



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/11742/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 20 December 2021**

**Decision & Reasons Promulgated
On 11 January 2022**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**G F
[ANONYMITY ORDER MADE]**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: The appellant in person

For the respondent: Mr Steven Whitwell, a Senior Home Office Presenting Officer

Anonymity

Pursuant to rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, until this appeal is finally determined the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant.

Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The respondent appeals with permission against the decision of the First-tier Tribunal allowing the appellant's appeal against her decision on 26 June 2019 to make a deportation order against the appellant and to refuse him leave to remain on human rights grounds, with reference to section 33 of the UK Borders Act 2007 and section 117C(6) of the Nationality, Immigration and Asylum Act 2002 (as amended).
2. The appellant is a citizen of Jamaica who has lived in the United Kingdom since 2001, when he accompanied his mother here. He has a wife, three step-children and a child of his own, all British citizens. His step-children are respectively 15, 14 and 11, and his own child is 5 years old.
3. By a decision sent to the parties on 11 December 2021, Upper Tribunal Judge Reeds set aside the decision of the First-tier Tribunal and the appeal now comes before me for remaking afresh in the Upper Tribunal.
4. **Mode of hearing.** The hearing today took place face to face. The appellant was unrepresented.

Background

5. The appellant came to the United Kingdom at the age of 7, in 2001, and on 4 April 2003 he was granted indefinite leave to remain as a dependent relative of his mother, who has since died.
6. The appellant's first convictions were in 2010, just around the time he left school. At that time, and for about 6 years, until his conviction in 2015, he worked as a barber in his father's shop. He had significant debts of about £5000, for court fines, drugs, and gambling debts. He was not good at managing money.
7. On 27 May 2015, the appellant received an 18-month suspended sentence at the Central Criminal Court for 4 counts of supplying a Class B controlled drug (cannabis) to undercover officers in and around London Road, West Croydon, and 2 counts of offering to supply them with a Class A controlled drug (cocaine). He had a large amount of cannabis on him, and people were queuing up to buy.
8. On 25 August 2015, the appellant was sentenced at the Central Criminal Court to 9 years' imprisonment on two counts of robbery and one of having an imitation firearm with intent to commit an indictable offence. The suspended sentence from May 2015 was activated in part, and the appellant was ordered to serve 12 months of that sentence, consecutively to the robbery and firearm sentence, making a total of 10 years' imprisonment.
9. On 14 August 2018 the respondent notified the appellant of her intention to make a deportation order pursuant to section 32(5) of the UK Borders Act 2007 and invited representations under section 33 of that Act. The

appellant's then representatives, Shaka Services Limited, an OISC registered body, made representations under Article 8 ECHR which appeared to raise a protection claim. Following an enquiry by the Respondent, Shaka Services confirmed that the appellant did not wish to make a protection claim.

10. On 26 June 2019, the respondent made a deportation order and on the next day, 27 June 2019, she refused the human rights claim. The appellant appealed to the First-tier Tribunal.
11. The appellant was released from prison in April 2020. He offended again in November 2020 (control of a motor vehicle while intoxicated).

First-tier Tribunal decision

12. First-tier Judge Bart-Stewart considered the appeal while the appellant was still in prison. The appellant was represented by Ms Michelle Harris of Counsel at that hearing.
13. The First-tier Judge recorded that the youngest of the appellant's three step-children had acute myeloid leukaemia, diagnosed in 2013, which had been treated with chemotherapy and bone marrow transplant, leaving the child with paraplegia due to spinal cord compression from his leukaemia treatment, bladder and bowel dysfunction resulting from the spinal cord compression, and speech sound and developmental language disorder. He had various operations to even up his leg length and sort out a contracture of his right ankle. That had helped with his walking, though he still had falls from time to time.
14. The appellant's youngest stepson needed support at school, which was being provided. He would become frustrated when trying to communicate and become upset or have tantrums. He used a self-propelling wheelchair, a walker, and a Leckey PAL chair at school. It does not appear that the judge was told that the leukaemia had been in remission since the treatment ended in 2015.
15. The First-tier Judge considered that the appellant's private life outweighed the public interest in deportation and allowed the appeal. The respondent appealed to the Upper Tribunal.

Error of law decision

16. By a decision sent to the parties on 11 December 2020, Upper Tribunal Judge Reeds set aside the decision of the First-tier Judge. At [139] she noted that there was very little evidence of the role the appellant played in family life. The First-tier Judge had not addressed properly the issue of whether there were 'very compelling circumstances' over and above Exceptions 1 and 2, as required by section 117C(6), by reason of the length of sentence imposed.

17. Upper Tribunal Judge Reeds preserved factual findings made in the First-tier Tribunal which were to the appellant's advantage:

"143. As set out above, there are factual findings that were made which were in favour of the [claimant] and in my judgment they should be preserved findings. That being the case, the decision should be remade in the Upper Tribunal, as there are findings of fact that should be preserved. There is no challenge to the evidence relating to [the youngest stepson] and his diagnosis. There is also no dispute that it would be unduly harsh for the appellant wife and children to relocate to Jamaica with the appellant (at [71]). The First-tier Judge also found a genuine and subsisting relationship with the children (including [his own child] who was born while the appellant was in custody (at [70]). As to the appellant circumstances, the decision reflects the lack of challenge to his claim that he has no relatives or contact there (see [103]).

144. I am also aware that the position of the appellant has changed and that further evidence, both documentary and oral, will be necessary in order to remake the decision, in fairness to the appellant and to reflect the current circumstances of the family members."

18. On 10 August 2021, a letter from Constantia Ms Pennie, a volunteer immigration advisor with Shaka Services who provided help and services to its OISC registered advisor, Mr Jean-Emile Yebga Pouth, informed the Upper Tribunal that Mr Yebga Pouth had died unexpectedly on 4 July 2021, and enclosed a copy of his death certificate. Shaka Services' business accommodation had been repossessed by the landlord, but Ms Pennie provided an email address for the Tribunal's response. The Upper Tribunal Lawyer granted an adjournment to the first available date after 4 October 2021. An application for a longer adjournment on 6 September 2021 was rejected on the basis that the claimant would have enough time to instruct a new solicitor, as the hearing would not be listed until after 1 November 2021.
19. The appeal came before the Upper Tribunal (a panel consisting of Upper Tribunal Judge Sheridan and Deputy Upper Tribunal Judge Woodcraft) on 22 November 2021 but was adjourned again. The claimant arrived half an hour late for the hearing and said that he had instructed new solicitors, Legal Eagle Solicitors. The court clerk contacted Legal Eagle, who confirmed that they were acting but said they were unaware of any hearing on that date. The clerk also contacted Ms Harris, who had not heard from the claimant or any solicitor since the death of Mr Yebga Pouth in July 2021. She had not been re-instructed by Legal Eagle.
20. In directions sent to the parties on 25 November 2021, Judges Sheridan and Woodcraft emphasised that they had told the claimant that the substantive hearing would be relisted for today, 20 December 2021. No new evidence had been produced and they told the claimant specifically that:

“(a) in the absence of a very good reason, a further adjournment would not be granted;

(b) he was on notice that he was expected to provide further evidence and he now had a further opportunity to do so; and

(c) up to date evidence from his wife (and her mother) was likely to be of central importance and, absent very good reason, if they do not make themselves available to be cross-examined at the resumed hearing, an adverse inference might be drawn.”

Upper Tribunal hearing

21. The claimant came to court today and asked for an adjournment. He said his solicitors, Legal Eagle, had been in touch with the Upper Tribunal but the Upper Tribunal computers were not working properly and they had not been able to put themselves properly on the record or arrange representation for the hearing.
22. The claimant had not brought any correspondence to support this assertion. He provided no witness statement but he did give oral evidence at the hearing. I refused the adjournment: the order of the previous panel was very clear and it was not in the interests of justice for the remaking of the decision in this appeal to be adjourned again.
23. The claimant brought no evidence from his wife or her mother, although his children are currently living with his mother-in-law. The claimant's youngest stepchild (J in the First-tier Tribunal decision) has had leukaemia but the claimant told me that the illness has been in remission for 6 years, since 2015 when his treatment ended.
24. The claimant complained of difficulties in his marital relationship because he was not allowed to work or study after coming out of prison in April 2020, which had created problems in his relationship with his wife. She was the provider, and they argued, the claimant feeling that he could not provide for his family as he would like to do, and that his wife talked down to him.
25. The claimant committed a further offence after his release from prison in April 2020. On 8 November 2020, the claimant attended a family party, driving there in his car. He had not expected to drink as much as he did. When he left the party, the claimant was too intoxicated to drive. However, he went to his car, under the influence of alcohol, and turned on the engine to charge his mobile phone. He then fell asleep with the engine running, which he accepts amounted to being in control of a motor vehicle while intoxicated. On 14 December 2020 at the West and Central Hertfordshire Magistrates' Court, the claimant pleaded guilty and was sentenced to a fine of £80 and 10 points on his licence.
26. The claimant is one of five brothers, or perhaps six. His father and his younger sister live together in Croydon. Two of the claimant's brothers

were killed, one in Jamaica and one in the United Kingdom. The claimant is living with his step-mother, also in Croydon. One younger brother lives with the claimant and his step-mother, and she also has another son by the claimant's father. His step-mother's family are in the United States.

27. The claimant has another two brothers somewhere in Jamaica. He claims not to know where, but again, I find that the claimant was being economical with the truth and I place no weight on that.
28. The claimant is now living with his step-mother, in Croydon. His wife and all four of the children have moved to Bromley, because the relationship was not going well. The claimant suggested the break, because he considered that his wife needed some space.
29. The claimant's wife has family in Jamaica: the claimant said that his wife's father splits his time between Jamaica and the United Kingdom. His wife left the United Kingdom in November 2021 for an extended holiday to Jamaica, with a female friend. She is not expected back until January 2022. The claimant was vague about where his wife was staying: he thought it might be an hotel, but could not remember the name or even the approximate location in Jamaica. I do not consider that he was telling the truth about that.
30. In their mother's absence, the claimant is not looking after his children. They are living with their maternal grandmother in Thornton Heath, Croydon.
31. The claimant told the Tribunal that he had changed between the age of 21, when he committed the index offence, and now, when he is 28. He just wanted the opportunity to follow his dreams and have a career. He wanted to be a good influence on his children and be a responsible adult, and he hoped to have more children.

Analysis

32. It is clear to me that quite a lot of information was withheld from the First-tier Tribunal, including the family links to Jamaica on both the claimant's side and that of his estranged wife, the fact of their separation, and the limited involvement the claimant has with his children. He said that when they were in Bromley he used to visit and spend time with the children, taking them to school and sometimes staying over, but he gave no concrete examples of adult behaviour or parenting.
33. The claimant has continued to offend, just 8 months after his release, and the behaviour of which he was convicted in December 2020 was very irresponsible.
34. I have had regard to the guidance given by the Court of Appeal in *MI (Pakistan) v Secretary of State for the Home Department* [2021] EWCA Civ 1711 (18 November 2021). The evidence in this appeal falls well short of the standard set therein. I have regard to the fact that the claimant's wife

and children no longer live with him, and that in his wife's absence, it was to her mother, not the claimant, that she turned for day to day care of her four children. There is no up to date evidence about the claimant's youngest stepchild, but if the relationship has failed, as it seems it may have done, very strong evidence of continuing involvement would be required.

35. The claimant's offending was of a very serious nature, attracting a cumulative sentence of 10 years. I remind myself that the more serious the offence, the greater the public interest in deportation. I bear in mind the preserved findings in Judge Reed's decision: the finding of a genuine and subsisting relationship with the children is generous.
36. The finding of no relatives or contact in Jamaica is not sustainable: on his own evidence today, the claimant has two previously undisclosed brothers in Jamaica, and there may well be other relatives. Even if there are none, the evidence in this appeal is not such as to amount to 'very compelling circumstances' over and above Exceptions 1 and 2 in section 117C, such that the public interest in deporting him would be outweighed.
37. I substitute a decision dismissing the claimant's appeal.

DECISION

38. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

The previous decision has been set aside. I remake the decision by dismissing the appeal.

Signed [Judith AJC Gleeson](#)
2021

Date: 20 December

Upper Tribunal Judge Gleeson