Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01910/2013

THE IMMIGRATION ACTS

Heard at Manchester Crown Court	**Decision & Reasons Promulgated**
On 4 July 2014	**On 2 June 2015**
And at Field House on 26 March 2015	

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

IBRAHIM KARA

Claimant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Claimant: Mr Anisuddin, Legal Representative Mr T Melvin
For the Respondent: Mr Mc Veety, Presenting Office (4 July 2014)
Mr T Melvin, Presenting Officer (26 March 2015)

DECISION AND REASONS

1. The Secretary of State appeals with permission against the determination of the First-tier Tribunal (a panel comprising First-tier Tribunal Judge A D Smith MBE, TD and Mrs S Hussain) promulgated on 6th January 2014 in which they allowed the claimant's appeal against the decision of the respondent to deport him pursuant to Section 3(5)(a) of the Immigration Act 1971.

2. The claimant is a British Overseas Citizen. He was born in Tanzania. His father was registered as a British citizen pursuant to Section 6(1) of the British Nationality Act 1948 and subsequently became a British citizen under Section 11(1) of the British Nationality Act 1981. The claimant first visited the United Kingdom in 1996 with his father and brother to visit grandparents; he alone returned to Tanzania. In November 1999 the claimant was issued with a British passport giving his status as a British citizen and he returned to the United Kingdom to join his father, brothers and sisters in the United Kingdom. He subsequently lost his passport and, after applying to renew it, was told in 2003 by the British Passport Agency that the British passport issued to him had been issued in error and that he is in fact a British overseas citizen, the basis of that being that his father could not pass on the right of abode and as the son was born abroad he obtained only British overseas citizenship by descent.

3. On 6 October 2004 the claimant was convicted of driving whilst disqualified and driving with no insurance and was sentenced to a community punishment order for 100 hours, disqualification from driving and costs. On 16 December 2005 he was convicted at Isleworth Crown Court of threats to kill and was sentenced to twelve months' imprisonment. He was released on 6 February 2006.

4. On 12 November 2012 the respondent served a liability for deportation notice and questionnaire on the claimant. He later contacted the Home Office claiming that he was a British citizen and was advised to submit proof of this. No satisfactory evidence to that effect was, according to the respondent, received, and a decision was taken to deport him. The respondent considered that this was a case which fell to be considered pursuant to paragraph 398 of the Immigration Rules but that neither paragraph 399 nor 399A applied to the facts of this case given that he was not in a genuine and subsisting relationship with a spouse or partner; had no children here; and, he had not lived here continuously for twenty years preceding the date of the immigration decision. She considered also that there were no exceptional circumstances in this case. She also considered that the delay in this case was not exceptional given the nature of the offence of violence.

5. On appeal the Tribunal found that the appellant had committed a serious criminal offence [16, 17]; that neither paragraph 399 nor 399A was engaged [18]; and, that it would only be in exceptional circumstances that the public interest in deportation would be outweighed by other factors [19].

6. The Tribunal concluded that there were in this case exceptional factors such that the public interest was outweighed. Those factors are set out in paragraph [20] of the determination, the panel finding, amongst other matters, that:-

   (i) the claimant had lived in the United Kingdom almost continuously since 2000 apart from a short trip to Tanzania when he got married, his wife continuing to reside in Indonesia;

(ii) the claimant has a close relationship with his brother although there is no dependency; that he has a good work record and since release from custody has worked more or less continuously and is currently in employment;

(iii) the claimant's brother is a full British citizen and he has other close family ties to the United Kingdom having stepbrothers and sisters who all live in Greater London;

(iv) that he has few remaining ties to Tanzania, his father living in Uganda part of the year and that he is much more familiar now with the customs and cultures of the United Kingdom;

(v) significant weight was to be attached to the fact that between November 1999 and 2003 he had good reason to believe that he was a British citizen but the fact of his mistake was not something that they should ignore.

7. The respondent sought permission to appeal on the grounds that the Tribunal had:-

(1) failed to give adequate consideration to the public interest, in failing to provide any reason for finding that he had no risk of reoffending;

(2) failed to carry out a thorough assessment in considering taking off proportionality taking into consideration the public interest in deporting foreign criminals which includes not only the risk of reoffending but deterring others and preserving public confidence in the system of control;

(3) failed to provide adequate reasons for the findings he would be unable to continue his family and private life in Tanzania, the claimant and his brother living independent lives;

(4) failed to provide reasons for the conclusion that he has no ties to Tanzania; that the finding the appellant would have pursued an application in 2002 to register as a British citizen is speculative and that he had had every opportunity to apply to register as a British citizen but had not done so;

(5) failed to find adequate reasons for the period in which the claimant was issued with a British passport, that error was an exceptional circumstance.

8. I heard submissions from both representatives. Mr McVeety submitted that there were in reality no exceptional circumstances in this case and that the panel had erred in taking into account the fact that the appellant had mistakenly been given British citizenship. He accepted, however, that the panel had not found that the appellant had no ties to Tanzania.

9. Mr Anisuddin submitted that the Tribunal's conclusions had been open to them on the unusual facts of this case and that it was evident that they had properly taken into account the public interest.

10. The grounds of appeal at [4] and [5] appear to be challenges to findings which the Tribunal did not in fact make. They did not find that the claimant had no ties to the United Kingdom nor did they find that he had established a family life in the United Kingdom. It was open to them to find he had a close relationship with his brother, and, that he had stronger ties with the United Kingdom than with Tanzania.

11. That said it is not at all clear from the determination what weight the Tribunal gave to the public interest. Whilst they do state that the claimant's deportation is conducive to the public good [17] there is no indication that they have taken into account the very significant weight to be attached to the deportation of foreign criminals particularly those who, like this claimant, do not fall within the terms of paragraph 399 or 399A. Even allowing for the fact that this is not a case in which paragraph 32(5) of the UK Borders Act 2007 applies, nonetheless the public interest in the deportation of foreign criminals is significant.

12. Further, I do not consider that the fact that somebody had, as the Tribunal found, been mistakenly issued with a British passport, is any mitigation for his criminal behaviour. The reality is that, on the facts as found by the Tribunal, the claimant was not a British Citizen; had he been, the situation would be entirely different.

13. If, as the Tribunal found, the claimant had never been a British Citizen, it is not apparent why this was a factor in the claimant's favour; the reference to **Liew v SSHD** [1989] Imm AR 62 does not assist, as the facts of that case are entirely different; there was no passport issued in error in that case and as the decision of the Tribunal makes clear [page 65], "a British Passport is the evidence of citizenship but is not its root. Citizenship is a statutory right and depends upon whether a person qualifies according to statutory provisions." Here, the claimant could not legitimately have concluded that he was a British Citizen, nor

14. Accordingly, I am satisfied that the determination of the First-tier Tribunal did involve the making of an error of law and I set it aside.

15. Both representatives agreed that, in the circumstances of this case, it was of fundamental importance to settle whether or not the issue of whether or not the claimant is, as he claims, a British citizen. The appeal was adjourned to allow the proper enquiries to be made.

16. At the reconvened hearing Mr Anisuddin explained that it was no longer being argued that the claimant is a British citizen and on that basis, the submissions in this case would be made solely in respect of whether the decision to deport the claimant was in accordance with the Rules and/or would be in breach of the United Kingdom's obligations pursuant to Article 8 of the Human Rights Convention.

17. Although initially unaware of the decision in **YM (Uganda)** [2014] EWCA Civ 1292 or the provisions of section s 117A – 117D of the 2002 Act , Mr Anisuddin submitted that the applicant fell within the exceptions to the Immigration Rules such that he should not be removed given that there were significant obstacles to his reintegration into Tanzania and the length of time he had spent in the United Kingdom. He

submitted also, having had regard to Section 117C of the 2002 Act that the claimant fell within the exceptions and having had regard to the other factors set out in Sections 117B and C, it would not be proportionate to remove him. He added that there was in any event no indication that he would be admitted to Tanzania, a country of which he is not a citizen.

18. Mr Melvin submitted that the claimant did not come within any of the exceptions set out in paragraphs 399 or 399A of the Immigration Rules and that accordingly he would need to show that the public interest in deportation would only be outweighed by other factors when there are compelling circumstances over and above those described in paragraphs 399 and 399A.

19. Mr Melvin submitted also that the applicant did not fall within the exception set out in Section 117C at all circumstances of this case, notwithstanding the delay between the applicant's conviction and the decision to deport him that the public interest was not in this case outweighed and that he should be deported to Tanzania.

20. Following the decision in **YM (Uganda)** I must consider first the position under the Immigration Rules as in force as at 28 June 2014. The relevant provisions are as follows, the previous version being struckthrough:

> A362. Where Article 8 is raised in the context of deportation under Part 13 of these Rules, the claim under Article 8 will only succeed where the requirements of these rules as at [28 July 2014] are met, regardless of when the notice of intention to deport or the deportation order, as appropriate, was served.'
> …
> 397. A deportation order will not be made if the person's removal pursuant to the order would be contrary to the UK's obligations under the Refugee Convention or the Human Rights Convention . Where deportation would not be contrary to these obligations, it will only be in exceptional circumstances that the public interest in deportation is outweighed.
>
> [A.398. These rules apply where:
> (a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom's obligations under ***Article 8*** of the Human Rights Convention;
> (b) a foreign criminal applies for a deportation order made against him to be revoked.]
>
> 398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and (a) the deportation of the person from the UK is conducive to the public good [and in the public interest] because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least four years; (b) the deportation of the person from the UK is conducive to the public good [and in the public interest] because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or (c) the deportation of the person from the UK is conducive to the public good [and in the public interest] because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law, the Secretary of

State in assessing that claim 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 deportation will be outweighed by other factors~~ [the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.]

399. This paragraph applies where paragraph 398(b) or (c) applies if – (a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK and (i) the child is a British citizen; or (ii) the child has lived in the UK continuously for at least the seven years immediately preceding the date of the immigration decision; and in either case (a) ~~it would not be reasonable to expect the child to leave the UK~~ [it would be unduly harsh for the child to live in the country to which the person is to be deported]; and (b) ~~there is no other family member who is able to care for the child in the UK~~ [it would be unduly harsh for the child to remain in the UK without the person who is to be deported]; or (b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British citizen, [or] settled in the UK, ~~or in the UK with refugee leave or humanitarian protection,~~ and ~~(i) the person has lived in the UK with valid leave continuously for at least the 15 years immediately preceding the date of the immigration decision (discounting any period of imprisonment) and (ii) there are insurmountable obstacles to family life with that partner continuing outside the UK~~ [(i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and (ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported because of compelling circumstances over and above those described in paragraph EX.2 of Appendix FM; and (iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported].

399A. This paragraph applies where paragraph 398(b) or (c) applies if – ~~(a) the person has lived continuously in the UK for at least 20 years immediately preceding the date of the immigration decision (discounting any period of imprisonment) and he has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK; or (b) the person is aged under 25 years, he has spent at least half of his life living continuously in the UK immediately preceding the date of the immigration decision (discounting any period of imprisonment) and he has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK.~~

[(a) the person has been lawfully resident in the UK for most of his life; and (b) he is socially and culturally integrated in the UK; and (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported].

21. I bear in mind that the claimant was convicted and sentenced to a term of imprisonment of twelve months' duration on 3 February 2006. If, as the respondent claims, he was notified of liability to deportation on 12 June 2007, he is not a "foreign criminal" as defined in Section 32 of the UK Borders Act 2009 as he falls within the transitional provisions set out in the UK Borders Act 2007 (Commencement No. 3 and Transitional Provisions) Order 2008 (SI 2008/1818). But that is not his case; he claims to have been notified in 2012. In any event, he is a foreign criminal as defined in section 117D of the 2002 Act.

22. Although the point was not the matter of submissions, and although it may be argued that by virtue of paragraph A398 as the applicant is not a foreign criminal this point makes no material difference for the reasons set out below.

23. If paragraph 398 does apply then the applicant does not fall within the exceptions set out in paragraph 399A. Although he has been lawfully resident in the United Kingdom for some fifteen years and is clearly socially and culturally integrated here, he was born on 5 June 1976 and is thus 39 years of age. He came to the United Kingdom on 13 February 2000, as was accepted by the First-tier Tribunal at paragraph 13. He is thus, by a narrow margin therefore, in a position of having spent slightly more than half of his life here. It was accepted before the First-tier Tribunal that the applicant's presence here was lawful and there has been no submission to the contrary by the respondent. He cannot, however, show that there are serious obstacles to him being able to integrate into life in Tanzania. Whilst it is asserted that he would not be admitted to Tanzania given that he is not a citizen of that country, no evidence of this has been produced. Whilst it may well be the case that being denied entry would be a significant obstacle, evidence to that effect has not been produced. Given that the applicant retains some connections with Tanzania, has visited relatively recently, and has shown he is capable of earning a living, he cannot show that he meets the requirements of paragraph 399A.

24. For these reasons, either because the current (or former) Immigration Rules do not apply to the claimant or he does not meet their requirements, it is necessary then to consider the provisions of Section 117A to D of the 2002 Act which provide as follows:-

> **117A** *Application of this Part*
>
> (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—
>
> (a) breaches a person's right to respect for private and family life under Article 8, and
>
> (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
>
> (2) In considering the public interest question, the court or tribunal must (in particular) have regard—
>
> (a) in all cases, to the considerations listed in section 117B, and
>
> (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.
>
> (3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).
>
> **117B** *Article 8: public interest considerations applicable in all cases*
>
> (1)The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

117C *Article 8 additional considerations in cases involving foreign criminals.*

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where—

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

117D Interpretation of this Part

(1) In this Part—
"Article 8" means Article 8 of the European Convention on Human Rights;

"qualifying child" means a person who is under the age of 18 and who—
(a) is a British citizen, or
(b) has lived in the United Kingdom for a continuous period of seven years or more;

"qualifying partner" means a partner who—

(a) is a British citizen, or

(b) who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 — see section 33(2A) of that Act).

(2) In this Part, "foreign criminal" means a person—

(a) who is not a British citizen,

(b) who has been convicted in the United Kingdom of an offence, and

(c) who –
(i) has been sentenced to a period of imprisonment of at least 12 months,
(ii) has been convicted of an offence that has caused serious harm, or
(iii) is a persistent offender.

(3) ...

(5) If any question arises for the purposes of this Part as to whether a person is a British citizen, it is for the person asserting that fact to prove it.

25. Irrespective of whether the claimant is a "foreign criminal" for the purposes of the 2007 Act, he is clearly a foreign criminal for the purposes of the 2002 Act given the provisions of Section 117D set out above.

26. The provisions of paragraph 399A of the Immigration Rules mirror paragraph 117C(4) and for the same reasons I am not satisfied that the appellant meets Exception 1 within Section 117C. Further, it is not submitted that he is in a genuine and subsisting relationship with a qualifying partner or has a child here and accordingly Exception 2 does not apply. I accept that the deportation of the appellant is clearly in the public interest and the offence, one of violence, is clearly serious. I accept having had regard to Section 117B that the applicant speaks English and has worked for the entirety of his life and therefore is not likely to be a burden on taxpayers. It is clear that he is integrated into society and that the private life he has developed here has been whilst he was here lawfully. It should also be borne in mind that when he first came to this country he honestly believed (and had good reason to do so) that he was a British citizen. I accept that he was not notified of the decision to deport him in 2007; that much is clear. It is not clear that this was through any fault of his and I note that he was subsequently allowed to leave the United Kingdom and return without any difficulty and it is also borne in mind that he knew from at least 2004 that he had no rights to British citizenship. I accept that his private life has been precarious since 2012 when he was informed of the decision

to deport him but of necessity his private life was not established here when his status was precarious; that occurred only later.

27. The public interest in deportation is only outweighed by other factors when there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

28. There has I accept been significant delay in this case between the notification which was attempted to be sent by the Secretary of State and any action being taken. Why that is is unclear. I attach, however, limited weight to this. Whilst it does weigh against the Secretary of State, equally there is a strong presumption in favour of deportation. I consider that the length of the time the applicant has stayed here, the fact that he is a British overseas citizen, the fact that most of his family are settled here are not either singly or cumulatively of sufficiently compelling nature as to outweigh the public interest in deporting the claimant. He was 24 when he left Tanzania and there appears to be no good reason why he could not live there again. The assertion that he would not be able to live there if he is not a Tanzanian citizen is simply that; an assertion. No evidence has been adduced to support that contention. Had it been, then my decision may well have been otherwise but given the fact that the appellant's wife lives in Indonesia and he has family ties in Tanzania, albeit somewhat attenuated, and given that he is a fit adult single man with no apparent health problems I consider that on the facts of this case the strong public interest in deporting him as a foreign criminal is not outweighed by the interference caused to his private life.

29. I therefore dismiss the appeal on all grounds.

SUMMARY OF CONCLUSIONS

1 The determination of the First-tier Tribunal did involve the making of an error of law and I set it aside.

2 I remake the decision by dismissing the appeal on all grounds.

Signed Date 21 May 2015

Upper Tribunal Judge Rintoul