



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: DA/00386/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 30 October 2013**

**Determination**

**Promulgated**

**On 29 November 2013**

**Before**

**UPPER TRIBUNAL JUDGE PINKERTON**

**Between**

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

Appellant

**and**

**MR C O  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr K Norton – Presenting Officer

For the Respondent: Ms F Allen of Counsel

**DETERMINATION AND REASONS**

1. For ease of reference purposes the parties are hereafter referred to as they were before the First-tier Tribunal so that Mr CO is the appellant and the Secretary of State for the Home Department is the respondent.

2. The respondent made a decision on 29 January 2013 to make a deportation order against the appellant by virtue of Section 32(5) of the UK Borders Act 2007. The appellant appealed that decision. The appeal was heard by a First-tier Tribunal panel and in a determination promulgated on 25 July 2013 the panel allowed the appeal.
3. The respondent sought permission to appeal submitting that the panel failed to give adequate reasons for finding that the appellant's Article 8 rights would be breached given the severity of the offences committed by him. It was said that the appellant has been assessed to be at medium risk of re-offending and that his likelihood of reconviction within one year is calculated at 17% and within two years at 30%. The appellant's motive for committing crimes is said to be financial. The panel misdirected themselves at paragraph 53 of the determination that the appellant is at low risk of re-offending. It is further submitted that this finding has infected the panel's proportionality findings which are therefore flawed. Despite the appellant's positive character references his criminal activity in the past does not reflect the appellant's wilfulness when faced with financial difficulties and his willingness to become involved in drug dealing to alleviate financial strain. This is reflected in the increased percentage in the assessment of his risk of re-offending as noted from the report referred to at paragraph 46 of the determination.
4. Further grounds were given, namely that deportation in pursuit of the legitimate aim of preventing crime and disorder is not to be seen as one dimensional in its effect. It has the effect not only of removing the risk of re-offending by the deportee himself, but also of deterring other foreign criminals in a similar position. Furthermore, deportation of foreign criminals preserves public confidence in a system of control whose loss would itself tend towards crime and disorder. Although the panel makes reference to the best interests of the children, whose behaviour has been adversely affected by the appellant's imprisonment, the panel failed to weigh the severity of the appellant's crime against this. The Secretary of State's public policies may outweigh the appellant's Article 8 rights and those of his children in circumstances where he poses an increased risk to society through drug dealing. While the best interests of children are a primary consideration there was no evidence establishing a right under Article 8 sufficiently strong to prevail over the extremely pressing public interest in the appellant's deportation.
5. The judge granting permission to appeal wrote that it is arguable that the panel did not give adequate reasons for their conclusion that the public interest in the appellant's deportation was outweighed. Although at paragraph 42 of the determination they referred to the presumption being that the public interest required deportation of the appellant throughout the remainder of the determination they do not specifically consider the public interest in deportation as deterring other foreign nationals and preserving public confidence in the system. Where they reach their conclusions they refer only to the serious nature of the offences and it is not therefore apparent that they took the full nature of the public interest

as set out in the cases referred to in the grounds into account in the proportionality balance.

6. The judge granting permission wrote further that although it is said that the panel misdirected themselves as to the risk of the appellant re-offending and that there is an ever increasing risk of the appellant re-offending in the future, the submission in the grounds appears to misunderstand the nature of percentage of risk of reconviction which is almost inevitably greater over a two year period than it is over a one year period. However, it is not clear why the panel say that the appellant is considered to be at low risk of re-offending. 30% likelihood of reconviction within two years would appear to be a medium risk of reconviction and it was considered just arguable that the panel may not have given adequate reasons for their conclusion that there was a low risk that the appellant would re-offend.

### **Rule 24 response**

7. The appellant filed a Rule 24 response to the effect that the appellant has not been assessed as being at medium risk of re-offending. His scores for risk are 17% within one year and 30% within two years. The MOJ's guidance on OGP and OVP predictors in OASys sets out that for OGP the two year score translates into four bands and the low risk band is 0-33%. Furthermore the two year score will always be higher as it incorporates the one year score. The panel not only considered the statistical assessment of re-offending but also made an overall assessment of the evidence when reaching the conclusion that the appellant is at low risk of re-offending. The panel considered progress made by the appellant in prison including testimonials as to his conduct there. The panel also considered his conduct since release from custody on 17 May 2012 including the probation progress report that he has attended all his fifteen appointments, shown commitment to the licence and its conditions, and a desire to support his family by legitimate means.
8. The Rule 24 response went on to say that the panel gave adequate reasons for their conclusion that the public interest is outweighed. At paragraph 42 they set out the appellant's offences and the presumption that the public interest required deportation. They started their deliberations with consideration of the offences, using the sentencing remarks as their starting point whilst acknowledging at paragraph 48 the seriousness of the offences.
9. The panel correctly appreciated that the best interests of the children must be a primary consideration but "can, of course, be outweighed by the cumulative effect of other considerations". The panel makes reference not only to the seriousness of the offences but also to the wider public interest in deportation and the fact that this needs to be "given sufficient weight" (at paragraph 53).

10. In oral submissions before me Mr Norton maintained that the public interest in the deportation of the appellant was not properly considered. The panel did not give proper consideration to the fact that the appellant was convicted in January 2009 on two counts of supplying a class A drug (crack cocaine) for which he received a suspended prison sentence of 51 weeks. In October 2010 he was again convicted on two counts of supplying a class A drug (crack cocaine) for which he received 41 months' imprisonment which included activating the previous suspended prison sentence.
11. Ms Allen relied on the Rule 24 response. The determination referred (at paragraph 42) to the presumption that the public interest requires deportation of the appellant and that under the Immigration Rules it will only be in exceptional circumstances that the public interest is outweighed by the obligations under the Human Rights Convention. Having reminded themselves of the legal position the panel then went on to consider the facts in the case. They clearly had in mind throughout the determination the balance that had to be struck and paragraph 53 demonstrated that they had not erred in law in coming to the conclusions that they did for the reasons given.

### **My decision**

12. I announced at the hearing that the panel did not err in such a way that the decision should be disturbed. I stated to the effect that it would have been open to the panel to come to a different conclusion and many might consider that the appellant is fortunate that the panel did not do so. However, any argument that they should have concluded differently is simply that, an argument.
13. The panel was well aware of the task that it was set. It recognised that the offences of supplying class A drugs are very serious even when taking account of the appellant's explanation for both sets of offences (paragraph 47). At paragraph 48 they reached the view on all the evidence that the appellant's offences are seemingly out of character:

“whilst this is not to imply that the offences were anything other than very serious, there is some basis for saying that they were committed by a person who was well respected both as a member in the local community and for his support for his partner and children. In that sense they were uncharacteristic”.
14. At paragraph 51 the panel reminds itself that the question that needs to be considered and answered is whether deportation is necessary, proportionate and a fair balance between the rights to respect for the family life of the appellant and any children and the particular public interest in question. The best interests of the children are a primary consideration (paragraph 52) which means that they must be considered first but can of course be outweighed by the cumulative effect of other considerations. At paragraph 53 the panel again refers to the serious

nature of the offences for which there is a statutory presumption that the appellant should be deported in the wider public interest and this needs to be given significant weight.

15. The panel was entitled to conclude on the evidence that there was a basis for saying that the offences were out of character and there is a low risk that he will re-offend which is a vital ingredient when assessing whether deportation is necessary in the public interest.
16. This is a careful assessment by the panel. It is almost certain that each deportation appeal will differ in its facts and on the particular facts found in this appeal the panel did what was required of it and concluded ultimately in favour of the appellant. This the panel was entitled to do.

### **Decision**

17. For the above given reasons the decision of the First-tier Tribunal panel is upheld.
18. I was not addressed on the matter of anonymity but an anonymity direction was made by the First-tier Tribunal and for the reasons given there I see no reason to disturb that direction.

Signed

Date

Upper Tribunal Judge Pinkerton