IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005536

First-tier Tribunal No: HU/01847/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 27th of March 2024

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

Secretary of State for the Home Department

Appellant

and

Gibson Bennett Ackom (aka Bonsu)
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr E. Terrell, Senior Home Office Presenting Officer
For the Respondent: Mr A. Stedman, Counsel (direct access)

Heard at the Royal Courts of Justice on 18 March 2024

DECISION AND REASONS

1. The principal controversial issue in these proceedings is whether a conclusion reached by the First-tier Tribunal that the appellant would face "very significant obstacles" to his integration in Germany was irrational. That is the Secretary of State's primary submission in his appeal against a decision of First-tier Tribunal Judge Rodger ("the judge") promulgated on 6 September 2023 in which she allowed an appeal against a decision of the Secretary of State dated 15 November 2022 to refuse a human rights claim. The judge heard the appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). Permission to appeal was granted by Upper Tribunal Judge Sheridan.

2. In this decision, I will refer to the parties as they were before the First-tier Tribunal.

Factual background

3. The appellant is a citizen of Germany. He was born in January 1998 and, as found by the judge, arrived in the UK in 2005 aged 7. He has been convicted of a number of serious offences, mainly relating to drug dealing, the details of which are summarised at paras 4 to 6 of the judge's decision. The most serious sentences are those imposed on 11 September 2021 for possession of a Class A drug with intent to supply (45 months) and the possession of a bladed article in a public place (four months, to be served consecutively). Those sentences were to be served concurrently to an additional sentence of 35 months' imprisonment, also for possession of a Class A drug with intent to supply. For his total sentences of 49 months' imprisonment, the Secretary of State pursued his deportation pursuant to the UK Borders Act 2007.

4. The Secretary of State treated the appellant's representations made during an "induction" process as a human rights claim. The appellant said that he had lived in the UK for most of his life, had been educated here, and worked here. The Secretary of State refused the claim.

5. The appellant appealed. The central issue before the judge was whether the appellant's removal from the United Kingdom would be proportionate for the purposes of Article 8(2) of the European Convention on Human Rights ("the ECHR"). That turned on whether the appellant met the requirements of "Exception 1" to the public interest in the deportation of foreign criminals, pursuant to section 117C(1) of the Nationality, Immigration and Asylum Act 2002: see section 117C(4). Both parties agreed that the appellant was eligible, in principle, to demonstrate that the Exception was met because his longest single sentence was for less than four years' imprisonment: see para. 20.

6. The judge found that the appellant met all three Exception 1 criteria and allowed the appeal accordingly. Specifically, those findings were (i) that the appellant had been lawfully resident for most of his life (117C(4)(a)), (ii) that he was socially and culturally integrated in the United Kingdom (117C(4)(b)), and (iii) that there would be very significant obstacles to his integration in Germany (117C(4)(c)). As to point (iii), in summary the judge found that the appellant had no ties in Germany. He did not speak German. His mother had not kept in contact with any friends there. He would be returning with a criminal conviction and without the ability to speak German, which would affect his ability to look for and obtain work. The majority of his childhood and the entirety of his adult life had been spent in the UK. His family were not from Germany originally and their family life did not reflect any aspects of German culture. The judge was not satisfied that he would be able to find work to be able to support himself, and that "in his particular circumstances", there would be very significant obstacles to his integration in Germany. The judge said that she applied the guidance in *Kamara v Secretary of State for the Home Department* [2016] EWCA Civ 813; [2016] 4 WLR 152 when reaching those findings. See paras 28 to 30.

7. The judge also found that there were "very compelling circumstances" over and above the exceptions, in any event, namely the length of time he had spent in the UK, the fact that he spent his formative childhood and early adult years in the UK, his lack of connections with his home country, and the close knit nature of his family unit. Those factors, found the judge, outweighed the public interest in the appellant's deportation.

8. The judge allowed the appeal.

Issues on appeal to the Upper Tribunal

9. There are essentially two grounds of appeal.

10. First, the judge failed to apply the correct threshold to determine the presence of "very significant obstacles" to the appellant's integration, which was a misdirection in law. While the judge referred to *Kamara*, as held in *Parveen v Secretary of State for the Home Department* [2018] EWCA Civ 932 at para. 9, the focus in *Kamara* was integration, rather than prospective obstacles to integration. The judge had not applied the elevated threshold inherent to Exception 1.

11. Secondly, the judge had failed to give adequate reasons for her conclusion that there were "very compelling circumstances" over and above the Exceptions, when reaching her alternative reasoning at paras 33 and 34.

Legal framework

12. Section 117C of the 2002 Act makes provision concerning the public interest in the deportation of foreign criminals:

> "(1) The deportation of foreign criminals is in the public interest.
>
> […]
>
> (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.
>
> […]
>
> (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."

13. In *Perry v Raleys Solicitors* [2019] UKSC 5 at para. 52, Lady Hale PSC held that the constraints to which appellate judges are subject in relation to reviewing first instance judges' findings of fact may be summarised as:

> "…requiring a conclusion either that there was no evidence to support a challenged finding of fact, or that the trial judge's finding was one that no reasonable judge could have reached."

14. The First-tier Tribunal is a specialist tribunal. In *HA (Iraq) v Secretary of State for the Home Department* [2022] UKSC 22, [2022] 1 WLR 3784, [2023] 1 All ER 365 Lord Hamblen said, at para. 72:

> "It is well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal. In particular:
>
> (i) They alone are the judges of the facts. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. It is probable that in understanding and applying the law in their specialised field the tribunal will have got it right. Appellate courts should not rush to find misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently - see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49; [2008] AC 678 per Baroness Hale of Richmond at para 30.
>
> (ii) Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account - see *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49; [2011] 2 All ER 65 at para 45 per Sir John Dyson.
>
> (iii) When it comes to the reasons given by the tribunal, the court should exercise judicial restraint and should not assume that the tribunal misdirected itself just because not every step in its reasoning is fully set out - see *R (Jones) v First-tier Tribunal (Social Entitlement Chamber)* [2013] UKSC 19; [2013] 2 AC 48 at para 25 per Lord Hope."

Preliminary observations: what is not challenged

15. There are a number of features of the judge's decision that are not challenged. The judge proceeded in the appellant's absence, which was occasioned due to repeated difficulties producing him from custody. The Secretary of State was therefore not able to cross-examine the appellant. There has been no challenge to this aspect of the judge's conduct of the proceedings.

16. The Secretary of State has also not challenged the judge's findings that the first two limbs of Exception 1 were met. The sole issue relates to limb three of Exception 1.

Issue 1: decision of the judge rationally open to the judge for the reasons she gave

17. Mr Terrell agreed with Judge Sheridan's characterisation of the Secretary of State's primary criticism of the judge's decision as being a rationality challenge and submitted that the judge reached a conclusion that no reasonable judge could have reached. While the judge cited *Kamara*, she did not cite *Parveen*, pertaining to the elevated threshold inherent to the very significant obstacles test. Mr Terrell also submitted that the judge's approach was inconsistent with *NC v Secretary of State for the Home Department* [2023] EWCA Civ 1379 at paras 20 to 26, which emphasised the practical test posed by the very significant obstacles threshold. The judge should have considered the likely reality of life for the appellant in Germany and should have reached evidence-based findings about his prospective integration, rather than findings based on speculation.

18. Mr Terrell submitted that the principal bases upon which the judge concluded that limb three of Exception 1 was met were "problematic"". As to the first, the appellant's inability to speak German, the Secretary of State's decision relied on evidence that 60% of the population of Germany speak English. As to the

second, the appellant's lack of familiarity with Germany, Germany is an EU Member State. The appellant would be entitled to benefits. Germany is a first world country. The appellant is a young man with no health issues. The inevitable upheaval he would face is incapable of amounting to "very significant obstacles".

19. Mr Stedman submitted that while another judge may have reached a different conclusion, this judge was entitled to reach the conclusion she reached, for the reasons she gave.

20. In my judgment, the judge was rationally entitled to conclude that the appellant would face very significant obstacles to his integration in Germany, for the following reasons.

21. First, nothing turns on the judge's focus on *Kamara* rather than *Parveen*. *Parveen* observed at para. 9 that the oft-cited passage from *Kamara* at para. 14 focussed on an individual's prospective integration, rather than obstacles to integration. While Mr Terrell is correct to submit that the Court of Appeal in *Parveen* went onto address whether the concept featured an "elevated threshold", quoting *Treebhawon v Secretary of State for the Home Department* [2017] UKUT 13 (IAC) ("mere hardship… will generally be insufficient…"), the concluding words of para. 9 of *Parveen* are apposite. Underhill LJ said:

> "I have to say that I do not find [the summary in *Treebhawon*] a very useful gloss on the words of the rule. It is fair enough to observe that the words 'very significant' connote an 'elevated' threshold, and I have no difficulty with the observation that the test will not be met by 'mere inconvenience or upheaval'. But I am not sure that saying that 'mere' hardship or difficulty or hurdles, even if multiplied, will not 'generally' suffice adds anything of substance."

22. The significance for present purposes lies in the final sentence of the paragraph:

> "The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as 'very significant'."

23. I do not consider that the judge can be criticised for not referring to *NC*. It was not handed down until 22 November 2023, whereas the judge heard the case on 22 August 2023 and promulgated her decision on 6 September 2023. In any event, *NC* itself does not identify any proposition of law which the judge failed to address. At para. 19, Whipple LJ said:

> "This appeal raises a point of enormous significance to the appellant because it will be determinative of her future, in the UK or otherwise. But in the end the point is a short one relating to the adequacy of the First-tier Tribunal's analysis and reasoning at [44] of its determination."

(Para. 44 of *NC* concerned the First-tier Tribunal's assessment of whether the appellant would face very significant obstacles to his integration.)

24. At para. 25, *NC* underlined the importance of conducting a *Kamara*-compliant broad, evaluative judgment that focusses on the obstacles to integration and their significance to the appellant, and at para. 26, as I have already observed, it underlined the importance of conducting a practical assessment of that issue. As I will explain, that is what the judge did.

25. Mr Terrell correctly identifies the main themes in the judge's analysis of the very significant obstacles issue. She addressed different facets of those themes from paras 28 to 30. Her analysis must be considered in the round.

26. The judge ascribed significance the appellant's young age upon his arrival in the UK; the lack of family links in Germany; the fact that his mother did not retain friendship links in Germany; and the absence of the appellant's ongoing social family or cultural connections in Germany. A combination of those factors led to her conclusion that the appellant would not have any in-country support upon his return.

27. In my judgment, those factors, and the judge's consequential reasoning, were entirely open to the judge, on the basis of the evidence before her. Those factors are a significant part of any analysis of an individual's prospective integration. Starting from scratch with no in-country support, in a country that would be, to all intents and purposes, a foreign country, would be an immensely challenging task for most involuntary returnees. The judge was entitled to conclude, as she did at para. 28, that the appellant would be returning to a country with which he has no familiarity. His cultural heritage is Ghanaian, not German. Those are paradigm examples of factors relevant to the judge's broad evaluative assessment of whether there would be very significant obstacles to the appellant's integration in Germany. Inherent to the concept of integration is the ability to understand and navigate precisely the issues that that the appellant would struggle immensely with: understanding the society, being able to participate, having a reasonable opportunity to be accepted there.

28. But the societal aspect of the appellant's prospective integration was not the sole feature of the judge's analysis. She ascribed significance to his inability to speak German. In my judgment, she was rationally entitled to do so.

29. While Mr Terrell pointed to background evidence referred to in the Secretary of State's decision (at para. 29) that 60% of the population speak English, the judge's reasoning was not confined to the linguistic difficulties the appellant would be likely to face. The judge was entitled to find that the factors referred to in the previous paragraph would be compounded by the appellant's inability to speak German.

30. I accept that the prevalence of the English language in Germany is such that the appellant's prospective linguistic difficulties would not attract the weight it would in a country where far fewer people speak English. And not all judges would have ascribed this much significance to this issue. However, I respectfully disagree with Mr Terrell's submission that this finding took the judge's conclusions into the territory of irrationality. Large numbers of people the appellant would have to engage with in order to begin to integrate would be statistically unlikely to speak English. That was a factor for the judge to consider alongside the broader factors that she outlined concerning the appellant's significant lack of cultural familiarity with Germany. The significance of the appellant's inability to speak German, and the prevalence of those who do speak English in Germany, was a matter of weight, not rationality.

31. The final facet of the judge's analysis of the appellant's prospective integration related to the impact of his serious criminal convictions in the UK on his employability in Germany. Mr Terrell highlighted para. 32 of the Secretary of State's decision, which stated that the appellant's skills or qualifications in the UK could be utilised in Germany. That may well be right. But para. 32, and the materials the refusal letter referred to, were silent as to the impact of the

appellant's significant criminal record on his ability to secure work. Had the Secretary of State relied on background materials which conclusively demonstrated that serious criminal convictions would be no bar to a person who does not speak German from obtaining employment in Germany (assuming such materials exist), it may well not have been open to the judge to have reached the findings that she did. But the material before the judge did not go that far, and in my judgment the judge was rationally entitled to ascribe some significance to this issue, as part of her broad, evaluative assessment. The judge was sitting as an expert judge of a specialist tribunal: "it is probable that in understanding and applying the law in their specialised field the tribunal will have got it right" (*HA (Iraq)*, para. 72(i)).

32. Drawing this analysis together, I find that the findings reached by the judge, although generous and unlikely to have been reached by some other judges, did not stray into the territory of irrationality. The judge was charged with conducting a broad, evaluative assessment of an inherently fact-specific question. As the Court of Appeal held in *Re Sprintroom Ltd* [2019] EWCA Civ 932, [2019] BCC 1031 at para. 76:

> "…on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the judge's treatment of the question to be decided, 'such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion'."

33. The decision of the judge was not wrong by reason of any of the indicative identifiable flaws listed above. The judge conducted a practical, *NC*-compliant broad evaluative assessment. She took all relevant factors into account (including the availability of social assistance in Germany: see para. 29) and reached a conclusion that was rationally open to her.

34. As it was put in *Volpi v Volpi* [2022] EWCA Civ 464 at para 2(ii):

> "It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached."

35. The Secretary of State may well disagree with judge's findings, but those findings were not findings that no reasonable judge could have reached, for the reasons set out above.

Issue 2: not necessary to consider

36. Mr Terrell accepted that if the Secretary of State did not succeed in relation to ground 1, any error in relation to ground 2 would be immaterial. I agree. It is not necessary to consider ground 2, therefore.

Conclusion

37. This appeal is dismissed.

Notice of Decision

The appeal is dismissed.

The decision of First-tier Tribunal Judge Rodger did not involve the making of an error of law such that it must be set aside.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 March 2024