Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/16801/2018

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Decision & Reasons Promulgated**
On 4 March 2019	**On 10 April 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CADONIUS DE-HAVALAN LOWE
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer
For the Respondent: Mr B Lams, Counsel instructed by Fisherwrite Solicitors

DECISION AND REASONS

1. At the start of the hearing Mr Whitwell asked to amend the grounds. Mr Lams opposed the application and I refused leave. As I said at the hearing, the application was unsatisfactory for two reasons. It was raised very late (I think on Friday 1 March for a hearing on Monday 4 March) and it was not accompanied by draft grounds. Two quite different points were taken. First, it is said that the claimant has been convicted of a further offence. That seems to be correct but it is something that occurred after the hearing in the First-tier Tribunal. I do not see how it can be said that failing to consider something that had not happened can be an arguable error of law. Second, it is said that the judge misdirected himself

materially because, at paragraph 31 of the Decision and Reasons, he referred, wrongly, to a "significant obstacles" test rather than "very significant obstacles" test. This, on the face of it, seems a material and important point but it was not taken in the respondent's grounds, which seemed to accept that the correct "very significant obstacles" test was applied. The plain meaning of paragraph 2 of the grounds is that the correct test was applied. Mr Lams pointed out that the judge quoted directly from Part 5A of the 2002 Act and the Rules in the Decision and Reasons. Rather than indicating that the wrong test was applied, the failure to use the qualifying word "very" is clearly a slip because it is inconsistent with the rest of the decision. The failure to take the point in the grounds was not an ill-considered omission but a recognition of the correct test was in fact applied, albeit on the Secretary of State's case applied incorrectly. I refused permission mainly because I do not accept there is actually anything in the points.

2. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter "the claimant" to refuse an application for permission to remain on human rights grounds on 1 August 2018.

3. The claimant is a citizen of Jamaica. He was born in April 1999 and so is now almost 20 years old. He entered the United Kingdom with his mother sometime in 2002 and has remained. His mother's immigration history is imperfect. She has not always had leave. Nevertheless, she lives in the United Kingdom and has leave to remain. The claimant was given leave in line with his mother. Most recently, on 29 December 2016 the claimant was given indefinite leave to remain. He was then still a minor. If there are any failings in his immigration history they are not the fault of the claimant. He was a minor acting on the advice of his mother.

4. On 30 October 2017 the Secretary of State wrote to the claimant to tell him that he was liable to deportation because of his criminal behaviour. The letter was served on 31 October 2017. On 9 November 2017, 14 November 2017 and 21 November 2017 solicitors made submissions on his behalf.

5. The papers include a Decision to Deport pursuant to the Immigration Act 1971 and the UK Borders Act 2007 dated 30 October 2017. The claimant was arrested in March 2017. I assume that the arrest was contemporaneous with the offence. It follows that he was not quite 18 years old when he committed the offence. The sentencing judge gave full credit for a guilty plea and imposed a term of two years and four months' custody. The circumstances of the offence are set out in the judge's opening remarks where he said:

> "I have got to deal with you for your involvement in serious drug dealing. You came down from London, you were sent down to assist an operation, essentially it being run from London, it was effectively what is described in the case of, *R v Ajayi & Limby* [2017] EWCA Crim 1011. You involved yourself in a county line operation, you were not here as a

> user feeding a habit. You were part of a cuckooing process and you divvied up the drugs at the address and also went out occasionally on the streets selling them and that is just really serious, that is just a terrible thing to do".

6. I understand a "cuckooing process" to be a process by criminal gangs where gang members befriend someone who is vulnerable with the intention of taking over his or her resources, typically home, to use in criminal activities.

7. The First-tier Tribunal heard evidence and set out the correct legal tests.

8. The Tribunal found that the claimant has always lived with his mother apart from a short period of time when he had lived with his father and when he was detained. He said he intended to continue living with his mother in Birmingham. The judge was satisfied that the claimant was dependent on his mother for accommodation and for finance. He had not formed his own family unit. The judge concluded that there were "elements of dependency, involving more than the normal emotional ties" and decided that the claimant has "family life" with his mother.

9. Unremarkably the judge found also that the claimant had private life in the United Kingdom. He accepted that the claimant had been lawfully resident in the United Kingdom for most of his life. He speaks English which is the national language of Jamaica, and there was no medical evidence to suggest he was suffering from any disabling condition. He had a BTEC qualification. It is clear that the Secretary of State decided that the claimant's father and extended family lived in Jamaica at the time of making the decision (see "Decision to Refuse a Human Rights Claim" dated 1 August 2018).

10. The First-tier Tribunal accepted evidence that the claimant's father left Jamaica about twenty years before the decision, and the mother about sixteen years before the decision. The judge found that the claimant's mother is unlikely to have maintained contacts and that her siblings have relocated to the United States of America. The judge found the claimant does not have any family or other connections in Jamaica.

11. The judge found that the claimant had always been dependent on his mother or father or the state through the Prison Service for accommodation and support. The judge accepted the appellant's parents, mainly his mother, sent him an income while he was in prison but the family had "limited means and they would not be able to provide either a lump sum or regular income to assist" the claimant in the event of his return to Jamaica.

12. Putting these things together the First-tier Tribunal decided that there were very significant obstacles to the claimant's integration into Jamaica within the meaning of the phrase in Section 117C(iv)(c) of the Nationality, Immigration and Asylum Act 2002.

13. The judge allowed the appeal.

14. The Secretary of State's grounds take five paragraphs.

15. Paragraph 1 is narrative and refers correctly to the relevant legal test and the accepted conviction.

16. Paragraph 2 asserts baldly that "it is irrational" to find there were very significant obstacles in the way of integration. That is the main ground and I return to it later.

17. Paragraph 3 accuses the First-tier Tribunal Judge of considering only "negative factors rather than the multidimensional aspects of integration".

18. Paragraph 4 says the First-tier Tribunal Judge has failed to give adequate consideration to the seriousness of the claimant's criminal conduct and the high public interest in deportation.

19. Paragraph 5 says that it is "irrational" to accept that the claimant is dependent on his family in a **Kugathas** sense". Clearly this is a reference to the decision of the Court of Appeal in Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31.

20. Ground 4 I find to be without merit. The judge did not underestimate or wrongly evaluate anything about the criminal offence. He was fully aware of the criminal offence. What the judge did do was apply Section 117C of the Nationality, Immigration and Asylum Act 2002, which he was required to do, and conclude that Exception 1 applied and therefore the public interest did not require deportation. Having made that decision, there was no error in the assessment of the criminal conduct. The assessment of the criminal conduct is best measured by the sentence imposed. The sentence imposed was a sentence that permitted the possibility of Exception 1 applying and the judge found that it did.

21. Neither is there any error in finding that "family life" existed. I do find the Secretary of State's delight in separating "family life" and "private life" as if they were two separate concepts to be considered individually frustrating. The European Convention on Human Rights obliges the United Kingdom to consider a person's "private and family life, home and correspondence". "Private and family life" is one thing, not two, which can arise in a variety of ways. It is described sometimes as "physical and moral integrity". It is ejusdem generis with "home" and "correspondence" and the article is about stopping the state interfering unnecessarily with people. It is not about how the rights of an auntie might be different from the right of a mother.

22. Here, the judge was satisfied on the evidence that the claimant's only experience of adult life was in the context of life with his mother. Previously he had lived for a short time with his father and he had lived in custody. There is no error in describing the arrangement as "family life" provided that it was appreciated that it was a less important kind of family

life, being the family life between a young adult who should be ready for independent living. It is not entitled to the same kind of weight that should be given to the relationship between, for example, a parent and a small child.

23. However, as this case has been decided on the basis of Exception 1 and not independently on human rights grounds as a separate consideration outside the Act, I see nothing in the point. The contention that the judge has wrongly appraised the negative factors rather than the whole aspect of integration does not, I find, add anything to ground 2.

24. The essential point taken here is that the judge should not have found there were very significant obstacles.

25. Mr Lams argued his case clearly and without fanfare, and all the more effectively as a result. He reminded me, correctly, that my first task is to decide if there has been an error of law. The error of law identified by the Secretary of State is perversity and that is not easy to prove. Here, the First-tier Tribunal has directed itself correctly. I can only interfere if it is a case where the conclusion it reached was not open to it. All of this I accept.

26. However, I asked Mr Lams to identify the very significant obstacles in the way of integration and I struggled to follow his answer. This was not because of any deficiency on his part but because the case is not made out.

27. Certainly, the claimant is a young man with no real experience of independent living. Certainly, he has no experience of life in Jamaica, and certainly he would be on his own in the sense that there is no evidence of financial support from the United Kingdom or any relatives in Jamaica having the slightest interest in him. However, the claimant had not produced any evidence that showed he had made any real attempt to sort out how he might live in Jamaica. I am told nothing about employment difficulties or opportunities or how he might or might not be able to obtain accommodation. The evidence was silent about these things.

28. Given that the claimant had sufficient wit (albeit of a thoroughly discreditable kind) to be part of a drug ring enterprise, I cannot accept that he can be regarded a helpless babe. Neither can I accept in the absence of clear evidence, that a person who has been locked up for whatever is necessary in a sentence of two years and four months, had not learned some street wisdom of a kind that would assist him.

29. The claimant does have qualifications of sorts. He does speak the main local language. I can see many reasons why he will not wish to return to Jamaica and I can see many things that will be difficult for him there, or which could be expected to be difficult which is probably all that is necessary but I cannot see anything here that I would describe properly as a “very significant obstacle”.

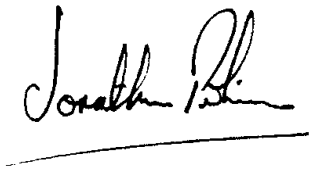
30. Mr Lams relied in part on the decision of the Court of Appeal in **Kamara v SSHD [2016] EWCA Civ 813**. Mr Lams reminded me of the judgment of Sales LJ emphasising there needs to be a broad assessment, that I should take into account the claimant having no emotional support in the country and at the least accept that the judge was entitled to conclude that the obstacles would be very significant.

31. It is important to sit back here and reflect a little on what is happening. It is proposed to remove to Jamaica a person who has no meaningful links with the country except a passport which he has as a consequence of being born there. He has no adult experience of the country and no support there. He probably has no memories of the country. He was 3 years old or thereabouts when he left it. Exactly why this young man is being returned to that country? He has been justly punished for the offences that he has committed but he had indefinite leave to remain in the United Kingdom at the material time and will be a stranger in his country of nationality. However, that is not really something that I have to answer. Parliament has set out the law and the only relevant exception here is "very significant obstacles" to integration. The decision has been made that it is in the public interest to deport a person such as the claimant unless the exception applies. I agree with Mr Lams' observation that this is "exile" rather than "deportation" but as far as I can see that is precisely what Parliament requires.

32. If this decision is right then many decisions against young people who are being removed to their country of nationality where they have no experience would be contrary to the law. Maybe that is precisely what Parliament intended. Maybe that is the balancing measure to prevent excessive consequences in the case of young people who have no contact in the country of which they happen to be a national. However, I do not accept that. Parliament has decided there needs to be very significant obstacles. Clearly the Secretary of State did not consider there were else he would not have made the decision in the first place. The First-tier Tribunal was satisfied that there were but I cannot work out why. Not only is there nothing here that I would identify as a "very significant obstacle" but in my judgment there is nothing that can be identified as a "very significant obstacle". Whilst it is necessary to make a rounded assessment of all the circumstances, it is also necessary to apply the law in statute. The exception will only apply in strong circumstances. I do not accept that those circumstances have been identified in the evidence here. I find the Secretary of State's grounds are made out. The decision of the First-tier Tribunal was irrational. I set aside its decision and I re-make a decision dismissing the claimant's appeal.

Notice of Decision

The First-tier Tribunal erred. I set aside its decision and I substitute a decision dismissing the claimant's appeal against the Secretary of State's decision.

Signed
Jonathan Perkins
Judge of the Upper Tribunal  Dated 8 April 2019