Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08444/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 December 2017	**On 12 January 2018**

Before

THE HONOURABLE LADY RAE
UPPER TRIBUNAL JUDGE LANE

Between

ALI YOUSSOUF HASSAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr G Dolan, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Miss Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Ali Youssouf Hassan, was born on 30 September 1981 and is a male citizen of Somalia. He entered the United Kingdom in 1990 as a visitor with his father. The appellant's father subsequently applied for asylum and, whilst that application was refused, he was granted exceptional leave to remain. The appellant has a substantial criminal offending history. Most recently, on 6 November 2012, the appellant was convicted at Cardiff Crown Court of possession of a prohibited weapon, possessing a Class A controlled drug with intent to supply, possession of a

Class B drug, possessing ammunition without a certificate and he was sentenced to five years' imprisonment. On 7 August 2015, the Secretary of State decided to make a deportation order in respect of the appellant. The appellant subsequently made further submissions in respect of Article 8 ECHR and, by a decision dated 21 July 2017, the Secretary of State refused that human rights application and refused to revoke the deportation order. The appellant appealed against that decision to the First-tier Tribunal (Judge Housego) which, in a decision promulgated on 12 October 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are two grounds of appeal. First, the appellant asserts that the judge misdirected himself in law. The appellant's appeal fell to be considered under the provisions of Section 117C of the Nationality, Immigration and Asylum Act 2002 (as amended):

> Article 8: additional considerations in cases involving foreign criminals
>
> (1) The deportation of foreign criminals is in the public interest.
>
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
>
> (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
>
> (4) Exception 1 applies where—
>
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
>
> (b) C is socially and culturally integrated in the United Kingdom, and
>
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
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> (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
>
> (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
>
> (7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

3. At [22], the judge wrote:

> "Having been sentenced to a term of imprisonment of over four years, in order to succeed, the appellant must show not only that he meets Exception 1 [the exception set out at paragraph 399(a) of HC 395 (as amended)] but that over and above that there are very significant obstacles to his reintegration to Somalia."

4. The appellant asserts that the appellant was not required, contrary to what the judge considered to be the case, to show that he satisfied both Exception 1 and that there were very compelling circumstances in his case.

5. The judge considers the various exceptions at [21]:

> "Section 117C, which is primary legislation, stipulates that where there is a sentence of more than four years' imprisonment the public interest requires deportation unless there are very compelling circumstances over and above those described in Exceptions 1 and 2. These exceptions are set out in Section 117C(4). Exception 1 applies to those lawfully resident in the United Kingdom for most of his life, is socially and culturally integrated in the UK and there would be very significant obstacles to his integration into Somalia (Exception 2 relates to children, and the appellant has none)."

6. At [22], the judge considered that "the appellant must show not only that he meets Exception 1 … but that over and above that there are very compelling circumstances. It is not enough to show there are very significant obstacles to his reintegration to Somalia".

7. We agree with Mr Dolan that the judge has not expressed himself particularly clearly. We do not, however, find that the judge has erred in law such that his decision falls to be set aside. We agree with Mr Dolan that it is possible that circumstances which may be 'very compelling' thereby entitling an applicant to remain may exist whilst an applicant is unable to show that there are very significant obstacles to his reintegration to his country of origin (see Exception 1). Such a hypothetical applicant might fall outside Judge Housego's interpretation of the law by which it would not matter how compelling circumstances might be if the applicant could not also show that there were very serious obstacles to reintegration. The problem for the appellant in the instant appeal, however, lies in the fact that (i) there are no very significant obstacles to his integration into Somalia; and (ii) there are not, in addition, any very compelling circumstances which might otherwise justify allowing him to remain in the United Kingdom. Judge Housego's misstatement of the law, therefore, is immaterial in the appellant's case. We suggested to Mr Dolan that the appellant had not shown that there were very compelling circumstances in his case. In response, he referred to evidence highlighting the appellant's lack of education and inability to speak the Somali language. Those factors had been addressed by the judge [52] who made findings with which we can find no reason to interfere. The judge concluded that the appellant had not told the truth regarding his Somali language skills, noting that the appellant was 18 years old on arrival in the United Kingdom and that his brother and younger sister can speak Somali. The judge reached a finding which was available to him on the evidence and he has supported this finding with cogent reasons. As for the appellant's educational attainments, the judge considered these at [63]. Following a discussion of the evidence, the judge concluded that the appellant showed no "deficiency in intellect" and that he could read and write with proficiency.

8. Whilst we accept that "very compelling circumstances" may exist where the specific provisions of Exceptions 1 and 2 are not met by an appellant, where an appellant (as here) can neither satisfy Exceptions 1 and 2 or even come close to satisfying the requirement for "very compelling circumstances", it is almost certain that he will fail to qualify for leave to remain. Whilst Judge Housego did err in law by confusing the various requirements of Section 117C, any error does not materially affect the outcome of the appeal.

9. The second ground of appeal asserts that the judge adopted a flawed approach to the balancing exercise required by Article 8 ECHR. The appellant relies upon *Maslov v Austria* [2009] 1 INLR 47 at [71, 73 and 74]:

> 71. In a case like the present one, where the person to be expelled is a young adult who has not yet founded a family of his own, the relevant criteria are:
>
> – 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 solidity of social, cultural and family ties with the host country and with the country of destination.
>
> 73. In turn, when assessing the length of the applicant's stay in the country from which he or she is to be expelled and the solidity of the social, cultural and family ties with the host country, it evidently makes a difference whether the person concerned had already come to the country during his or her childhood or youth, or was even born there, or whether he or she only came as an adult. This tendency is also reflected in various Council of Europe instruments, in particular in Committee of Ministers Recommendations Rec (2001)15 and Rec (2002)4 (see paragraphs 34-35 above).
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> 74. Although Article 8 provides no absolute protection against expulsion for any category of aliens (see *Üner*, cited above, § 55), including those who were born in the host country or moved there in their early childhood, the Court has already found that regard is to be had to the special situation of aliens who have spent most, if not all, their childhood in the host country, were brought up there and received their education there (see *Üner*, § 58 *in fine*)

10. The appellant has been living in the United Kingdom for over 25 years, having indefinite leave to remain, is a "settled migrant". At [60], Judge Housego wrote:

> "For the appellant there is the fact that he came to the UK at about 9 years of age, is now 36 and that much of his family is in the UK. However, he is not on good terms with much of his family and he does not know well those with whom he is now on good terms. Much of his time in the UK has been spent in prison or engaged in criminal activity and so that lessens the weight to be attached to it."

11. As Judge Housego records, the appellant was not born in the United Kingdom nor did he come here at a very young age. The early years of his childhood were spent in Somalia. Further, it is clear that the judge has had regard to the criteria set out in [71]

of *Maslov* (although he does not refer to that authority in terms) and has drawn attention to the nature and seriousness of the offences of the appellant and to the "solidity of social cultural and family ties with the host country". The judge has also acknowledged that the appellant has no particularly strong ties with Somalia but it was plainly open to the judge to regard the fact that the appellant spent the first nine years of his life living in Somalia (about 25% of his life) was a factor of some significance. It matters not that the judge has failed to refer to *Maslov* or, indeed, any other authority. What does matter is that he has applied the principles of the relevant jurisprudence in his analysis. We find that he has done so.

12. Finally, Mr Dolan submitted that the judge had been guilty of "double counting" at [59–60]:

> "59. There are no very compelling circumstances in this appeal. In addition Article 8 proportionality assessment required for this decision there is the weight of the public interest in removal of a foreign criminal. The length of the criminal career, the appellant and its increasing seriousness mean that the weight to be given to the five year sentence imposed on the appellant for firearms or for dealing in heroin on top of a lengthy criminal record is very great.
>
> 60. For the appellant there is the fact that he came to the UK at about 9 years of age and is now 36 and that much of his family is in the UK. However he is not on good terms with much of his family and does not know well those with whom he is now on good terms. Much of his time in the UK has been in prison or engaged in criminal activity so that lessens the weight to be attached to it."

13. Mr Dolan submitted that the judge should not have used the appellant's criminal offending history to diminish the extent and strength of his private life and, at the same time, used it to increase the public interest concerned with the appellant's removal. We disagree. We see no problem in the judge's approach to the appellant's criminal offending and his view that the seriousness the offending should have a directly proportionate effect upon the public interest concerned with the appellant's removal. Equally, at [60], the judge is doing no more than trying to characterise and assess the quality of the appellant's private life in the United Kingdom. Not unreasonably, the judge considered that a private life which had developed to a large extent in the company of criminals should not attract the protection of Article 8. The judge has also, quite properly, sought to determine the private life ties which the appellant may enjoy with other adult members of his family and has concluded that the appellant's criminality has hindered the development of those relationships. In consequence, it is clear that the appellant does not have a particularly strong private life in the United Kingdom whilst his serious criminal offending reinforces the decision to deport him.

14. In the circumstances and for the reasons which we have set out above, we do not find that the judge has fallen into error in carrying out the proportionality exercise under Article 8 ECHR. In consequence, the appeal is dismissed.

Notice of Decision

15. This appeal is dismissed.

16. No anonymity direction is made.

Signed Date 9 January 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

We have dismissed the appeal and therefore there can be no fee award.

Signed Date 9 January 2018

Upper Tribunal Judge Lane