Case No: C5/2008/1268

Neutral Citation Number: [2008] EWCA Civ 1408
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM & IMMIGRATION TRIBUNAL
[AIT No: IA/04012/2007]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday, 26th November 2008

Before:

LORD JUSTICE TUCKEY
LORD JUSTICE JACOB
and
SIR WILLIAM ALDOUS

- -

Between:

AM (JAMAICA) **Appellant**

- and -

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

- -

(DAR Transcript of
WordWave International Limited
A Merrill Communications Company
190 Fleet Street, London EC4A 2AG
Tel No: 020 7404 1400 Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

- -

Mr J Collins (instructed by Hersi & Co) appeared on behalf of the **Appellant**.

Ms L Busch (instructed by the Treasury Solicitor) appeared on behalf of the **Respondent**.

- -

Judgment

(As Approved)

Lord Justice Jacob:

1. This is an appeal from a decision of Immigration Judge Metzer given on 16 August 2007. The appellant has serious convictions. The Immigration Judge summarised them at paragraph 22, saying as follows:

> "22. The Appellant pleaded guilty six months after the Plea and Directions hearing on 11th March 2002 to six offences of robbery and two offences of possession of an imitation firearm. He had 11 previous convictions relating to 18 offences including two offences of robbery which were dealt with by the Inner London, Youth Court in November 1992. The remainder of his offences were primarily road traffic offences with three matters of burglary. The convictions for robbery related to snatching handbags from female victims.
>
> 23. The offences themselves were clearly extremely serious. They involved offences against travel agents. In general female travel agents were deliberately targeted. It was surmised that they would have stocks of foreign currency in their safe together with English currency and there would be no barriers or screens such as are to be found in banks and building societies. The offences were committed by the Appellant and his co-defendant purporting to be customers and making enquiries for travel brochures causing the staff to move away from their desks and therefore away from any panic button which might be on their desks. On two occasions, staff were threatened with an imitation firearm. One robbery to which the Appellant had pleaded guilty involved him telling the manageress to get up and stand away from the desk and she described being terrified and shaking and how he and his co-defendant were 'very intimidating' and that she would have done 'whatever the appellant told her to do'."

2. The appellant's general history is that he is Jamaican but came to this country with his mother when he was 13 years old -- he is now 32 -- so that his late adolescence and all his adult life has been in this country. He has formed a close relationship with a partner and they have three children. The evidence is that the family life is good insofar as it has been possible having regard to the fact that the appellant has been in prison for quite a substantial amount of time. The members of the family gave evidence before the Immigration Judge to the effect that the appellant was a reformed character. Quite extraordinarily, neither side gave any evidence as to what happened whilst the

appellant was in prison. There are some incomplete records of medical assessments of the appellant for some periods of time showing him at those times free of drugs. We do not know what the position was as regards other times. There is no evidence as to whether he applied for parole; if so whether it was granted or refused; if it was refused, why? We were told that normally this kind of material is put before the Immigration Judge by the Secretary of State and indeed one would have thought that it would be very easy to get and put in front of a tribunal. So we do not know as much as we could know about the case nor did the Immigration Judge.

3. It is quite clear that one consideration which surely must apply under the weighing exercise, both under Article 8 and under the Rules is, to what extent is there a risk of re-offending? That question does not seem to have been looked at, and that is the first reason why in my view this should go back for another look. Much the larger reason is as a result of the decision of the House of Lords in Beoku-Betts v SSHD [2008] UKHL 39. In that case their Lordships' House held that Article 8 considerations in relation to deportation and asylum, and quite generally, require consideration not only of the Article 8 rights of the individual concerned but the Article 8 rights of his or her whole family.

4. The Immigration Judge in this case clearly considered the Article 8 rights of the appellant. He did not know that he was supposed also to bring into the balance the Article 8 rights of the partner and of the children of the whole family. He did not ask himself, "What is going to be the effect on these children of not having their father?" He did not think he had to and he did not.

5. But we now know from this decision of the House of Lords that he ought to have done. Miss Busch submits that the result would be exactly the same and there is no point in sending it back because the Immigration Judge clearly describes the loving family and recites all the evidence which was put in. That is of course true, but what he did not do is to weigh the effect of that evidence as far as the children and the partner are concerned. It is not for us to do the weighing. It is for him. Therefore for these two reasons the only satisfactory way of proceeding with this case is to remit it so that it can be reconsidered.

6. In that reconsideration there will need to be such evidence as is available about what happened whilst the appellant was in prison particularly as regards parole or anything else that may be known. But secondly it may be that the appellant himself may wish to bring in further evidence about the position as regards his family, not so much as it affects him but as it will affect them.

7. So for those two reasons I think this appeal must be allowed and the matter remitted for further determination by the Immigration Appeal Tribunal.

Sir William Aldous:

8. I agree.

Lord Justice Tuckey:

9. I also agree.

Order: Appeal allowed