



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/05604/2019**

THE IMMIGRATION ACTS

Heard at Glasgow
On 24 October 2019

Decision & Reasons Promulgated
On 29 October 2019

Before

Upper Tribunal Tribunal Judge Macleman

Between

M A

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Devlin, Advocate, instructed by Shoaib Associates
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This determination is to be read with:
 - (i) The remarks of Sheriff J M Johnston QC, sentencing the appellant to 6 years imprisonment, dated 4 July 2016.
 - (ii) The respondent's deportation decision dated 28 June 2018, deportation order dated 12 March 2019, and human rights decision dated 13 March 2019.
 - (iii) The appellant's grounds of appeal to the First-tier Tribunal, dated 27 March 2019.

- (iv) The decision of FtT Judge Doyle, promulgated on 23 August 2019, dismissing his appeal.
 - (v) The appellant's grounds of appeal to the UT, stated in detail in the application for permission dated 6 August 2019.
 - (vi) The grant of permission by the FtT, dated 20 September 2019, on the view that arguably the FtT did not fully set out the appellant's case, and gave inadequate consideration to a psychological report, and to the appellant having resided in the UK for 27 years.
2. Mr Devlin's submissions were along the line of the grounds. His overarching theme was that although the FtT did not misdirect itself on the law, it failed to apply the approach set out in *NA*, cited in the grounds, and in other cases, by not evaluating each and every circumstance set out in sections 117C(4) and (5) of the 2002 Act to determine if they were of sufficient force, alone or in conjunction with other factors, to meet the test in section 117C(6).
 3. Chief among the matters relied upon was a psychological report by Dr Ul-Hassan, dated 5 August 2019, which opined that the appellant's removal would create a risk of serious deterioration in the mental health of his wife, which in turn was likely to have a direct impact on the mental health and wellbeing of their children. This was said to involve something over and above the ordinary effects of separation inherent in deportation, capable of amounting to very compelling circumstances over and above the statutory exceptions, which the judge failed to consider.
 4. In substance, I do not find the appellant's argument to amount to more than that the judge was bound to specify all the circumstances of his case in greater detail. It was said, for example, that the reference to the psychological report at paragraph 34 missed the expert's point about adverse effects on the appellant's wife and children, and that the judge, there and elsewhere, paid only lip service to engaging with factors which might be in the appellant's favour; but all factors are alluded to, and nothing is overlooked which might reasonably have been found to meet the high test of very compelling circumstances.
 5. Mr Devlin emphasised that such circumstances include those which have been considered in terms of the exceptions, and that the nature and seriousness of the offending has already been factored in by statute, and is not a balancing factor at the section 117B(6) stage. However (and although the appellant's offending was serious, and within the extended family, directed against his children's cousins) there is nothing in the decision which suggest such an approach was taken.
 6. In my view, the appellant has not shown that the making of the decision of the FtT involved the making of any error on a point of law.
 7. If the decision were to be set aside and remade, it would have turned on the same circumstances as were before the FtT. There was no application

to tender further evidence, and the situation is substantially unchanged. The appellant has completed his custodial sentence, but since then he has been in immigration detention. He is in contact with his children regularly, but only by telephone, which can be continued from anywhere. Although he did not advance any details it seems that he will have no direct contact with them in the foreseeable future, wherever he may be. His contact with his wife appears also to be mainly, if not entirely, by telephone.

8. In my judgement, the evidence fails to establish any exception to deportation specified in the rules and in statute, and the cumulative circumstances are not compelling, to the extent required to outweigh the public interest in the appellant's deportation.
9. The FtT did not make an anonymity direction, and parties did not suggest that the UT should make one. However, in view of the nature of the appellant's offending and the involvement of several child relatives, an order is now made. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.
10. The decision of the First-tier Tribunal shall stand.

A handwritten signature in black ink, appearing to read 'Hugh Macleman'. The signature is written in a cursive style with a large, stylized initial 'H'.

25 October 2019
UT Judge Macleman