**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: OA/18511/2013

**THE IMMIGRATION ACTS**

| **Heard at Bradford** | **Determination Promulgated** |
|---|---|
| **On 30 July 2014** | **On 11 August 2014** |

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**JOSEPH MORRIS HOUSEN**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Gumbs (the appellant's partner)
For the Respondent: Mr M Diwnycz, a Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, Joseph Morris Housen, born on 22 January 1979 and is a citizen of Jamaica. The appellant appealed against a decision of the respondent dated 17 September 2013 to refuse to revoke a deportation order made against him. The appellant had arrived in the United Kingdom in May 2001 as a visitor. He was granted indefinite leave to remain upon application in October 2003. An application for naturalisation

as a British citizen was refused in July 2007 after the appellant had been convicted at Leeds District Magistrates' Court of a driving offence. On 9 February 2010, at Bradford Crown Court, the appellant was convicted of conspiracy to supply controlled a drug class A and was sentenced to six years' imprisonment. He was served on 14 May 2010 with a notice of liability to automatic deportation. A deportation order was made against him on 28 January 2013 and, following a unsuccessful appeal, he was deported to Jamaica on 4 October 2013 from where he has applied for the revocation of the deportation order.

2. The appellant's appeal came before the First-tier Tribunal sitting at Bradford on 26 February 2013 (Judge Hindson). The Tribunal dismissed the appeal in a determination promulgated on 17 March 2014. The appellant now appeals, with permission, against that dismissal.

3. At the Upper Tribunal hearing on 30 July 2014, the appellant was no longer represented by Immigration Legal Advice. The appellant's partner, Ms Chevon Gumbs, did attend. I am grateful to Ms Gumbs for the assistance she was able to give the court. The respondent was represented by Mr M Diwnycz, a Senior Home Office Presenting Officer.

4. Judge Hindson heard oral evidence from Ms Gumbs and her mother. The appellant is married to Nicole Housen, (hereafter, Mrs Housen). The appellant and Mrs Housen have two children. Mrs Housen has a son from a previous relationship. In addition, Mr Housen has had a longstanding relationship with Ms Gumbs by whom he also has two children.

5. The grounds of appeal complain that the judge had not adequately considered the new evidence which had been put forward with the application to revoke the deportation order at the appeal. The grounds seek to clarify that statement by adding;

> The Immigration Judge states at paragraph 22 of the determination that he has been presented with some evidence that was not before the Immigration Judge Fisher and Mr Getlevog and that he has also been provided with more detail about the relationship between the appellant and Ms Gumbs than was put before the previous Tribunal. He also received evidence about the actual effect of that separation on Ms Gumbs and her children such as medical evidence and evidence from school. He goes on to state at paragraph 24 that he is not satisfied that had the Tribunal had the benefit of the additional evidence now before him that they would have come to a different conclusion.

6. The grounds also challenge the determination on the basis of the judge's failure to make specific findings on the evidence and apply the relevant Immigration Rules, in particular paragraph 390, 390A, 391 and 391A of HC 395:

Revocation of deportation order

> 390. An application for revocation of a deportation order will be considered in the light of all the circumstances including the following:

(i) the grounds on which the order was made;

(ii) any representations made in support of revocation;

(iii) the interests of the community, including the maintenance of an effective immigration control;

(iv) the interests of the applicant, including any compassionate circumstances.

390A. Where paragraph 398 applies the Secretary of State will consider whether paragraph 399 or 399A applies and, if it does not, it will only be in exceptional circumstances that the public interest in maintaining the deportation order will be outweighed by other factors.

391. In the case of a person who has been deported following conviction for a criminal offence, the continuation of a deportation order against that person will be the proper course:

(a) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of less than 4 years, unless 10 years have elapsed since the making of the deportation order, or

(b) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of at least 4 years, at any time,
Unless, in either case, the continuation would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees, or there are other exceptional circumstances that mean the continuation is outweighed by compelling factors.

391A. In other cases, revocation of the order will not normally be authorised unless the situation has been materially altered, either by a change of circumstances since the order was made, or by fresh information coming to light which was not before the appellate authorities or the Secretary of State. The passage of time since the person was deported may also in itself amount to such a change of circumstances as to warrant revocation of the order."

7. The grounds assert that "no mention of the evidence in relation to the relevant Rules were made by the Immigration Judge and therefore this is an error of law." It is also asserted that there was no consideration of Section 55 of the Borders, Citizenship and Immigration Act 2009.

8. It must be said that Judge Hindson's determination is certainly concise. He has provided a summary of the background to the appeal and the reasons for the refusal by the respondent. At [16], the judge noted that:

> Put briefly, the appellant's case is that he is no longer able to enjoy family life with his wife, Ms Gumbs and all of the children. They are all deprived of any real family life with him. They all miss each other and the situation is making the children unhappy.

9. The judge went on to note [19] that Ms Gumbs had not attended the previous appeal hearing before Judge Fisher and Mr Getlevog "because she felt it may upset the appellant's wife if she did so, perhaps so much that she would not attend herself to give evidence." The judge accepted the same point advanced in the grounds of appeal, namely that the basis of the appellant's appeal to the First-tier Tribunal to revoke the deportation order was on the basis that the appellant's relationship with Ms Gumbs and their children had "not been part of the case before Judge Fisher and Mr Getlovog, or at least it was not described in detail and therefore was not taken into account by them in making their decision" [19]. The judge found [20] that Judge Fisher and Mr Getlovog had been aware of the appellant's "other family" since they made reference to it in the determination. The judge recorded that Ms Gumbs had been willing for the appellant to live with her should he return to the United Kingdom although he also noted that "it seems clear from his statement that the appellant's preference is to return to his wife." The judge accepted at [22] that he had been presented with evidence which had not been before the previous Tribunal, in particular more details regarding the relationship between the appellant and Ms Gumbs. He records also the evidence from the school of one of the children (M) who had had a "challenging year." The judge concluded at [24]:

> I have taken careful account of all the evidence before me and of the determination of Judge Fisher and Mr Getlovog. Having done so I can find no reason for coming to a different conclusion than did they. I am not satisfied that, had the Tribunal had the benefit of the additional evidence now before me, they would have come to a different conclusion. I therefore adopt the findings of Judge Fisher and Mr Getlovog and dismiss the appeal for the same reasons.

10. In her comments to me, Ms Gumbs drew my attention to that paragraph of Judge Hindson's determination and queried his finding that, had the previous Tribunal "had the benefit of the additional evidence" he would not have reached a different conclusion. I have to say that I agree with Ms Gumbs that Judge Hindson's conclusion is not entirely clear. It is not immediately obvious why he has thought it necessary to find whether, if the previous Tribunal had had the benefit of the evidence which was before him, they would have reached the same decision on the appeal. I am conscious that the judge felt it necessary to follow the principles of *Devaseelan* [2002] UKIAT 00702 and he has clearly directed himself to consider the previous Tribunal's conclusions and findings as a starting point for his own analysis. There was, however, no need for him to second-guess the previous Tribunal's probable response to the evidence advanced by the appellant in support of his revocation appeal.

11. However, notwithstanding those observations and also the brevity of the determination, I am unable to conclude that the judge erred in law such that his determination falls to be set aside. It would indeed have been helpful if the judge had set out the relevant Immigration Rules but I cannot see, for example, that he has ignored any part of paragraph 390 of the Rules (see above) which may have assisted the appellant. Although he does not say so in terms, the judge has considered the interests of the

appellant including any compassionate circumstances and also the representations made in support of the revocation (in particular, concerning the "new" evidence regarding Ms Gumbs and her children). The judge has not explicitly considered the interests of the community (including the maintenance of effective immigration control) but it is hard to see how, had he done so, this might have led to a favourable outcome for the appellant. Likewise, on the facts before him, it is very hard to see how the judge would have concluded that there were exceptional circumstances which outweighed the public interest (paragraph 390A). He does not refer to paragraph 391A but it is apparent from any reading of his determination that the judge has had firmly in mind that revocation of a deportation order is only likely to occur where "the situation has materially altered;" it is clear that the judge understood that the focus of his determination should be on the new evidence which had not been before the previous Tribunal. Again, had the judge expressly asked himself the question as to whether any change of circumstances justify the revocation of the deportation order, one can only conclude that he would have answered that question in the negative. With regard to Section 55, I acknowledge that the judge did not refer to it directly. He does engage, albeit briefly, with the evidence regarding Ms Gumbs' children [22]. Finally, I note that it is not asserted by the appellant that the passage of time since the deportation order might itself amount to a change of circumstances [paragraph 391A]; the whole thrust of the appeal before Judge Hindson concerned Ms Gumbs and her children. I am not satisfied that the evidence which the judge heard regarding Ms Gumbs and the children represented a material alteration to the appellant's circumstances; instead, those circumstances existed at the time of the previous determination have simply not been brought to the attention of the previous Tribunal in any detail. I have concluded that, even if Judge Hindson had attempted to apply the relevant Immigration Rules to the evidence or had dealt at greater length with the "new" evidence before him, he would not have come to a different conclusion. The appellant was deported relatively recently and the effect of his deportation on Ms Gumbs and her children has, in my opinion, been adequately addressed by the judge at [22].

12. I am aware that the dismissal of this appeal will come as a disappointment to Ms Gumbs who helpfully explained her current position and that of the children to the Tribunal. However, as I explained to her, the Upper Tribunal may only look again the evidence and re-make the decision if it finds that the First-tier Tribunal determination should be set aside because it contains an error of law. For the reasons I have given above, I find that Judge Hindson's determination did not contain any such error and the appeal is dismissed accordingly.

## DECISION

This appeal is dismissed.

Signed Date 8 August 2014
Upper Tribunal Judge Clive Lane