COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF JOSEPH GRANT v. THE UNITED KINGDOM

(Application no. 10606/07)

JUDGMENT

STRASBOURG

8 January 2009

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Joseph Grant v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lech Garlicki, *President,*
Nicolas Bratza,
Giovanni Bonello,
Ljiljana Mijović,
Ján Šikuta,
Mihai Poalelungi,
Nebojša Vučinić, *judges,*
and Fatoş Aracı, *Deputy Registrar,*

Having deliberated in private on 2 December 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 10606/07) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Jamaican national, Mr Joseph Nikita Grant ("the applicant"), on 5 March 2007.

2. The applicant, who had been granted legal aid, was represented by Mr Simon Purchas of Harrison Bundey, a lawyer practising in Leeds. The United Kingdom Government ("the Government") were represented by their Agent, Mr John Grainger, of the Foreign and Commonwealth Office.

3. On 21 March 2007 the Acting President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in Jamaica on 15 September 1960 and he is currently living there again.

5. The facts of the case, as submitted by the applicant, may be summarised as follows.

6. The applicant and one of his two brothers arrived in the United Kingdom in 1974 to join their mother who was already there. His brother

was granted British citizenship in 2004. A third brother was born in the United Kingdom. His mother and two brothers continue to live in the United Kingdom. He has no surviving relatives in Jamaica.

7. In 1983 the applicant had a son, Leon, by a British national. He has a grandchild by this son. In 1984 the applicant had a second son, Ryan, by a second British woman. Also in 1984 he began a relationship with a third British national which lasted twelve years. They had a daughter, Naomi, who has born in 1996 and is now twelve years of age. During this time the applicant had a third son, Nathan, by another woman. Nathan is now eighteen years of age.

8. Although the applicant has never lived with any of his children, he claims that he is in regular contact with all of them and in particular sees his daughter on average three times a week. Although she is now married, the applicant remains in contact with the mother of his daughter.

9. The applicant was first convicted on 17 July 1985, when he was fined GBP 15 for shoplifting. The following year he was fined a further GBP 25 after a second conviction for shoplifting, and in 1988 he was fined GBP 100 following convictions for criminal damage and assaulting a police officer. On 21 September 1989 the applicant was convicted of supplying a controlled drug. He was sentenced to 15 months' imprisonment. Following this sentence, the applicant was considered for deportation by the Secretary of State for the Home Department. Following representations by the applicant that the drug in question was cannabis with a value of GBP 3 (equivalent to EUR 5), on 14 March 1990 the Secretary of State wrote to the applicant advising him that deportation action would not be pursued and warning him that if he came to the adverse notice of the Immigration Service in the future his deportation would again be considered.

10. The applicant subsequently became addicted to heroin. Between 30 December 1991 and 24 May 2006 he was convicted 32 times for 52 offences, including driving offences, assaulting a police officer, assault occasioning actual bodily harm, criminal damage, possession of an offensive weapon, possession and supply of controlled drugs and theft. The applicant received sentences of fines, suspended sentences, community service orders and occasionally prison sentences which at no time exceeded twelve months. He maintains that these convictions were connected with his drug abuse and, while they included convictions for the possession of crack cocaine and heroin and theft in order to feed his drug habit, he has never sold drugs.

11. On 29 January 2003 he pleaded guilty to robbery at Leeds Crown Court. In sentencing the applicant, the trial judge noted that the normal sentence for robbery would have been three to four years' imprisonment but, given the facts in the case and the applicant's guilty plea, he imposed a sentence of twelve months' imprisonment. He made no recommendation regarding the applicant's deportation from the United Kingdom.

12. On 24 April 2006, at Leeds Magistrates' Court, the applicant was convicted of three counts of theft and breach of a conditional discharge for possessing a controlled drug.

13. On 30 May 2006 the Secretary of State for the Home Department made a deportation order against the applicant stating that, in view of his conviction for robbery of 29 January 2003, it was conducive to the public good to do so.

14. The applicant appealed to the Asylum and Immigration Tribunal ("the AIT"), relying, *inter alia*, on Article 8 of the Convention. He argued that, in light of his extensive private and family life in the United Kingdom and the length of his stay there, the decision to deport him was a violation of Article 8. In its determination of 19 October 2006, the AIT dismissed the applicant's appeal. It accepted that the applicant enjoyed family life in the United Kingdom but held that the relevant judgments of the European Court of Human Rights finding a violation of Article 8 in deportation cases could be distinguished on the facts. The AIT concluded:

> 'We therefore consider that, although there will be a breach of the Appellant's family life if deported to Jamaica, this will not be disproportionate in terms of being conducive to the public good.'

15. The applicant applied for reconsideration of the AIT's decision. On 6 November 2006, a Senior Immigration Judge refused the application, holding that the AIT had clearly considered the applicant's contact with all his children and was well aware of the length of time the applicant had been living in the United Kingdom. She found the AIT's reasons to be adequate, proper and intelligible.

16. The applicant's application for statutory review was dismissed by the High Court on 31 January 2007. On 12 November 2007 the applicant was deported to Jamaica.

II. RELEVANT DOMESTIC LAW

17. Section 5(3)(a) of the Immigration Act 1971 (as amended by the Immigration and Asylum Act 1999) provides that a person who is not a British citizen shall be liable to deportation from the United Kingdom if the Secretary of State deems his deportation to be conducive to the public good. Sections 82(1) and 84 of the Nationality, Immigration and Asylum Act 2002 provide for a right of appeal against this decision on the grounds, *inter alia*, that the decision is incompatible with the Convention.

18. Section 2 of the Human Rights Act 1998 provides that, in determining any question that arises in connection with a Convention right, courts and tribunals must take into account any case-law from this Court so

far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.

19. The Rules relating to the revocation of a deportation order are contained in paragraphs 390 to 392 of the Immigration Rules HC 395 (as amended), supplemented by Chapter 13 of the Immigration Directorates Instructions ("IDIs"). There is no specific period after which revocation will be appropriate although Annex A to Chapter 13 of the IDIs gives broad guidelines on the length of time deportation orders should remain in force after removal. Cases which will normally be appropriate for revocation 3 years after deportation include those of overstayers and persons who failed to observe a condition attached to their leave, persons who obtained leave by deception, and family members deported under section 3(5)(b) of the Immigration Act 1971. With regard to criminal conviction cases, the normal course of action will be to grant an application for revocation where the decision to deport was founded on a criminal conviction which is now "spent" under section 7(3) of the Rehabilitation of Offenders Act 1974. Paragraph 391 of the Rules, however, indicates that in the case of an applicant with a serious criminal record continued exclusion for a long term of years will normally be the proper course. This is expanded on in Annex A to Chapter 13 of the IDIs, which indicates that revocation would not normally be appropriate until at least 10 years after departure for those convicted of serious offences such as violence against the person, sexual offences, burglary, robbery or theft, and other offences such as forgery and drug trafficking.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

20. The applicant complained that the decision to deport him constituted an unjustified interference with his right to respect for his private and family life as provided in Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

21. The Government contested that argument.

A. Admissibility

22. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

23. The applicant argued that in deporting him to Jamaica the respondent Government had not struck a fair balance between the interests of the applicant and his family and the interests of the State, resulting in a violation of Article 8.

24. The applicant submitted that the decision to deport him interfered with the private and family life that he had established in the United Kingdom. He had lawfully resided there for thirty-four years, having arrived when he was thirteen years old. Four generations of his family were there, namely his mother, his brothers, his four children and his grandchild, and he had no remaining ties to Jamaica. Although the applicant had never lived with any of his children, he submitted that he was in regular contact with all of them and saw his youngest daughter on average three times a week.

25. The applicant accepted that the interference with his private and family life was in accordance with the law and in pursuit of a legitimate aim, namely the prevention of disorder and crime, but argued that it was not necessary in a democratic society. In view of the length of his residence and the strength of his connections to the United Kingdom, his deportation could only be justified by exceptionally strong public interest grounds, a stringent test which was not met in this case. Although he had committed a large number of criminal offences over the years, most of them could properly be described as petty offences. The majority of the drug-related offences were for possession, and the convictions for the supply of drugs concerned the supply of very small amounts of cannabis. The theft offences were all connected to his drug habit, and he had made a number of attempts to stop using drugs. He was committed to dealing with his addiction and at the date of his deportation appeal, he had been drug-free for a number of months.

26. The Government, on the other hand, did not accept that the applicant's deportation would interfere with his right to respect for his family life. The family life limb of Article 8 was plainly not engaged in relation to the applicant's mother, brothers, and adult sons. With regard to his youngest child, there were no exceptional factors serving to demonstrate that the relationship had “sufficient constancy” to create *de facto* family ties.

Naomi was not born as a result of a lawful marriage to her mother, she had never lived with the applicant, and the applicant was not involved in her day to day care. While the applicant asserted that he saw her two to three times a week, the statement from Naomi's mother was silent on the frequency of contact. Moreover, the pattern of the applicant's repeated criminal conduct, his several periods of imprisonment and his regular use of drugs did not suggest the element of constancy necessary to establish a family tie.

27. Although the Government accepted that there was an interference with the applicant's private life, they submitted that the interference was not disproportionate. Although individually the applicant's offences were not at the most serious end of the spectrum of criminal activity, looked at as a whole the nature, number and time-span of the offences, which included those of violence, dishonesty and the possession and supply of drugs, demonstrated that the applicant had shown a prolonged and flagrant disregard for the criminal laws of the United Kingdom, giving rise to a compelling public interest in his deportation. Moreover, it was likely that if the applicant remained in the United Kingdom, he would continue his pattern of re-offending. In reality, there was no prolonged period since 1985 during which the applicant had been out of prison and had not re-offended.

28. The Government further submitted that while the applicant had been in the United Kingdom since 1974, he had spent the first thirteen years of his life in Jamaica, where he must have established his first social relationships. His mother had friends in Jamaica and there was no reason why they could not help to provide a social network on his return. Furthermore, as the language spoken in Jamaica was English, the applicant would have no difficulty in establishing himself by reason of any language barrier.

29. Finally, the Government drew the Court's attention to the fact that the applicant had never attempted to obtain British citizenship.

2. The Court's assessment

(a) Was there an interference with the applicant's right to respect for his family and private life?

30. It was common ground between the parties that the applicant's deportation constituted an interference with his right to respect for his private life, and the Court endorses this assessment. The Court also considers that the applicant had established a family life in the United Kingdom with his youngest daughter. It is clear from the Court's case-law that children born either to a married couple or to a co-habiting couple are *ipso jure* part of that family from the moment of birth and that family life exists between the children and their parents (see *Lebbink v. the Netherlands*, no. 45582/99, § 35, ECHR 2004-IV). Although co-habitation

may be a requirement for such a relationship, however, other factors may also serve to demonstrate that a relationship has sufficient constancy to create *de facto* family ties (*Kroon and Others v. the Netherlands*, 27 October 1994, § 30, Series A no. 297-C). Such factors include the nature and duration of the parents' relationship, and in particular whether they had planned to have a child; whether the father subsequently recognised the child as his; contributions made to the child's care and upbringing; and the quality and regularity of contact (see *Kroon*, cited above, §30; *Keegan v. Ireland*, 26 May 1994, § 45, Series A no. 290; *Haas v. the Netherlands*, no. 36983/97, § 42 ECHR 2004-I and *Camp and Bourimi v. the Netherlands*, no. 28369/95, § 36, ECHR 2000-X).

31. In the present case, the applicant had been in a twelve-year relationship with Naomi's mother and they had planned to have a child together. Although the relationship ended around the time of Naomi's birth, the couple remained close friends and Naomi's mother wanted her daughter to have a relationship with her biological father. As a consequence, Naomi knew the applicant as her father, and he has had contact with her throughout her life. During the domestic proceedings, he asserted that he had contact with Naomi on average three times a week, and, whenever possible, he assisted her mother financially with her upbringing. This evidence was accepted by the AIT, which held that the applicant enjoyed family life in the United Kingdom. In the absence of any evidence to refute the applicant's assertion, or the AIT's findings, the Court also accepts that his relationship with Naomi had sufficient constancy to amount to family life.

32. The Court further recalls that, as Article 8 also protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of “private life” within the meaning of Article 8. Regardless of the existence or otherwise of a “family life”, the expulsion of a settled migrant therefore constitutes an interference with his or her right to respect for private life. It will depend on the circumstances of the particular case whether it is appropriate for the Court to focus on the “family life” rather than the “private life” aspect (see *Maslov v. Austria* [GC], no. 1638/03, ECHR 2008 § 63).

33. Accordingly, the measures complained of interfered with both the applicant's “private life” and his “family life”. Such interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of Article 8 as being “in accordance with the law”, as pursuing one or more of the legitimate aims listed therein, and as being “necessary in a democratic society” in order to achieve the aim or aims concerned.

34. Accordingly, the measures complained of interfered with both the applicant's “family life” and “private life”.

(b) "In accordance with the law"

35. It is not in dispute that the impugned measure had a basis in domestic law, namely section 5(3)(a) of the Immigration Act 1971 (as amended by the Immigration and Asylum Act 1999).

(c) Legitimate aim

36. It is also not in dispute that the interference served a legitimate aim, namely "the prevention of disorder and crime".

(d) "Necessary in a democratic society"

37. The principal issue to be determined is whether the interference was "necessary in a democratic society". The relevant criteria that the Court uses to assess whether an expulsion measure is necessary in a democratic society have recently been summarised as follows (see *Üner v. the Netherlands* [GC], no. 46410/99, §§ 57 - 58, ECHR 2006-...):

> "3. Even if Article 8 of the Convention does not therefore contain an absolute right for any category of alien not to be expelled, the Court's case-law amply demonstrates that there are circumstances where the expulsion of an alien will give rise to a violation of that provision (see, for example, the judgments in Moustaquim v. Belgium, Beldjoudi v. France and Boultif v. Switzerland, [cited above]; see also Amrollahi v. Denmark, no. 56811/00, 11 July 2002; Yılmaz v. Germany, no. 52853/99, 17 April 2003; and Keles v. Germany, 32231/02, 27 October 2005). In the case of Boultif the Court elaborated the relevant criteria which it would use in order to assess whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued. These criteria, as reproduced in paragraph 40 of the Chamber judgment in the present case, are the following:
>
> - the nature and seriousness of the offence committed by the applicant;
> - the length of the applicant's stay in the country from which he or she is to be expelled;
> - the time elapsed since the offence was committed and the applicant's conduct during that period;
> - the nationalities of the various persons concerned;
> - the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;
> - whether the spouse knew about the offence at the time when he or she entered into a family relationship;
> - whether there are children of the marriage, and if so, their age; and
> - the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled.
>
> 4. The Court would wish to make explicit two criteria which may already be implicit in those identified in the *Boultif* judgment:
>
> - the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and

- the solidity of social, cultural and family ties with the host country and with the country of destination."

38. Although the applicant's criminal record includes offences of dishonesty, violence, possession of a weapon in a public place, and the possession and supply of drugs, none of the individual offences committed by him as at the more serious end of the spectrum of criminal activity. The majority of offences were non-violent in nature and those that involved some violence attracted sentences of twelve months' imprisonment or less (the applicant was fined for assaulting a police officer, he was sentenced to nine months' imprisonment for assault occasioning actual bodily harm, and he was sentenced to twelve months' imprisonment for robbery). Moreover, the applicant's convictions for the supply of drugs relate to small quantities of a Class B drug, and as a consequence he could not be considered to be a "dealer".

39. The Court cannot, however, ignore either the sheer number of offences of which the applicant has been convicted, or the time span during which the offences occurred. The applicant was warned in 1990 that if he again came to the adverse attention of the immigration authorities, he would be at risk of deportation. Nevertheless, he continued habitually to re-offend. With the exception of a four-year period between 1991 and 1995, there was no prolonged period during which the applicant was out of prison and did not re-offend. Although the Court accepts that the majority of the applicant's convictions resulted from his drug addiction, there is no evidence to suggest that the applicant has addressed this underlying problem.

40. The time span during which the offences occurred is one factor which distinguishes this case from *Maslov v. Austria* (cited above), where the Court found a violation of Article 8. In *Maslov*, the applicant had convictions for burglary, extortion and assault, which he had committed during a fifteen-month period in order to finance his drug consumption. The Court found that the decisive feature in that case was the young age at which the applicant committed the offences (he was still a minor) and the non-violent nature of the offences (see *Maslov*, cited above, § 81). In the present case, although the applicant's offences are mostly non-violent, he has a much longer pattern of offending and the offences he committed were not "acts of juvenile delinquency".

40. The Court accepts that the applicant has lived for a considerable length of time in the United Kingdom, although it could not be said that he spent the major part of his childhood or youth there. His mother and two of his brothers live in the United Kingdom, and he has fathered four children, all of whom are British citizens. His children are 25, 24, 18 and 12 years old. He also has a grandchild by his eldest son. In the circumstances, the Court considers that he has strong ties with the United Kingdom. Nevertheless, it cannot overlook the fact that the applicant has never co-habited with any of his children. Three of his children have now reached the

age of majority, and although the applicant remains in contact with them, they are in no way dependent upon him. His youngest daughter, with whom the Court has found that he enjoyed family life in the United Kingdom, currently resides with her mother and her mother's husband. Without underestimating the disruptive effect that the applicant's deportation has had, and will continue to have, on Naomi's life, it is unlikely to have had the same impact as it would if the applicant and his daughter had been living together as a family. Contact by telephone and e-mail could easily be maintained from Jamaica, and there would be nothing to prevent Naomi, or indeed any of the applicant's children or relatives in the United Kingdom, from travelling to Jamaica to visit him.

41. The Court recognises that 34 years have passed since the applicant last lived in Jamaica. As a consequence, the Court accepts that he does not have strong social or family ties to Jamaica. On the other hand, it is clear from statements that have been made that some of his family members in the United Kingdom have maintained friends and contacts there, and it is unlikely that the applicant has found himself to be completely isolated. As the language spoken in Jamaica is English, there is no language barrier which would create difficulties for the applicant in establishing himself or finding employment. The Court is therefore not persuaded that the applicant has become so estranged from Jamaica that he would no longer be able to settle there.

42. Finally, the Court has regard to the duration of the deportation order. Although the Immigration Rules do not set a specific period after which revocation would be appropriate, it would appear that at the very latest the applicant would be able to apply to have the deportation order revoked ten years after his deportation.

43. In light of the above, the Court finds that a fair balance was struck and that the applicant's deportation from the United Kingdom was proportionate to the legitimate aim pursued and therefore necessary in a democratic society.

44. There has accordingly been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 8 of the Convention;

Done in English, and notified in writing on 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Lech Garlicki
Deputy Registrar	President