



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

Appeal Number: HU/01347/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19<sup>th</sup> August 2019**

**Decision & Reasons Promulgated  
On 23<sup>rd</sup> August 2019**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**SALIM [P]**

Respondent

**Representation:**

For the Appellant: Mr L Tarlow, Senior Home Office Presenting Officer  
For the Respondent: Ms G Brown, instructed by Michaels Stevens Solicitors

**DETERMINATION AND REASONS**

1. For reasons set out in a decision promulgated on 6<sup>th</sup> June 2019, First-tier Tribunal Judge Housego allowed Mr [P]'s appeal against the refusal of his human right claim made subsequent to the signing of a deportation order following various criminal convictions which included a sentence of four years imprisonment for drugs offences in March 2004.
2. The SSHD sought and was granted limited permission to appeal by the Upper Tribunal on 12<sup>th</sup> July 2019 namely that it was arguable that the judge had failed to make a clear finding on the ability of his partner to provide appropriate care

for the couple's son; had failed to consider/provide adequate reasons in respect of the possibility of support for the child and or partner from other agencies; had failed to provide adequate reasons for the conclusion that there were no other family members in a position to offer any practical assistance to his partner or son if he were removed from the UK and that it was arguable that the references to rehabilitation indicated a failure to have adequate regard to what was said in *RA (s117C: "unduly harsh";,; offence: seriousness) Iraq [2019] UKUT 123 (IAC)*.

3. The SSHD was refused permission to appeal the findings of the judge that he did not have to apply s117D Nationality Immigration and Asylum Act 2002 - it was irrelevant because the judge had in fact reached a decision on whether there were very compelling circumstances over and above Exceptions 1 and 2 in any event. The SSHD was also refused permission on a claimed contradiction in the decision on whether Mr [P] had never gone to Nigeria (he was born there and lived there until he was 5); the judge had also referred to him living there until he was 5 in any event and the finding he had no family connections in Nigeria was a finding open to the judge on the evidence before him.
4. Mr Tarlow did not make submissions other than to rely on the grounds.
5. In so far as alternative family or other support is concerned if Mr [P] were to be deported, the judge sets out in detail the serious medical conditions of the child which although now mitigated to a certain extent because of serious and lengthy medical intervention, still requires intervention and support from Mr [P] and his partner, the serious health conditions of the child's mother/Mr [P]'s partner and her need for daily assistance from him, the medical evidence in support of the submissions made of the need for his care and support, and her likely need for two shoulder replacements. Her nearest relatives are in Leicester. As Mr Tarlow said, even if family can travel to where she and the child live it could easily take two hours during which time the intervention required could well be too late. Similarly, social services/NHS ambulance interventions would be a last resort and would arise in emergency situations, such emergency situations being avoided because of Mr [P]'s presence. There is no error of law by the judge finding it would be unduly harsh for the child and the partner to remain in the UK without Mr [P].
6. Given the length of the prison sentence imposed, the judge considered whether there were very compelling circumstances over and above it being unduly harsh on the partner/child to separate them. In reaching his conclusion on that, the judge correctly considered, *inter alia*, the nature of Mr [P]'s criminality including the very serious offence he committed in 2004, the length of time since the last offence (in 2013), that none of the other offences committed resulted in imprisonment, that he was rehabilitated, length of time in the UK, the extent to which his partner and child required care and support over and above that which rendered separation unduly harsh. The full extent of the considerations is set out in the decision between paragraphs 54 and 58.
7. The issue taken in the grounds on which permission to appeal was granted was that the judge took improper account of Mr [P]'s rehabilitation. Whilst little

weight should be placed upon rehabilitation it is incorrect to characterise that as being a significant factor or of major import in the judge's decision. It was a factor and no more, as acknowledged by Mr Tarlow.

8. There is no error of law in the decision by the First-tier Tribunal such that the decision is set aside to be remade.
9. I dismiss the SSHD's appeal.

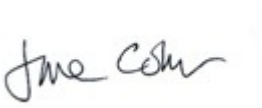
Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision

The decision of the First-tier Tribunal allowing the appeal by Mr [P] against the refusal of his human rights claim stands.

Date 21<sup>st</sup> August 2019



Upper Tribunal Judge Coker