IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000302
First-tier Tribunal No: HU/06178/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 21 May 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

The Secretary of State for the Home Department

Appellant

and

Damien Gordon
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr Basra, Senior Home Office Presenting Officer
For the Respondent: Ms Radford, Counsel instructed by Turpin & Miller LLP (Oxford)

Heard at Field House on 24 April 2023

DECISION AND REASONS

1. This is an appeal by the Secretary of State. However, for convenience I will refer to the parties as they designated in the First-tier Tribunal.

2. The appellant is a citizen of Jamaica born in 1988. It is not known with certainty when he came to the UK but most likely it was in (or around) 2003, following a grant of Indefinite Leave to Enter (to join his mother) in 2002.

3. In 2019 the appellant was convicted of a drugs related crime and sentenced to two years' imprisonment. Prior to the commission of this offence he committed several other offences, although none resulted in a period of imprisonment. As a consequence of the appellant's conviction in 2019, the respondent made a deportation order against him pursuant to Section 32 of the UK Borders Act 2007.

4. The appellant claims that deporting him to Jamaica would violate Article 8 ECHR. In a decision dated 1 June 2020 the respondent rejected this argument.

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The appellant appealed to the First-tier Tribunal where his appeal came before Judge of the First-tier Tribunal Kudhail ("the judge"). In a decision promulgated on 23 December 2022 the judge allowed the appeal. The respondent is now appealing against this decision.

Relevant Law

5. The appellant is a foreign criminal, as defined in section 117D(2) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). As he was sentenced to a period of imprisonment of less than four years, the public interest will not require his deportation if either of the two Exceptions in sections 117C(4) and (5) of the 2002 Act apply. Sections 117C(4) and (5) provide:

> (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.

Decision of the First-Tier Tribunal

6. The judge allowed the appeal because she was satisfied that the appellant met the three conditions in section 117C(4) such that Exception 1 was applicable.

7. It was not in dispute that the appellant had been lawfully resident in the UK for most of his life and therefore that sub-section (a) of Exception 1 was satisfied.

8. Whether the appellant satisfied sub-section (b) of Exception 1 (social and cultural integration in the UK) was in dispute. The respondent's case before the First-tier Tribunal was that the appellant was not socially and culturally integrated because of his criminality and imprisonment, as well as his lack of significant employment or any contribution to society. The judge rejected this for several reasons. First, the judge noted that the respondent had accepted that the appellant was forced into criminality in 2019 as a victim of modern slavery. In the light of this, the judge attached little weight to the conviction as an indictor of the appellant not being socially and culturally integrated. Second, the judge had regard to the appellant's education and employment in the UK. Third, the judge considered the appellant's relationship with his daughter and his daughter's family. The judge took the view that these factors, considered cumulatively, established that the appellant was socially and culturally integrated in the UK.

9. The judge then considered whether the appellant satisfied sub-section (c) of Exception 1 (very significant obstacles to the appellant's integration in Jamaica). The judge directed herself to the Court of Appeal authority *Kamara v SSHD [*2016] EWCA Civ 813 and gave several reasons for finding that there would be very significant obstacles.

10. The judge allowed the appeal on the basis that the conditions of Exception 1 were satisfied.

Grounds of Appeal

11. Ground 1 submits that the judge failed to give adequate reasons for finding that the appellant is socially and culturally integrated in the UK. It is submitted that although the judge referred to the appellant's relationship with his daughter, there is no finding that the effect on her of his deportation would be unduly harsh. It is also submitted that the judge failed to take into account that the appellant spent part of his formative years in Jamaica and only has a very limited employment history in the UK. A further submission made in this ground is that the judge failed to have regard to or follow the Court of Appeal cases *CI Nigeria v SSHD* [2019] EWCA Civ 2027 and *Binbuga (Turkey) v Secretary of State* [2019] EWCA Civ 551 on the impact of offending and imprisonment on a person's integration into the UK.

12. Ground 2 concerns the judge's finding that the appellant would face very significant obstacles integrating into Jamaica. The respondent submits that the judge failed to have regard to the appellant's "cultural nexus" to Jamaica and to recognise that after a period of unfamiliarity and adjustment there would be no reason why he would be unable to integrate into the country. The respondent also highlighted that the appellant speaks English.

Rule 24 Response

13. Ms Radford, on behalf of the appellant, submitted a Rule 24 response. She cited well-known authorities, including *R (Iran)* [2005] EWCA Civ 982, which make clear that an appellate court should be slow to interfere with conclusions of the finder of fact where oral evidence has been heard. She also referred to cases discussing "reasons challenges", where it is emphasised that reasons need not be elaborate and it is sufficient that a reader of a decision is able to understand why a judge reached the decision she did.

14. In the Rule 24 response it is argued that the judge had regard to numerous factors relevant to whether the appellant is socially and culturally integrated in the UK and reached a conclusion that was plainly open to her. With respect to integration in Jamaica, it is submitted that the judge carefully considered the obstacles to integration that the appellant would face in Jamaica and reached a conclusion that was open to her on the evidence.

Submissions

15. I am grateful for the submissions made by Mr Basra and Ms Radford at the hearing which broadly paralleled the arguments made in the grounds and Rule 24 response. I have not set out the submissions but have had regard to them in my assessment of the case.

Ground 1: Sub-section (b) of Section 117C(4) of the 2002 Act: Social and Cultural Integration in the UK

16. The judge found that the appellant has spent most of his life in the UK and during that time has been educated, formed relationships (including with his daughter and her family) and been employed. It was entirely consistent with *CI (Nigeria)* to treat these as factors indicating social and cultural integration. As explained in paragraph 58 of *CI (Nigeria)*:

> "Relevant social ties obviously include relationships with friends and relatives, as well as ties formed through employment or other paid or unpaid work or through

participation in communal activities. However, a person's social identity is not defined solely by such particular relationships but is constituted at a deep level by familiarity with and participation in the shared customs, traditions, practices, beliefs, values, linguistic idioms and other local knowledge which situate a person in a society or social group and generate a sense of belonging. The importance of upbringing and education in the formation of a person's social identity is well recognised, and its importance in the context of cases involving the article 8 rights of persons facing expulsion because of criminal offending has been recognised by the European Court. Thus, in the *Üner* case at para 58, the court considered it 'self-evident' that, in assessing the strength of a foreign national's ties with the 'host' country in which they are living, regard is to be had to 'the special situation of aliens who have spent most, if not all, of their childhood in the host country, were brought up there and received their education there.'."

17. The grounds submit that the judge's assessment of social and cultural integration was flawed because the judge failed to consider whether the effect of the appellant's deportation would be unduly harsh on his daughter. This is misconceived. Undue harshness is a condition that must be satisfied for Exception 2 in Section 117(5) of the 2002 Act to apply. However, the judge's consideration of the appellant's relationship with his daughter was not made in the context of addressing Exception 2; it formed part of the assessment of Exception 1. Accordingly, whether or not deportation would be unduly harsh was irrelevant. The point the judge was making was merely that the appellant has a relationship with his daughter and that this is a factor indicating social and cultural integration in the UK.

18. The grounds submit that the judge failed to consider that the appellant's employment history was very limited. However, there is nothing in the decision that indicates the judge misunderstood the extent to which the appellant has worked and in paragraph 35 the judge made a clear finding, having regard to the documentary evidence that was before her, about the appellant's employment history. It was a matter for the judge whether or not, and if so to what extent, to attach weight to the appellant's limited employment in the UK.

19. The grounds submit that the appellant's offending means he is not integrated. However, in the light of the judge's findings that (1) the appellant's imprisonment covered only a small fraction of the time he has lived in the UK; (2) the appellant has strong connections in the UK unrelated to any offending; and (3) the appellant was forced into criminality in 2019; it was clearly open to the judge – and not inconsistent with *CI (Nigeria)* or *Binbuga (Turkey) v Secretary of State for the Home Department* [2019] EWCA Civ 551 – to find that the offending and imprisonment did not sever the appellant's cultural and social ties or mean that he was never integrated. Mr Basra noted that the appellant had committed multiple offence prior to the offence in 2019 which are not considered or even referred to in the decision. However, as pointed out by Ms Radford, none of this offending resulted in imprisonment.

20. The respondent's reliance on *Binbuga* is, in my view, misplaced, as the key point made by the Court of Appeal in that case is that being part of a criminal gang is not an indication of integration. In this case the appellant did not rely on gang membership as an indicator of integration. Rather, his case was that he is firmly integrated in the UK through his connections to law-abiding individuals and engagement in lawful activities.

21. I am satisfied that the evidence before the judge clearly supported the conclusion that (a) the appellant has, and has had for many years, deep and

strong social and cultural ties in the UK unrelated to criminality; and (b) the relatively short period of time the appellant spent in prison did not sever these links. Given this factual matrix, the judge was undoubtably entitled to find that the appellant is socially and culturally integrated in the UK. Accordingly, I am not persuaded by ground 1.

Ground 2: Sub-section (c) of Section 117C(4) of the 2002 Act: Very Significant Obstacles Integrating into Jamaica

22. The judge gave multiple reasons for finding that the appellant would face very significant obstacles integrating into Jamaica. These were:

(a) the appellant had lived in the UK since he was only 8 years old;

(b) the appellant had visited Jamaica only once, in 2014;

(c) the appellant had suffered abuse in Jamaica from his uncle;

(d) the appellant suffers from depression and was likely to suffer "a full blown depressive relapse" if deported to Jamaica. This finding was based on a report by a chartered clinical psychologist Dr Isaacs, which the judge found reliable and attached weight to;

(e) the appellant would not have any family support in Jamaica; and

(f) the appellant knows nothing of, and would not know now how to "get on" in, Jamaica.

23. The judge did not overlook any material considerations. The grounds refer to the appellant's "cultural nexus" to Jamaica. However, this was clearly not overlooked as the judge had regard to the appellant's visit to Jamaica in 2014, experience in Jamaica before he moved to the UK, and the availability of family support in Jamaica.

24. The judge's conclusion that the appellant would face very significant obstacles integrating in Jamaica is perhaps a generous one, but it is also one that was reasonably open to her given, in particular, the findings of fact concerning the length of time the appellant has lived outside of Jamaica, the lack of family support in Jamaica, and the appellant's mental health problems. Accordingly, the judge was entitled to find – and did not err in finding - that sub-section (c) of section 117C(4) was satisfied.

Notice of Decision

25. The grounds of appeal fail to identify an error of law and therefore the decision stands.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9.5.2023