IAC-AH-SC/CJ-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/03670/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20th March 2015	**On 26th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR GARY JUNIOR PRINGLE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Toal, Counsel
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Jamaica born on 9th May 1991. The Appellant last entered the UK on 30th August 2001, i.e. at the age of 10. He was granted discretionary leave on 3rd August 2007 valid until 9th November 2008 and further discretionary leave on 17th February 2010 valid until 9th November 2013. On 6th November 2013 the Appellant's legal representatives applied for an extension of his discretionary leave in the United Kingdom. That application was refused by the Secretary of State by a Notice of Refusal dated 31st December 2013. It was noted by the

Secretary of State that the Appellant was now over 18 and therefore classed as an adult in the United Kingdom and that during the Appellant's time in the UK he had persistently committed acts of criminality. His criminal convictions are set out at pages 1 and 2 of the Notice of Refusal. The Appellant's most recent act of criminality was that on 1st September 2011 he was convicted at the Inner London Crown Court for robbery and that since his last grant of discretionary leave he has also been charged of an assault for which he received a caution. In the light of the Appellant's ongoing/persistent criminality the Secretary of State was satisfied that it would be undesirable to permit the Appellant to remain in the United Kingdom as his presence in the UK was not conducive to the public good because his conduct and character made it undesirable to allow him to remain in the UK.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Malins sitting at Hatton Cross on 3rd November 2014. In a determination promulgated on 10th December 2014 the Appellant's appeal was allowed under Article 8 of the European Convention of Human Rights.

3. On 10th December 2014 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. The Secretary of State in those ground contended:

   (1) That the judge failed to give adequate reasons for finding that the Appellant did not fall for refusal under S-LTR.1.6 of Appendix FM when the Appellant's presence in the United Kingdom is not conducive to the public good given his persistent offending since 2008.

   (2) That the circumstances identified by the judge cannot be said to amount to "very significant obstacles to integration" or exceptional/compelling circumstances.

   (3) That by reference to Section 117B the judge erred in giving weight to the Appellant's private life when at all times the Appellant's stay in the UK had been precarious.

   (4) The judge had failed to apply *Nasim [2014] UKUT 25 IAC*: that the use of Article 8 has very limited use of a private life which did not interfere with a person's moral and physical integrity.

4. On 2nd February 2015 First-tier Tribunal Judge Ransley granted permission to appeal. Judge Ransley considered that it was arguable so far as Ground 1 is concerned that the First-tier Tribunal Judge's decision that the Appellant's application for further discretionary leave did not fall for refusal under S-LTR.1.6 was not adequately reasoned when the judge failed to take into account the Appellant's persistent offending since 2008 and that the judge might have exceeded her jurisdiction by stating that the Respondent "should probably have granted" further discretionary leave to remain. Judge Ransley considered that the second ground had little merit and in accordance with normal principles allowed all grounds to be argued if one ground was to be argued. Judge Ransley considered that the judge was entitled to find that the Appellant's profound deafness and his inability to communicate if returned to Jamaica where American Sign

Language is used rather than British Sign Language as a "significant obstacle". Judge Ransley considered it was arguable further that the judge had erred in law for failure to give consideration to the public interest factors as required by Section 117B of the 2002 Act and that the determination showed that the judge had given no consideration to the authority in the *Nasim*. In such circumstances she considered that the determination showed arguable errors of law that might have made a material difference to the outcome of the appeal and she granted permission to appeal.

5. On 18th February 2015 the Appellant's instructing solicitors lodged a reply on behalf of the Respondent pursuant to Rule 24. That reply, which is settled by Counsel, and runs to five pages is effectively a skeleton argument of submissions in response.

6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. This is an appeal by the Secretary of State. For the purpose of continuity within the proceedings the Secretary of State is referred to herein as the Respondent and Mr Pringle as the Appellant. The Appellant appears by his instructed Counsel Mr Toal. Also in attendance is the Appellant himself. I acknowledged the Appellant's circumstances in that he is profoundly deaf and that he is assisted by a sign reader within these proceedings. I have taken care throughout this decision to ensure that the Appellant understands all that is being communicated to him. The Secretary of State appears by her Home Office Presenting Officer Mr Jarvis.

The Relevant Immigration Rule:

> "S-LTR.1.6. The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR.1.3. to 1.5.), character, associations, or other reasons make it undesirable to allow them to remain in the UK."

Submissions/Discussions

7. Mr Jarvis starts by submitting that it is a requirement for an applicant seeking leave to remain on the grounds of private life in the UK that his application does not fall for refusal under a number of grounds of which S-LTRP.1.6 is one of them. It is his contention that the Appellant's criminal record is poor and that whilst the Appellant may have provided supporting evidence regarding his character and expressed his remorse this does not change the fact he has shown a blatant disregard for the laws of the UK through his persistent offending since 2008. He points out that S-LTR.1.6 of Appendix FM is about past conduct and that therefore the focus of the judge is wrong and that the judge's approach to paragraph 15(2)(c) is wrong. He asks the Tribunal to find an error of law and that the Appellant cannot meet the Rules. He submits it is necessary for the appeal to be

considered outside the Rules looking for compelling circumstances and that it would therefore be appropriate for the judge to have applied paragraph 117B of the Immigration Act and that little weight should be given to a private life established when a person's immigration status is precarious – as he contends is the Appellant's. Further, he contends that whilst the Tribunal has found the Appellant has established a private life in the UK the judge failed to direct herself to the authority of *Nasim and Others (Article 8) [2014] UKUT 00025 IAC* where it was found that the use of Article 8 had very limited use for private life cases which did not interfere with a person's moral and physical integrity. He asked me to find that there is a material error of law and to set aside the decision of the First-tier Tribunal.

8. Mr Toal in response states that it is for the First-tier Tribunal Judge to make a decision and that she has done so having given due consideration to both the offences and the history of this Appellant. The judge knew of the Appellant's offending history and was entitled to draw the conclusions that she did. He takes me to the evidence that was before the Tribunal namely that of the Appellant's mentor, Mr Palata, and the expert evidence of Dr O'Rourke, consultant clinical psychologist, specialising in work with the deaf community. He points out that none of the evidence of Mr Palata nor Dr O'Rourke is impugned in the Grounds of Appeal and submits that that provided a proper evidential basis for the judge's clear reasons for not upholding the Secretary of State's decision on the basis of S-LTR.1.6.

9. He acknowledges that there is no references by the judge to Section 117B factors but submits that given the specific facts of this case it would have made no material difference and thus her failure to do so does not constitute a material error of law. Further, so far as the decision in *Nasim* is concerned firstly he points out that that was not raised at the appeal hearing but in any event submits it would make no material difference given that the Tribunal in *Nasim* was concerned with the Article 8 rights of students whose Article 8 arguments arose from the time they had spent in the United Kingdom with student leave and that this is an entirely distinct factual matrix from the present case since the Appellant has resided in the UK since the age of 10, was taken into care, and was granted discretionary leave on the six year route to settlement. He asked me to find there is no material error of law and to dismiss the appeal.

10. Mr Jarvis points out that Section 117B relates effectively to what happens next whereas S-LTR.1.6 of Appendix FM is not so restrictive and it is not shown that the Rules should be construed in the manner that the judge has done i.e. addressing the issue on present conduct at the date of hearing. He submits the argument is not about jurisdiction and that the emphasis of the judge is wrong.

The Law

11. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by

taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

13. It is important to remember the basis upon which this appeal came before the First-tier Tribunal in that the factual history was set out to the judge and it is against that factual history that the judge made her findings. The Appellant is profoundly deaf. I accept his disability. It is contended that that deafness was probably as a consequence of being dropped by his mother as a baby but there is no evidence regarding this before me or, as far as I am aware, was there before the First-tier Tribunal. Thereafter the factual history is not challenged by the Secretary of State. It is extremely well set out at paragraph 1 of the Appellant's previously instructed Counsel's reply to the grant of permission to appeal. It is clear that the Appellant has had a disadvantaged upbringing. The First-tier Tribunal Judge had the benefit of a full and detailed analysis of the Appellant's upbringing and of the evidence of the Appellant's mentor Pafe Mike Palata. Mr Palata's evidence is set out in some detail at paragraph 8 of the determination. Further, the First-tier Tribunal Judge took into account the written evidence of Dr Sue O'Rourke a consultant clinical psychologist who is registered as a sign language interpreter and has worked in the National Mental Health Service for Deaf People in London and Birmingham and was manager of Deaf Services at Rampton Hospital. Dr O'Rourke's doctoral research was in the area of deaf people in the criminal justice system and the First-tier Tribunal Judge quotes quite extensively from that report at paragraphs 10 and 11 of her determination.

14. The judge thereafter made findings on credibility finding both the Appellant and Mr Palata – who she describes as an excellent and rock-like mentor to be wholly credible witnesses and upon whose evidence she

could rely. The judge then went on to consider the scope of the appeal and made findings of fact which are set out at paragraph 15.1. The approach adopted by the First-tier Tribunal Judge to this point is unchallenged by the Secretary of State and shows a proper constructive and detailed analysis set out in a most thoughtful and well-presented style.

15. The thrust of the Secretary of State is that the judge has effectively erred in law thereafter so far as her findings under the relevant legal provisions are concerned. However, I am satisfied that she has provided a proper and adequate reason in her consideration of paragraph S-LTR.1.6 of the Immigration Rules and has provided proper and adequate reasons for finding that the application did not fall to be refused on this basis. She has looked at the matter thoroughly at paragraph 15.2.(c) and has gone so far as to cross-reference the matter back to the findings of fact she made at paragraph 15.1 on the evidence heard at the appeal supported by Dr O'Rourke's report. I am satisfied that the judge having considered all the evidence including in particular that or Mr Palata and Dr O'Rourke provides a proper evidential basis for the judge's clear reasons not upholding the Secretary of State's decision on the basis of S-LTR.1.6 and as such her approach does not disclose any material error of law.

16. The contention that the circumstances identified by the judge could not be said to amount to a very significant obstacle to integration or exceptional compelling circumstances is given scant support by Judge Ransley when granting permission. Judge Ransley is correct in doing so. I am satisfied that the judge was entitled to find the Appellant's profound deafness and his inability to communicate if returned to a Jamaica where American Sign Language is used rather than British Sign Language to be a significant obstacle. Again these were matters that were aired fully before the First-tier Tribunal Judge. They are not aired fully before me. The only reference to them however expanded upon is an explanation to be found at paragraph 5.1 of the Rule 24 reply on behalf of the Respondent as to differences between the respective sign languages and the pervasive stigma in respect of people with disabilities, is to the fact that British Sign Language is not generally used in Jamaica. It is clear that this aspect has been given full and proper consideration by the First-tier Tribunal Judge and the submission herein amounts to little more than disagreement and the decision shows no material error of law.

17. Everybody accepts that there is within this determination no reference to Section 117B. There is a requirement to consider Section 117B but in this instance bearing in mind the exceptional facts of this case I am satisfied that even had the judge done so the decision that she would have come to would based on the very exceptional history and health problems of this matter be such that there would be no material difference to her decision. It is just a factor to be considered. In such circumstances failure to refer to it does not disclose a material error of law.

18. Finally whilst the Secretary of State now seeks to rely on *Nasim* and the fact that Article 8 has very limited use for private life cases which did not interfere with a person's moral and physical integrity. The case law on Article 8 is constantly evolving. As the Rule 24 response points out firstly *Nasim* was not raised or brought to the attention of the court at the appeal hearing and secondly it takes place on an entirely distinct factual matrix from the present case. This is an Appellant who has resided in the UK since the age of 10 and has been in care of the local authority. He was granted discretionary leave on a six year route to settlement. It is clear that all these factors were given due and proper consideration by the First-tier Tribunal Judge and that there is a specific consideration of exceptional circumstances which the judge clearly found to be present on the facts of the case.

19. In such circumstances for all the above reasons I am satisfied that the determination of the First-tier Tribunal Judge discloses no material error of law and that the submissions of the Secretary of State effectively amount to little more than disagreement. In such circumstances the decision of the First-tier Tribunal is maintained and the appeal of the Secretary of State is dismissed.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award.

Signed Date

Deputy Upper Tribunal Judge D N Harris