IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000506
First-tier Tribunal No:
HU/06913/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23 May 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

SWAYE RICARDO BINNS
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms K Renfrew, counsel
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 5 May 2023

DECISION AND REASONS

Introduction

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Bird promulgated on 6 February 2023. However, for ease of reference hereafter the parties will be referred to as they were before the First-tier Tribunal.

2. Permission to appeal was granted by First-tier Tribunal Judge Landes on 22 February 2023.

Anonymity

3. No anonymity direction was made previously, and there is no reason for one now.

Factual Background

4. The appellant is national of Jamaica, now aged 45. He entered the United Kingdom as a visitor in November 2000 and varied his leave to that of a student until 30 September 2002. Thereafter he overstayed his leave.

5. On 4 September 2003, the appellant was convicted of possession of heroin for which he was sentenced to fifteen months' imprisonment as well as one count of assault occasioning actual bodily harm for which he was sentenced to a consecutive period of twelve months' imprisonment.

6. A decision to deport the appellant was made on 8 October 2003. The appellant's appeal against that decision was dismissed and his appeal rights were exhausted as of 19 October 2004. Also refused was an application for settlement as the spouse of a British citizen. A deportation order was signed on 19 October 2006. The appellant absconded from immigration control and next came to light on 18 October 2013 when he was arrested for possession of drugs.

7. On 20 March 2015, the appellant unsuccessfully applied for a right of abode. His appeal against that decision failed and his appeal rights were exhausted on 29 March 2018. That was followed by an application for an EEA Derivative Residence Card as the primary carer for his British son, which was also refused, on 19 April 2016. His appeals against that decision also failed.

8. The appellant was subsequently convicted of a series of offences relating to the unlawful provision of immigration advice for which he was sentenced, on 19 July 2018, to a total of four years imprisonment. On 4 October 2018, the appellant made further submissions in response to a further decision to deport dated 16 August 2018, which was subsequently revoked as the appellant was already subject to deportation following his previous offending.

9. The appellant's further submissions, in the form of a handwritten letter, were treated as an application to revoke the deportation order. In that letter, the appellant stated that he was appealing his conviction and sentence, that he had a genuine and subsisting relationship with his four minor British-born children, that he was about to marry his partner who is the mother of his youngest two children, and he made detailed submissions to the effect that his deportation would have a detrimental impact on his children.

10. On 10 August 2020, the respondent refused the appellant's human rights claim. The respondent stated that the appellant was refused permission to appeal against his conviction and sentence. The appellant's claim to a family life with his eldest two children was rejected. With respect to the appellant's youngest children, the respondent did not accept that it would be unduly harsh for them to relocate to Jamaica should their mother decide to do so nor that it would be unduly harsh for them to remain in the United Kingdom after the appellant's removal. The respondent concluded that the appellant would be unable to meet the test in 399A of the Immigration Rules owing to his lengthy unlawful residence, his lack of integration and it was not accepted that he had lost all social and cultural ties to Jamaica. No very compelling circumstances were detected, and the respondent did not consider it to be appropriate to revoke the deportation order, having considered paragraph 390 of the Rules.

The decision of the First-tier Tribunal

11. At the hearing before the First-tier Tribunal, the appellant gave evidence as did two witnesses, who were the appellant's partner T and his eldest child's mother K. Other evidence before the Tribunal included reports from a psychologist and an independent social worker.

12. In considering whether there were very compelling circumstances, the judge found that the appellant could not succeed under Exception 1 in relation to his private life but could succeed under Exception 2. The judge found that there were very compelling circumstances over and above Exception 2.

The grounds of appeal

13. The sole ground of appeal was that the decision showed that there was material misdirection in law and a lack of inadequate reasoning. It was said that the reasoning of the judge did not support a finding of 'compelling circumstances that would outweigh the public interest.' There was criticism over a failure to make findings as to the substance of Exception 1. It was said that the judge was wrong to make findings on rehabilitation when the primary focus ought to have been deterrence and the public interest in deporting foreign national offenders. It was submitted that the judge minimised the appellant's immigration record and did not refer to factors which increased the public interest in deportation. The grounds state that the judge was wrong to comment that the appellant was not removed in 2013 when he came to light and that the judge failed to consider section 117B of the Nationality, Immigration and Asylum Act 2002.

14. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

> I consider it arguable that the judge minimised the public interest in deportation given the appellant's earlier absconding by describing matters as she did at [68]. The appellant actively escaped and only came to the attention of the authorities 6 years later when he was arrested for another criminal offence. It is arguable that the absconding was a matter that increased the public interest in deportation and that the judge should have positively taken that into account in the proportionality balance.
>
> Whilst the judge should have considered s117 (B) explicitly, I cannot see that it would have made any difference on the facts of this case; that she did not consider reintegration explicitly can only have benefited the respondent; she was entitled to consider rehabilitation and there is nothing obvious to indicate that she overemphasised this factor.
>
> Although I have commented adversely on parts of the grounds, I do not restrict the grounds which may be argued.

15. The appellant filed a Rule 24 response dated 2 May 2023 in which the appeal was opposed.

The hearing

16. I heard detailed submissions from both representatives which, in the main, relied on the written arguments and which I took into consideration in reaching my decision. At the end of the hearing, I announced that the decision of the First-tier Tribunal contained no material error of law, and that the decision was upheld. I give my reasons below.

Decision on error of law

17. The first complaint in the grounds concerns the judge's finding that the appellant met the very compelling circumstances test. This ground amounts to little more than disagreement with the judge's findings. It is notable that there is no criticism of the judge's conclusion that the appellant met Exception 2, in that he established that his deportation would have an unduly harsh effect on his children.

18. Contrary to what is said in the grounds, the judge directed herself appropriately, set out and applied the guidance given in *HA* (Iraq) and provided detailed reasons for concluding that there were very compelling circumstances. Ms Isherwood seized on the judge's brief summary at [76], where she states that she concludes that there are very compelling circumstances. However, this summary came after a lengthy analysis of the evidence in this case which began at [29] of the decision. Essentially, the judge accepted the evidence contained in the report of an independent social worker which addressed the circumstances of the four children. The opinion of the social worker was that all four children would be detrimentally affected by the appellant's departure and one child was especially vulnerable owing to the inability of his mother to adequately control him, in the absence of the appellant, against the backdrop of his older siblings who were in an out of prison and who had strong gang connections. The only comment Ms Isherwood made regarding the expert evidence was that the social worker had assessed the best interests of the children rather the issue of undue harshness. As I indicated during the hearing, the question of undue harshness was one for the judge not for the social worker. The judge addressed that question fully.

19. The respondent's complaint about the judge not addressing the three component parts of Exception 1 goes nowhere. It was not in dispute that the appellant was not lawfully resident in the United Kingdom for most of his life. Had the judge considered the elements of social and cultural integration and very significant obstacles it was more likely to have strengthened the appellant's case rather than that of the Secretary of State owing to the positive findings that she reached elsewhere in the decision which touched upon these aspects. There is no error here and if I am wrong in this any error was not material.

20. The respondent suggests that the judge was not entitled to consider the extent of the appellant's rehabilitation, stating that the severity of offending takes precedence over the risk of reoffending. There is no indication that the judge attached an inappropriate degree of weight to the matters set out at [74] of the decision. She rightly directs herself in accordance with *HA* (Iraq) and sets out the facts. The grounds do not take issue with the judge's individual findings, including that the appellant has sought to address his offending behaviour, that he has not committed more offences and that he is positively involved in his church. AT [58] of *HA (Iraq)*, the Supreme Court makes mention of the relevance of evidence of positive rehabilitation which reduces the risk of offending being deserving of 'some weight' and there is no indication that the judge went any further than this.

21. On the face of it, there initially appeared to be some merit in the respondent's observation that the judge appeared to minimise the appellant's immigration history at [68-69] but it is clear from [68], that the judge recorded that the appellant evaded immigration control for a six- year period. The judge made no error at [69] in noting the respondent's failure to remove the appellant after the

deportation order was signed in 2006, even when his continued presence in the United Kingdom came to light in 2013. The judge was entitled to note that had the appellant been promptly removed in 2013, he would not have been in the United Kingdom in 2018 when the most recent offences were committed. There is little indication that the judge placed much if any weight on the delay in attempting to remove the appellant, let alone was there a finding that the public interest was reduced. On the contrary, at [69], the judge states that the 'public interest demands that the appellant be deported.' Nonetheless, delay was a matter which the judge was entitled to consider, applying *MN-T Colombia* [2016] EWCA Civ 893.

22. There is no substance to the complaint that the judge did not address section 117B of the 2002 Act. Even had she explicitly mentioned the relevant factors, it could have had no material impact on the outcome of this appeal.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is upheld.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 May 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email