Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/18425/2016**

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke	**Decision & Reasons Promulgated**
On 7 June 2017	**On 8 June 2017**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SE
ANONYMITY DIRECTION MADE

Respondent

Representation:

For the appellant: Ms Aboni, Senior Home Office Presenting Officer
For the respondent: Mr Nyamayaro, Duncan Lewis & Co Solicitors

DECISION AND REASONS

1. The appellant appeals against a decision of First-tier Tribunal Judge Holt dated 3 November 2016 in which the respondent's appeal against a decision to make a deportation order was allowed. I shall refer to the appellant as the SSHD and the respondent as SE for the remainder of this decision.

Procedural history

2. In a decision dated 13 April 2017, Designated First-tier Tribunal Judge Peart granted permission to appeal on the basis that it was arguable that the First-tier Tribunal's approach to "unduly harsh" failed to apply the guidance in MM (Uganda) v SSHD [2016] EWCA Civ 450.

3. In a rule 24 notice and skeleton argument SE's solicitors submitted that the First-tier Tribunal decision did not contain an error of law. No effort was made to address MM (Uganda).

4. The matter now comes before me to decide whether the decision contains an error of law.

Hearing

5. At the beginning of the hearing I outlined a provisional view to the representatives and invited them to make submissions. That provisional view is summarised as follows:

    (i) The First-tier Tribunal clearly erred in law in failing to direct itself to or apply the guidance in MM (Uganda): when considering whether or not deportation would be unduly harsh on children for the purposes of section 117C(5) of the Nationality, Immigration and Asylum Act 2002 as amended ('the 2002 Act') and para 399(a)(ii)(b) of the Immigration Rules, the decision-maker is required to have regard to all the circumstances including criminal and immigration history, and not just the impact upon the children.

    When the decision is read as a whole, the First-tier Tribunal focussed entirely on the unduly harsh effects upon the children and in making that assessment, failed to take into account the wider circumstances including SE's criminal offending.

    (ii) However, the First-tier Tribunal made clear findings of fact to support the conclusion that SE would face very significant obstacles integrating into Jamaican society and therefore met the requirements of section 117C(4) of the 2002 Act and para 399A of the Immigration Rules.

    The First-tier Tribunal was entitled to allow the appeal on this alternative basis, and in the premises the error of law identified in (i) is not a material one – the First-tier Tribunal was entitled to the conclusion reached for the reasons she gave in relation to section 117C(4).

6. Ms Aboni agreed with my analysis of (i) above. In relation to (ii) she acknowledged that the grounds of appeal relied upon, focus their criticism on findings of fact. I invited Ms Aboni to set out in what way these factual findings constitute errors of law. She submitted that the finding that there is no care available to address SE's mental health in Jamaica is irrational.

7. I specifically invited Ms Aboni to make submissions, and if necessary take instructions, on the correct approach to section 117C(4) in law, in particular whether there is any requirement to take into account the wider circumstances such as criminal offending, in a similar manner to that found in MM (Uganda) in relation to undue harshness for the purposes of section 117C(5). Ms Aboni made it clear that she only relied upon the guidance in MM (Uganda) for the purposes of (i) above, and not in relation to (ii) above. She submitted that the error of law in relation to (ii) was predicated entirely upon irrational findings regarding SE's mental health. Ms Aboni accepted that in finding there to be very significant obstacles for the purposes of section 117C(4), there was no requirement to include in the assessment, SE's criminal offending history.

8. Mr Nyamayaro invited me to find that the SSHD's criticisms in relation to (ii) simply disagreed with the First-tier Tribunal's factual findings, which were entirely open to the First-tier Tribunal on the material available. That was sufficient for the First-tier Tribunal to find in SE's favour. In the premises, any error of approach regarding (i) is immaterial, and the SSHD's appeal should be dismissed.

9. I invited Ms Aboni to respond to this but she maintained reliance solely upon the grounds of appeal criticising the factual findings on the mental health treatment available to SE in Jamaica. After hearing from both representatives, I indicated that the SSHD's appeal would be dismissed. I now give my written reasons for this.

Discussion

(i) Undue harshness

10. I accept that the First-tier Tribunal directed itself to SE's criminal offending [3-4, 28] and correctly directed itself to section 117C(1) at [16]. However, the First-tier Tribunal clearly erred in law in failing to direct itself to or apply the guidance in MM (Uganda) and excluded SE's criminal offending from its assessment of undue harshness for the purposes of section 117C(5).

11. At [21] the First-tier Tribunal based its conclusion on undue harshness entirely upon four factors, none of which took into account SE's criminal offending. That approach is repeated for the

purposes of para 399(a)(ii)(b) at [26-27]. The reference to SE's offending behaviour at [28] is separate from and follows the conclusion at [27] that it would be unduly harsh for the children to remain in the UK when their father is deported to Jamaica.

(ii) Very significant obstacles

12. In my judgment, the First-tier Tribunal made clear findings of fact to support the conclusion that the requirements of section 117C(4) are met.

13. Ms Aboni did not dispute that section 117C(a) is met. SE has been lawfully resident in the UK for most of his life – as noted by the First-tier Tribunal at [1] he came to the UK when he was 15 and was granted indefinite leave to remain in line with his mother. He was 37 at the date of the hearing before the First-tier Tribunal and therefore spent 60% (22 years) or most of his life in the UK during which time he had indefinite leave to remain.

14. Ms Aboni also did not dispute that section 117C(b) is met – there has been no challenge to the finding at [22] that SE is socially and culturally integrated in the UK.

15. Ms Aboni criticised the First-tier Tribunal's approach to section 117C(c) to which I now turn. The First-tier Tribunal's conclusion that there would be very significant obstacles to SE integrating into Jamaica is reasoned at [23-24 and 29-30]. The First-tier Tribunal noted that SE had spent very limited time in Jamaica since arriving in the UK at 15 and had little in the way of family contacts there. The First-tier Tribunal accepted that SE has "*very serious mental health problems*" and that the source of these was the abuse he suffered in Jamaica, when his mother left him there with relatives [23 and 29]. The First-tier Tribunal was entitled to regard this as an additional factor underlining the difficulty in SE integrating to Jamaica.

16. The First-tier Tribunal was also entitled to find at [24] that SE had only been referred for specialist psychiatric treatment recently and "*having finally got to a position where treatment in the United Kingdom is likely to start to address the source of [SE's] mental health problems, deporting SE is bound to interfere and disrupt that process and it is not possible to say when, or indeed if, [SE] would ever be in a position to find alternative specialist psychiatric treatment in Jamaica.*" The First-tier Tribunal's overall reasoning demonstrates that it mattered little that there was no evidence regarding psychiatric health services in Jamaica. The point being made by the First-tier Tribunal was a valid one – even if it was available, there would be delay and disruption in accessing it (partly caused by being in a different country as well as not having the effective family support he was dependent upon), when SE has been

assessed as requiring treatment immediately.

17. The First-tier Tribunal did not base the finding that there are very significant obstacles solely upon an absence of psychiatric treatment for SE in Jamaica or any disparity in treatment. The findings are more nuanced than this. The points made at para 2 of the grounds of appeal fail to acknowledge that the First-tier Tribunal found on the particular facts of this case that SE's mental health would worsen in Jamaica, not so much because of a disparity in treatment between the UK and Jamaica but because of a combination of the three reasons summarised at [24]: (i) he would be returned to the place and to contact with the people who had abused him as a child and teenager – the First-tier Tribunal expressly noted at [29] that there was cogent medical evidence that SE was chronically abused and neglected as a child at the hands of his grandmother and uncle in Jamaica when his mother left him there at the age of 9; (ii) there would be an inevitable delay and uncertainty in accessing psychiatric treatment without the support of his family in Jamaica, in contrast to psychiatric treatment in the UK being imminent after a delay of many years; (iii) the rupturing of SE's very close family life with his wife and children would lead to an exacerbation of his mental health problems. These are all rational factual findings open to the First-tier Tribunal.

18. The First-tier Tribunal concluded that the increase in SE's mental health difficulties would lead to significant difficulties to integration, in the particular circumstances of this case. When the decision is read as a whole, these can summarised as: the significant length of time he has been in the UK and not been to Jamaica, his lack of any effective social or family connections to Jamaica, the source of his mental health difficulties is attributable to the abuse he suffered in Jamaica over the course of many years, the uncertainty regarding the provision available to meet his particular needs in Jamaica.

19. The submission at para 1h) of the grounds that the First-tier Tribunal applied the "incorrect threshold to very significant obstacles" merely disagrees with the findings of fact. The First-tier Tribunal was well-aware of and expressly took into account SE's family members in Jamaica but noted that his grandmother was the perpetrator of serious abuse upon him in the past. The fact that treatment might be available in Jamaica does not obviate the finding that it would be difficult for SE to access it, given his history and his dependence on his family members.

20. The grounds of appeal relied upon by Ms Aboni do not demonstrate any error of law in the First-tier Tribunal's approach to the alternative finding that there would be very significant obstacles to SE's integration into Jamaica.

No material error of law

21. The First-tier Tribunal was therefore entitled to allow the appeal on this alternative basis, and in the premises the error of law identified in (i) above is not a material one – the First-tier Tribunal was entitled to the conclusion reached for the reasons given in relation to section 117C(4).

Decision

22. The decision of the First-tier Tribunal does not contain a material error of law and I do not set it aside.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
7 June 2017