IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001201
FtT No: HU/53137/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 14th of June 2024

Before

UPPER TRIBUNAL JUDGE PICKUP
DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

Junior BAYOU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Smith of Counsel instructed by Harding Mitchell, Solicitors
For the Respondent: Ms E Blackburn, Senior Presenting Officer

Heard at Field House on 23 May 2024

DECISION AND REASONS

Introduction

1. This is a 'Decision and Reasons' to which we have both contributed.

2. This is an appeal against a decision of First-tier Tribunal Judge Latta dated 6 January 2024 dismissing on human rights grounds an appeal against a decision to make a deportation order dated 8 June 2021 following refusal on 24 March 2021 of a human rights claim.

3. The Appellant is a citizen of the Ivory Coast born on 29 June 1988. He came to the UK at the age of 10 months. He was granted indefinite leave to remain on 17 December 2001. The deportation order was made pursuant to convictions in respect of conspiracy to supply a Class A controlled drug (heroin) and in respect of handling criminal property: he was sentenced to 9 years imprisonment at Exeter Crown Court following convictions on 22 May 2015. The offences themselves had taken place in 2012. The sentencing remarks of Mr Recorder Gerasimidis identify that the Appellant "*played a leading role in this conspiracy*". The Appellant had previously been convicted as a minor in respect of supply of Class A drugs and sentenced to 18 months in a Young Offenders Institute in February 2008.

4. On appeal to the First-tier Tribunal the Appellant essentially relied upon the time spent in the UK together with his relationship with his family in the UK and his relationship with his fiancée (a British national with a British national child and caring responsibilities for her mother). He expressed remorse in relation to his offending, and it was claimed he presented a low risk of reoffending. The Respondent relied on the serious nature of the offence (reflected in the long sentence and sentencing remarks), and argued that deportation was conducive to the public good. The Respondent, whilst accepting that the Appellant had changed his life in prison and gained some qualifications, and that he had a strong private and family life in the UK, did not accept that this amounted to very compelling circumstances or otherwise outweighed the public interest in deportation.

5. The First-tier Tribunal Judge noted that it was common ground between the parties that the appeal required to be approached in accordance with the scheme of Part 5A of the Nationality, Immigration and Asylum Act 2002: because the Appellant had been sentenced to more than 4 years, the public interest required deportation unless there were very compelling circumstances over and above those described in Exceptions 1 and 2 under sections 117C(4) and (5): (see Decision at paragraphs 14-15 and 35-40).

6. The appeal was dismissed for the reasons set out in the 'Decision and Reasons' of the First-tier Tribunal. The Judge accepted that Exception 1 was engaged, but found that there would not be very significant

obstacles to the Appellant's integration into the Ivory Coast. Further, whilst it was accepted that the Appellant was in a genuine and subsisting relationship for the purposes of Exception 2, the Judge found that separation would not be 'unduly harsh'. Further, the Judge found that the test of 'very compelling circumstances' was not met.

7. Permission to appeal to the Upper Tribunal was refused in the first instance in a decision of Designated Judge Shaerf dated 4 March 2024. On renewal, permission was granted by Upper Tribunal Judge Smith on 19 April 2024.

Discussion

8. The grant of permission to appeal did not limit the Grounds that may be argued, but identified particular merit in aspects of Grounds 2 and 3 - further explaining why the other aspects of the challenge in themselves lacked merit but acknowledging that any errors (if made out) arguably 'impact on the whole'.

9. In the event Ms Smith did not seek to amplify or otherwise place any specific reliance upon those aspects of the Grounds that Judge Smith had considered lacked merit.

10. For the avoidance of any doubt, in such circumstances - and where, for the reasons explained below, we have rejected the challenge under Grounds 2 and 3 – we also find that Ground 1 and 4 do not disclose any error of law. In this context we gratefully adopt the succinct reasoning of Judge Smith: "*The Judge unarguably had regard to the case law relating to deportation of those who have been in the UK for nearly all their lives and the test which applies. He unarguably applied that test when considering the proportionality of removal. As the grounds themselves recognise, rehabilitation would rarely be determinative of the proportionality balance*". Ground 5 is contingent upon Grounds 1-4 and accordingly also must fail.

11. We turn then to the substance of the matters that informed the grant of permission to appeal, and were developed in submissions before us.

12. Permission to appeal was granted on the following bases:

> "*I am (just) persuaded that there may be arguable merit in ground two (based on what is said at [18] and [20] of the grounds), and ground three (based on what is said at [23] and [24] of the grounds).*"

13. Grounds 2 and 3 are summarised in the Grounds of Appeal in these terms:

> "*Ground 2: The FTTJ erred in failing to consider Maslov in assessing whether there are very significant obstacles to the Applicant integrating in the Ivory Coast. The FTTJ misdirected himself as to evidence in respect of whether the Applicant could speak French. The FTTJ also misdirected himself in reliance on Sanambar v Secretary of State for the Home Department [2021] UKSC 30. Failed to give weight to the evidence that the Applicant has chronic health conditions.*
>
> *Ground 3: The FTTJ has misdirected himself in his consideration of whether the impact on the Applicant, his partner and her son would be unduly harsh. The FTTJ has failed to consider the evidence of the impact on the Applicant's partner's mental health. The FTTJ has misdirected himself that they could meaningfully maintain their relationship through remote communication and visits.*"

14. In respect of Ground 2, paragraph 18 of the Grounds identifies a tension between the written evidence and what is recorded at paragraph 45 of the Decision of the First-tier Tribunal in respect of the Appellant's knowledge of the French language. It is clear that the written statements of each of the Appellant, his father, and his partner variously declare that the Appellant cannot speak or write in French. The Grounds highlight that, in contrast, it is stated at paragraph 45 of the Decision: "*… the appellant confirmed in his evidence that he speaks some French*".

15. We are not persuaded that this is either a factual misconception on the part of the Judge, or that it is a factual misconception amounting to an error of law. It seems to us readily clear that the reference to 'confirming in his evidence' is an indication that the Appellant indicated at the hearing that notwithstanding the contents of his witness statement (and indeed those of his supporting witnesses) he did speak some French. This is reinforced by the contents of paragraph 27 of the Decision where, amongst the submissions made on behalf of the Appellant at the hearing, it is recorded "*It was the position of the appellant that he doesn't really speak French, but that he knows some words*".

16. Nothing has been put before us to demonstrate that the Appellant's oral evidence did not indeed depart from his written evidence in this regard. As Ms Smith acknowledged in the course of submissions, she did not have any evidence to challenge the observation of the First-tier Tribunal at paragraph 45. Not only does this slight change of emphasis in the Appellant's testimony undermine the reliability and credibility of the bald assertion in the witness statements as to having no French language ability, it means that there was no misconception on the part

of the Judge at paragraph 45. The ground of challenge falls away accordingly.

17. Ground 2 at paragraph 20 pleads that the First-tier Tribunal Judge "*failed to consider the medical records submitted in support of the [Appellant's] appeal*", and notes that the Appellant had been assessed for anxiety and depression, and been prescribed medication for high blood pressure, and also suffered nerve damage for which he is currently receiving treatment.

18. We have little hesitation in finding that there is no substance to this basis of challenge.

19. It is manifestly the case that the Judge did have regard to the medical evidence and expressly found it of little or no assistance in establishing that deportation would have any adverse impact on the Appellant's health: see paragraph 47, and similarly paragraph 65.

20. In any event in this context, we note that although the Appellant mentioned his health conditions at paragraphs 24 and 25 of his witness statement, he did not make any assertion to the effect that these might occasion any difficulties if he were deported, and therefore does not offer any explanation as to how or why that might be. Similarly, the Appellant's Skeleton Argument before the First-tier Tribunal whilst making reference to the fact of the Appellant's medical circumstances – very briefly at paragraph 18 – does not take this forward into any submission as to how or why such medical conditions might inhibit integration into the Ivory Coast or otherwise avail the Appellant in immigration terms. In particular it is to be noted that there is no reference to such matters in the list of factors set out at paragraph 20 of the ASA informing the concluding submission on 'very compelling circumstances'.

21. The substance of the Appellant's case as put before the First Tier Tribunal in this regard is adequately addressed by the Judge's reasoning at paragraphs 47 and 65.

22. For the reasons given, Ground 2 fails.

23. Ground 3 relates to the circumstances of the Appellant's partner, and argues that the Judge failed to consider the likely impact on her were the Appellant to be removed. Paragraphs 23 and 24 of the Grounds are focused on the health of the partner noting a history of anxiety and depression, and her evidence as to the assistance provided to her by the Appellant leading to an improvement in her condition – also noting a relapse when he was recalled to prison in 2021. Ms Smith took us to the relevant materials in the bundle that provide the factual context of this pleading – which included similar evidence from her teenage son.

24. We note paragraphs 55-57 of the Decision:

> "*55. In considering whether the effect of deportation would be unduly harsh, I am mindful of the guidance set out in paragraphs 41– 44 of HA (Iraq) v Secretary of State for the Home Department [2022] UKSC 22. I find that direct contact between the appellant and [his partner] could continue, and that she could also visit him in the Ivory Coast.*
>
> *56. Separation of the appellant from his fiancée and his family in the UK will be difficult for all parties. However, I bear in mind the guidance in HA (Iraq) referred to above and I am mindful of the considerably elevated threshold that is required, and that to satisfy the test, more is required than the situation being undesirable or difficult.*
>
> *57. Taking these factors into account, I find that the effects of the appellant's deportation on Ms Denise Acayo would not be unduly harsh. In reaching this conclusion I note that the relationship has only existed since 2019; was entered into after the appellant's release from his lengthy custodial sentence; and that the appellant is not residing with his fiancée at present.*"

25. We also note that the Judge rehearsed the documentary evidence available to him (paragraph 13), and listed the live witnesses called (paragraph 16), before stating that he had considered all of the evidence in making his decision (paragraph 17).

26. Ms Blackburn highlighted that the extent of the documentary evidence in respect of the partner's health was actually quite limited: it comprised her own testimony at paragraphs 11 and 12 of her witness statement and a prescription for sertraline dated 28 September 2023. Ms Blackburn noted that there were no GP notes in respect of her mental health, and no expert or specialist reports.

27. In such circumstances we accept Ms Blackburn's submission that there was no great breadth of material in respect of which it might have been reasonable to expect the Judge to demonstrate analysis. Consequently, we find that the Judge's treatment of the evidence encompassed at paragraphs 55-57 – in which he in any event reminded himself of the elevated threshold and recognised that separation would be "*difficult*" - was adequate.

28. In such circumstances we do not accept that the Appellant's partner's circumstances, including her evidence in respect of her mental health, was overlooked or otherwise disregarded by the First-tier Tribunal. Ground 3 fails accordingly.

29. For the reasons given we find that the Grounds relied upon by the Appellant do not disclose any error of law on the part of the First-tier Tribunal, and we reject the Appellant's challenge.

Notice of Decision

30. The decision of the First-tier Tribunal contained no material error of law and stands accordingly.

31. The appeal of Mr Bayou remains dismissed.

I Lewis
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 June 2024