



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: DA/01569/2014

THE IMMIGRATION ACTS

Healed at **Field House**
on **02.07.2018** and signed on **04.09.2018**

Decision & Reasons Promulgated
on 11.09.2018

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Khalid Samir al-ALI

appellant

and

Secretary of State for the Home Department

respondent

Representation:

No appearance for the appellant

Mr Stefan Kotas (2 July) and Mr Paul Duffy (4 September) for the respondent

DETERMINATION & REASONS

This is an appeal, by the respondent to the original appeal, against the decision of the First-tier Tribunal (Judge Peter Herbert OBE), sitting at Taylor House on 22 January 2015, to allow, on article 8 human rights grounds only, appeal by someone born in Malaysia in 1992, to parents originally from the British mandated territory of Palestine. Notice of hearing was sent to the appellant at the address he had given on 1 June: while it seems he has served a further sentence of imprisonment since the judge's decision, inquiries showed he is not detained at present, and there was no other explanation for his absence, so I went ahead with the hearing, and, for the same reason, with the further hearing on 4 September.

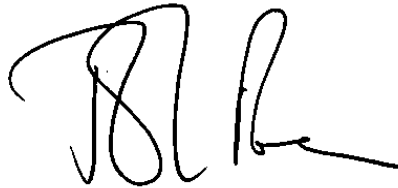
2. Two points stand out already: first, permission to appeal was given by the Upper Tribunal in 2018; although it had been refused by the First-tier Tribunal as long ago as 2016, the Upper Tribunal judge was satisfied that this decision had been challenged within the time required. As for the lack of progress on the respondent's application between 2016 and 2018, or why the Home Office did not make any inquiries about it, those are serious administrative concerns, but not directly relevant to any issues on this appeal.
3. The second point is about what administrative arrangements could be made for this appellant's removal, if his appeal were dismissed. While the directions which followed the deportation order proposed the appellant's removal to 'the Palestinian Authority', there is nothing to suggest that any arrangements exist for such a removal to any Palestinian territory occupied by Israel. The question is whether the hypothetical consequences of any such removal, referred to by the judge, could amount, on an article 8 appeal, to the 'very compelling circumstances over and above those described in Exceptions 1 and 2' required, either under s. 117C (6), or the corresponding provisions in paragraph 398 of the Rules, required to outweigh the public interest involved in removing someone, who like this appellant, had been sentenced to imprisonment for four years.
4. The judge had to deal with an appellant who was not represented, but who gave oral evidence before him. Quite rightly, he took great care to make sure that the appellant's interests did not suffer from that; but the question is whether he properly carried out the exercise required by Parliament where there had been a sentence of this length. Since Mr Kotas wished to rely on fresh grounds and further evidence, which it was not clear that the appellant would have had in time for the 2 July hearing, he was entitled to an opportunity to deal with those, and a further hearing was fixed for 4 September.
5. On 4 September, Mr Duffy told me that further inquiries showed that the appellant had never reported since he was released on 13 April. Having been convicted and sentenced to four years' imprisonment for his part in a two-handed night-time knife-point robbery of a pizza delivery driver, he needed, as the judge recognized at paragraph 108, to show the required 'very compelling circumstances' to avoid removal. Since he has chosen not to take any further part in these proceedings, the only question is whether the factors identified by the judge at paragraphs 99 – 107, and 119 - 124 justified such a finding or not, bearing in mind the judge's dismissal of his appeal on asylum, humanitarian protection and article 3 human rights grounds.
6. What the appellant had to show was first, that he was entitled to benefit from Exception 1, on the basis that
 - (a) he had been lawfully resident here for most of his life; and
 - (b) was socially and culturally integrated in this country; and
 - (c) there would be very significant obstacles to his integration in the territory controlled by the Palestinian Authority ['Palestine' for short], supposing that to be possible.
7. At the time of the appellant's conviction (3 February 2012), he had been unlawfully resident here from 11 May 2003, when his mother claimed asylum with him as a dependant, remaining as an unsuccessful appellant against refusal until he was granted indefinite leave

to remain on 30 December 2009, under the 'legacy' policy. That period of lawful residence continued till a deportation order was made on 14 July 2014, since when he has not been lawfully resident here.

8. While the judge was not required to take the view that the appellant's previous history of minor offences (see the judge's 20 -27) interrupted his lawful residence, he did need to take the whole of his criminal record, including the period spent in custody following his conviction into account in deciding whether he could properly be described as 'socially and culturally integrated in this country': see *Onuekwere* [2014] EUECJ C-378/12. There is nothing to show that the judge did this; and, bearing in mind the appellant's imprisonment, and failure to report since his release, it is not an assumption I am prepared to make in his favour.
9. The next question is whether the judge was justified in finding 'very significant obstacles' to the appellant's integration in Palestine. As the judge pointed out at 102, he speaks, but cannot write Arabic. There is the general economic climate to contend with (see 106 – 107); but the judge gave no details at 121 of why the 'significant human rights violations' occurring in Palestine made for 'very significant obstacles' in this appellant's case. The main factor is clearly the appellant's family history. Neither of his parents, on the judge's findings, had lived in Palestine since 1955, and they have no family connexions there. They met, married and had their three children in Egypt, till they moved to Malaysia in 1990, without acquiring any right to live there either.
10. While there are arguments to the contrary, I will assume for the moment that the judge was entitled to find 'very significant obstacles' in these considerations. That still leaves the appellant without a valid finding in his favour on requirements (a) and (b) of Exception 1. Was the judge entitled to go further, and find that the same considerations nevertheless made for 'very compelling circumstances' over and above those set out in the Exceptions? If he was not, then it is hard to see how the appellant could succeed in showing the 'exceptional and compelling circumstances' required for a claim under article 8 to succeed outside the Rules, under *MF (Nigeria)* [2013] EWCA Civ 1192 and authorities since then.
11. Most, if not all second-generation expatriate Palestinians are likely to have a similar lack of present-day connexion with Palestine. Together with the economic difficulties referred to by the judge, that might be taken to satisfy requirement (c) of Exception 1, and so not to require the deportation of someone sentenced to less than 4 years' imprisonment, who could also satisfy (a) and (b).
12. However, this appellant had to show 'very compelling circumstances' over and above those requirements: he is an apparently fit young man who speaks Arabic, and, even by the date of the judge's decision was already 23 (now 26). I do not see anything in the judge's findings on the present state of Palestine which could justify such a finding. So far as the appellant's family relationships are concerned, he and his mother and sister would all clearly miss each other very much, if he were deported; but that does not come within the terms of Exception 2. From a practical point of view, his sister, and not he is registered as his mother's official carer.

13. It seems to me that, in terms of the legislation now in force, the view could not reasonably be taken that there were 'very compelling circumstances' over and above the requirements of Exception 1 to prevent this appellant's removal to Palestine, entirely hypothetical as that possibility seems to be. No doubt he will have to be given some form of short-term leave, but that is a question for the respondent.

Respondent's appeal allowed: first-tier decision reversed

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'JLR' followed by a horizontal line.

(a judge of the Upper Tribunal)