [RB] are not in a durable relationship; therefore it follows that we do not find that there is a close and

genuine bond between them; neither do we find that his deportation will sever a genuine and subsisting relationship between parent and child EB (Kosovo) SSHD [2008] UKHL 41. The appellant has demonstrated a lack of ability to commit to one relationship for any length of time, and his current relationship is based upon only three months' cohabitation. We do not find that he has demonstrated a level of commitment to any of his children."

19. Mr Chelvan submits that this paragraph amounted to an illegitimate leap to conclusions without reference to, or taking into account, the evidence before the Tribunal. We disagree. The Tribunal had recorded expressly at paragraph 37 that it had considered all the evidence presented to it in the case, and it is plain from paragraph 37 that the Tribunal came to clear and cogent conclusions on the central issue in the case which was the relationship between the appellant and RB and C in what was said to be a family context.

20. The Tribunal's central finding that the manifest lack of commitment of the appellant to RB and his inability to commit himself to any relationships for any length of time obviously fundamentally undermines the appellant's argument that he had a commitment or a bond of an enduring nature towards C.

21. Seventh, the Tribunal went on in paragraph 48 to consider the general questions regarding the appellant and his family and private life and said this:

> "48. The appellant has family in Jamaica (see above); he is 40 years old and has no medical issues and so will be able to establish himself in Jamaica, find work and a place to live. In the short term we find that he can stay with his mother. He has not shown any evidence of ties to the UK, other than his claims to family life or lives; he has not worked for any sustained period and has not shown that he has established any private life."

Mr Chelvan criticised this paragraph of the Tribunal's Determination and Reasons as well and submitted that it was 'perverse' because the appellant had demonstrated some private life.

22. It is true that the evidence shows that the appellant had formed relationships with a number of women and had children whilst in the United Kingdom with those women. However, as put to Mr Chelvan, it is quite clear that what the Tribunal was effectively saying is that the appellant had not established any sufficient private life to be of any real relevance in this case.

23. Deportation is recognised by the authorities as having the unfortunate effect that families, whether close or not close, will be split. The panel in this case considered all the evidence, as they said, and gave anxious scrutiny to the key issues about the true nature of the relationship of the appellant with RB and C. The weight to be given to the evidence was a matter for them. The concluding proportionately finding, which was one

which Mr Chelvan also ignored, is that to be found in paragraph 52 which reads as follows:

> "Having undertaken the balancing exercise required to assess the proportionality of the respondent's decision, we have concluded that the need for the deportation of the appellant outweighs the consequences for him personally. He has committed a very serious offence of violence, and received a sentence reflective of society's condemnation of such crime, particularly involving a knife and causing considerable suffering to the victim. To the extent that the deportation decision will break up any family relationships which the appellant may have formed in the UK, that is an inevitable, and in this case necessary, consequence of his actions."

24. Mr Chelvan has failed at all stages to grapple with the relevant test which the Tribunal was having to consider, namely whether there were circumstances in this case such as to enable a finding to be made that one or more of the section 33 exceptions applied. Instead, he subjected the decision to a tedious litany of forensic criticisms of particular sentences or paragraphs. This is not how appeals should be mounted. As McCombe LJ in VW (Sri Lanka) [2013] EWCA Civ 522 said: "Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgement, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact".

25. For all these reasons, this appeal is refused.

Decision

There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.

Anonymity

The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. We make that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 to protect the identity of the child C.

Signed Date

Mr Justice Haddon-Cave