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***Ackom v Secretary of State for the Home Department* [2025] EWCA Civ 537**

Facts

Mr Ackom is a German national of Ghanaian origin, born in Dusseldorf, and was brought to the UK aged 7 by his father in 2005. He was schooled in the UK and was employed here, never returning to Germany.[1] He did not apply for EEA permanent residence before Brexit, nor for settled status under the EUSS scheme.[2] He had three groups of convictions for offences connected to an escalating involvement in drug possession and dealing, in May 2021, September 2021, and in February 2022 (whilst on bail awaiting sentencing for the September 2021 offences).[3] During prosecution, the Crown accepted that he had begun dealing to pay off a gambling debt to a drugs supplier who had threatened Mr Ackom and his mother. His mother had reported the threats to the police, but Mr Ackom had not co-operated with them.[4] He was sentenced to a variety of prison terms, the total being 49 months, but no individual element exceeded four years.[5]

In August 2022, whist serving his sentence, Mr Ackom was served with a notice of intention to deport. He submitted a human rights claim, which was refused in November 2022, with a right of appeal. On appeal to the First-tier Tribunal, his appeal was allowed on the basis that he met the requirements of Exception 1 under s 117C(4) of the Nationality, Immigration and Asylum Act 2022 (NIAA), namely that he had spent more than half of his life in the UK, was socially and culturally integrated in the UK, and that there would be very significant obstacles to his integration in Germany.[6] The Upper Tribunal found no error of law, despite adding that the FtT findings had been 'generous'.[7] The Secretary of State appealed to the Court of Appeal.

Held

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[1] *Ackom* [2].

[2] ibid.

[3] ibid [3]-[4].

[4] ibid [3].

[5] ibid [5].

[6] ibid [7].

[7] ibid [9].

The Court of Appeal's judgment (delivered by Lady Justice Andrews, with whom Lord Justices Nugee and Newey agreed) concluded that the First-tier Tribunal judge either failed to sufficiently justify its conclusion that the threshold was met or misapplied the relevant legal test (the *Kamara* test) for finding there would be very significant obstacles to Mr Ackom's integration in Germany. In *Kamara*, it was said that 'integration':

> is not confined to the mere ability to find a job or to sustain life while living in the other country… [It] calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on, and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.[8]

Lady Justice Andrews held that:

> What does not emerge clearly from the decision is why the FtT judge reached the conclusion that a fit, reasonably intelligent young man in his twenties, who had good educational qualifications and had been employed, and who was willing to undergo courses in prison to equip him with new skills... would be precluded from integration, in the sense explained in *Kamara*, by the current lack of any friends or family in Germany, the fact that he had not been back to Germany since he left at the age of 7, and the fact that he did not yet speak German...[9]

The Court of Appeal determined that the FtT had not properly examined whether these difficulties would genuinely prevent or significantly hinder integration:

> [T]he judge erred in law in not properly applying the Kamara test to the facts as found, or that if she did, she gave insufficient reasons for reaching the conclusion that the test was satisfied in the circumstances of this case, particularly given that

[8] *Kamara v Secretary of State for the Home Department* [2016] EWCA Civ 813; [2016] 4 WLR 152 [14].

[9] ibid [48].

> the proposed country of return is Germany, and life in Germany is not significantly different from life in the UK.[10]

As a result, the appeal was upheld, and the case was referred back to the First-tier Tribunal for reconsideration.

Comments

The Error of Law

I suggest that whilst the use of 'in the alternative' errors of law may be the backbone of grounds of appeal argued by an appellant, it is inappropriate when deployed as the basis of a judgment of a higher court. Insufficiency of reasons is materially different from failure to apply the correct legal test. It is the difference between not having given sufficient justification for the weight given to specific factors and not having given sufficient weight to those factors, such as that deportation is to an EU or European state. This judgment therefore fails to provide legal certainty to the lower courts.

Whilst the Home Office would probably like to take away from *Ackom* authority that the *Kamara* test is more intensive or harder to meet when the receiving state is an EU or European state, the judgment itself focusses exclusively on insufficiency of reasoning:

> the country concerned is Germany, and because life in Germany is not so different from life in the UK, one might have expected something more to have been said about that in this context than simply: "I have taken into account that Germany is a European country".[11]

Paragraphs 47-49 of the judgment are also focussed on the lack of reasoning, rather than on the substance of the reasoning inferred, or on the weight that the FtT judge actually ascribed to the nature of the state to which Mr Ackom was to be deported.

Therefore, I argue, that this judgment is not authority for imposing a higher test on those facing deportation to EU states. It would also be entirely consistent with this judgment to suggest that it is insufficient reasoning for a judge to state that 'I have taken into account that

[10] ibid [50].

[11] ibid [46].

the receiving state is not a European state', or 'I have taken into account that life in the receiving country is significantly different', in *dismissing* an appeal to the statutory exception. The need to provide adequate reasons should cut both ways. The logic of *Ackom* is that judges must provide explicit reasoning as to why cultural differences between the UK and the receiving state can – or cannot – be overcome. Furthermore, nothing in the Court of Appeal's reasoning suggests that the FtT judge was found to give too little weight to the fact that return was to a European or EU country per se: *Ackom* is not authority for arguing that where the receiving state is a European or EU state that the statutory test of 'very significant obstacles' is therefore inherently higher or harder to overcome. The Court of Appeal did not find that the FtT erred in its underlying conclusion that Mr Ackom would have very significant obstacles to integration – and explicitly made no finding on the suggestion that the FtT's fundings were 'generous'[12] – and the Court of Appeal's reasoning is consistent with finding an error only in the FtT's failure to fully spell out its assessment.

The political background

It was said that this is the first case since the withdrawal of the UK from the EU in which the Court of Appeal has been required to consider the 'proper approach' to s 117C(4)(c) of the NIAA as it applies to an EU national, where the proposed state of return is an EU state.[13] This judgment is consistent with the general hardening of the law around the deportation of EU nationals post-Brexit,[14] to the extent that the Court of Appeal conceded that, pre-Brexit, Mr Ackom:

> almost certainly could not have been removed from the UK in these particular circumstances (by virtue of the application of the Immigration (European Economic Area) Regulations 2016.) In simple terms, his criminal behaviour, serious though it was, was not serious enough.[15]

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[12] ibid [8].

[13] ibid [10].

[14] Jonathan Collinson, 'Deporting EU National Offenders from the UK after Brexit: Moving from a System That Recognises Individuals, to One That Sees Only Offenders' (2021) 12 New Journal of European Criminal Law 575.

[15] *Ackom* [10].

To date, case law has progressively ramped up the requirements for falling within the s 117C(4) exception. Cases have emphasised the 'elevated' nature of a text of *very* serious obstacles;[16] have found that absence of ties and links to the receiving state is not necessarily sufficient to demonstrate sufficient obstacles; and, instead encouraged focus on 'generic factors' (age, education, character etc).[17]

It is also worth recalling the legislative background. According to the human rights memorandum that accompanied the relevant legislation, the s 117C(4) exception was drawn up explicitly to 'provide for the *Maslov* "settled migrant"'[18] and *Maslov* provided that 'that for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country very serious reasons are required to justify expulsion'.[19] Mr Ackom arrived in the UK aged 7 and Mr Maslov in Austria aged 6.

Ackom is also a classic case where 'facts are only ever "facts": they are never bare but always dressed up by those who draw arguments out of them'.[20] *Ackom* arises out of the UK's political context of regulatory failings to protect individuals from problem gambling, of an individual forced into offending by threats and coercion, a history of institutionally racist policing so that racialised minorities may refuse to co-operate with the police, and where the criminal justice system has failed to prevent further offending through either deterrence or rehabilitation.

What purpose is it intended to serve to note Mr Ackom's Ghanaian heritage, as one of the first recited facts in this case, when that was not country to which he was to be deported? Although the FtT noted that his Ghanaian heritage meant that he did not 'continue the culture of Germany', it is not made explicit in the judgment as to what culture *was* followed at home: British, Ghanaian, British-Ghanaian, or some other culture. Nor did Mr Ackom's Ghanaian heritage form any part of the Court of Appeal's reasoning, nor did they consider whether integration in Germany might be more difficult for racialised minorities. The suspicion is that

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[16] *Parveen v SSHD* [2016] EWCA Civ 932.

[17] *AS (Iran) v SSHD* [2017] EWCA Civ 1284; [2018] Imm AR 169.

[18] Home Office, 'Immigration Bill: European Convention on Human Rights Memorandum by the Home Office' <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/249270/Immigration_Bill_-_ECHR_memo.pdf> accessed 9 May 2018, [83]-[84], original emphasis.

[19] *Maslov v Austria* [2008] ECHR [GC] 1638/03, [75].

[20] Marie-Bénédicte Dembour, 'Human Rights Law and National Sovereignty in Collusion: The Plight of Quasi-Nationals at Strasbourg' (2003) 21 Netherlands Quarterly of Human Rights 63, 72.

notwithstanding the FtT finding that Mr Ackom was integrated in the UK (and it not being in dispute at the Court of Appeal) the initial racialisation of Mr Ackom is an unconscious Othering of him, and an invitation to view him as not being entirely 'British' either.

For a judgment predicated on the lack of sufficient reasoning by the FtT, the Court of Appeal judgment is a remarkable example of the power of selecting what is said and what is left unsaid.

Not significantly different from life in the UK

The reasons that the Court of Appeal found that 'life in Germany is not significantly different from life in the UK'[21] is also obscured by the fact that it did not explicitly endorse the reasoning of SSHD's counsel. SSHD's counsel averred that:

- '[T]he Germans, like the English, have a great liking for football';[22]
- '[S]ocietal and cultural norms in Germany, as in many other EU countries, are not substantially different from those in England. The respondent would not be going into a completely alien environment, and it would not take very long for anyone brought up in England to understand how life is carried on in Germany';[23]
- 'The UK and Germany have a shared culture of democracy, and the same core values, respect for the rule of law and respect for human rights and civil liberties';[24]
- Contrasting the judgment in *Kamara*, 'Sierra Leone is not like an EU country. The tribunal found that Sierra Leone "is a highly contextualised society, many things in the language are not expressed, instead interpreted through non-verbal cues or cultural norms" with which the appellant would have no familiarity…"'.[25]

[21] *Ackom,* [50].

[22] ibid [36].

[23] ibid [33].

[24] ibid [37].

[25] ibid [41].

Integration is a heavily contested domain,[26] but this is not legal analysis: it is Orientalism.[27] There is no shortage of academic material upon which the courts could instead be drawing to make properly informed, evidence driven legal analysis. In Spencer and Charsley's academic examination of integration,[28] they identify that integration is not just an individualised endeavour but one that must also be engaged in by the receiving society and those who live in it. In *Ackom*, the Court of Appeal engages in no assessment of the quality of integration policies by the German state (beyond the provision of social security benefits), nor of the willingness of individuals in Germany to aid in Mr Ackom's integration (other than to note that many speak English).

Ackom also mischaracterises the earlier case of *AS (Iran)*[29] as setting down that 'it is possible for migrants with no ties to the country of destination, and no contacts there*, and who cannot speak the language on arrival*, to integrate and develop a private life there within a reasonable time'.[30] This is, in fact, wrong. The appellant in *AS (Iran)* could speak Farsi, although he could not read or write it, and the fact that he could speak Farsi was important for the assessment that the Upper Tribunal had taken into account a suitable range of factors in finding that AS could integrate in Iran.[31] The judgment in *Ackom* is also therefore an unreliable guide as to the current state of the law.

Spencer and Charsley identify five further effectors of integration: individual human capital; families and social networks; opportunity structures in society; policy interventions; and the ability to maintain contact with the country and community being left. In *Ackom*, the individual factors of integration are overemphasised, the importance of family and social networks for integration are downplayed, and the other effectors are entirely ignored.

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[26] Jonathan Collinson, 'Review of *Integration Requirements for Immigrants in Europe: A Legal-Philosophical Inquiry,* Tamar de Waal; & *Constructions of Migrant Integration in British Public Discourse: Becoming British*, Sam Bennett' (2022) 36 Journal of Immigration, Asylum and Nationality Law 266.

[27] Edward E Said, *Orientalism* (Routledge & Kegan Paul 1978).

[28] Sarah Spencer and Katherine Charsley, 'Conceptualising Integration: A Framework for Empirical Research, Taking Marriage Migration as a Case Study' (2016) 4 Comparative Migration Studies 18.

[29] *AS (Iran)* (n 16).

[30] *Ackom* [46, emphasis added].

[31] ibid [29]-[30] and [60].

In their alternative conceptual framework, Ager and Strang[32] define the core domains of integration as comprising employment, housing, education, and health, and key facilitators of integration being language and cultural knowledge, and safety and stability. Only employment and language and cultural knowledge are addressed by the Court of Appeal. Both academic studies stress the central importance of social connection or families and social networks to integration: the factor most obviously lacking in Mr Ackom's circumstances in Germany.

It is evident from this judgment that where legal representatives do not provide a counter-narrative of integration for the courts to assess, the space may instead be filled with Orientalised, evidence free assertions.

Exceptionalism and Destitution

The statutory scheme of s 117C(4) requires neither exceptionalism nor destitution. Yet the Court avers that the barriers identified to Mr Ackom's integration into Germany were 'not unusual in cases of this nature'.[33] Furthermore, efforts to point to how Mr Ackom might find employment difficult to obtain due to his criminal conviction are dismissed as problematic because 'otherwise no person in this category would ever be deported'.[34] But there is no statutory authority for any kind of exceptionality test. Whilst Parliament in the Immigration Act 2014 clearly intended to reduce the scope for successful private and family life appeals, Parliament also clearly envisaged legitimate grounds for someone, especially someone who arrived as a child, to resist deportation after the fact of criminal offending. In fact, the s 117C(4) exception was drawn up explicitly to 'provide for the *Maslov* "settled migrant"'.[35]

Then there is an analysis of Mr Ackom's entitlement to social security benefits in Germany in light of the position, accepted by the Home Secretary, that his criminal conviction and 'current inability to speak German would be likely to prevent him from getting a job'.[36] The Court of Appeal finds that because of Mr Ackom's entitlement to benefits 'there was no

[32] Alastair Ager and Alison Strang, 'Understanding Integration: A Conceptual Framework' (2008) 21 Journal of Refugee Studies 166.

[33] *Ackom* [19] and [46].

[34] ibid [47].

[35] Home Office Memorandum (n 18).

[36] *Ackom,* [47].

question of his being destitute'.[37] But simple avoidance of destitution is not the legal test in s 117C(4). This is reinforced by the *Kamara* test itself which found that significant obstacles to integration 'is not confined to the mere ability … to sustain life'.[38]

Employment is identified in the literature as important to integration because it helps in 'promoting economic independence, planning for the future, meeting members of the host society [and] providing opportunity to develop language skills'.[39] Whilst there are significant limitations to simply equating employment and integration, the Court of Appeal does not engage at all with the extent to which Mr Ackom's poor employment prospects in Germany would have implications for other facets of integration, such as housing, ability to develop social connections, safety and stability, and the acquisition of language and cultural knowledge.

This further reinforces that legal representatives need to engage with a much more rounded, structured approach to making representations about significant obstacles to integration, both to overcome what may be inapt assumptions about the ability to integrate into a 'culturally similar' European country, and to cause a judge to err in law by dismissing without reason the challenges of integration into a country which is assumed to be similar

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[37] ibid.

[38] *Kamara* (n 17) [14].

[39] Alastair Ager and Alison Strang, 'Understanding Integration: A Conceptual Framework' (2008) 21 Journal of Refugee Studies 166, 170.