



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/09981/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice Centre
On 30 July 2019** **Decision & Promulgated
On 08 August 2019** **Reasons**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**AA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not present or represented
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a male citizen of Tunisia who claims to have been born on 10 December 1983, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 24 April 2018 to refuse his human rights claim following the making of a deportation order on 2 October 2017. The First-tier Tribunal in a decision promulgated on 20 December 2018, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. At the initial hearing on 30 July 2019 at Manchester, the appellant failed to attend nor was he represented. A previous hearing on 4 June 2019 had

been adjourned because there had been some doubt that the notice of hearing had reached the appellant. There is nothing on the file to indicate that the notice of hearing sent by first class post to the appellant's last known address in Blackpool on 25 June 2019 has failed to reach that address. In the circumstances, I have proceeded with the hearing in the absence of the appellant.

Persistent Offender

3. The appellant had been convicted on 9 occasions in relation to 15 separate offences in the period 9 December 2016 - 27 September 2017. The offences including eight offences of theft and six relating to police/courts/prisons and one drugs offence. The Secretary of State was of the opinion that the appellant is a persistent offender and that his deportation to Tunisia would be conducive to the public good (section 3(5) Immigration Act 1971).
4. The grounds of appeal acknowledge that during a nine-month period the appellant was a 'relatively prolific offender'. However, in the 15 months prior to the First-tier Tribunal hearing, the appellant had not been convicted of any offence. The appellant asserts that he has not been properly characterised as a persistent offender.
5. The ground has no merit. The Upper Tribunal in *Chege* ("is a persistent offender") [2016] UKUT 187 (IAC) found that:

A persistent offender" is someone who keeps on breaking the law. That does not mean, however, that he has to keep on offending until the date of the relevant decision or that the continuity of the offending cannot be broken. A "persistent offender" is not a permanent status that can never be lost once it is acquired, but an individual can be regarded as a "persistent offender" for the purpose of the Rules and the 2002 Act even though he may not have offended for some time. The question whether he fits that description will depend on the overall picture and pattern of his offending over his entire offending history up to that date. Each case will turn on its own facts

6. The appellant has not explained why his circumstances should not be considered by the guidelines provided by the Upper Tribunal in *Chege*. That the appellant has not offended for some period of time prior to the First-tier Tribunal hearing does not prevent him from being properly described as a 'persistent offender.'

Unduly harsh

7. The appellant claims to have been in a relationship with his partner for 10 years and has two children who we claims are British citizens (their respective dates of birth are 2011 and 2013). In his analysis and application of Section 117C of the 2002 Act, the judge at [49] found that the evidence, including that contained in the appellant's witness statement, failed to 'disclose anything beyond what would necessarily be involved in a deportation because disruption to family life by deportation will inevitably generate harshness.' The grounds of appeal acknowledge

the distinction between 'harshness' and 'undue' harshness but assert that the 'failure the judge to recognise that the length of relationship is material to the extent of harshness in deportation was to leave out of account the relevant matter.' However, the judge was fully aware of the ages of the children and the length of the appellant's claimed relationship with his partner. It was unnecessary for the judge to single out the duration of these relationships for specific comment. The analysis contained at [49] *et seq* is both adequate and legally sound.

Is the appellant a vulnerable witness?

8. The grounds claim that the judge has failed to treat the appellant as a vulnerable witness. Even if the judge has had regard to the appellant's vulnerability, the grounds assert that he failed to record 'any impact that it had on his decision-making.' I note that it was on this basis that Judge Robertson granted permission to appeal. However, the ground has no merit. The appellant was represented at the hearing before the First-tier Tribunal. There is nothing in the record of proceedings or in the decision itself which indicates that any submission was made to the effect that the appellant should be treated as a vulnerable witness. There is in the papers a medical report from a psychiatrist, Dr Sterling, which the judge addresses at [37]. The judge notes that the report of the psychiatrist concludes by recommending further assessment. Indeed, any reading of the report reveals that Dr Sterling was unable to offer any diagnosis of the appellant's condition noting more than once that the appellant had 'presented to healthcare staff' in a manner which did 'not support' the diagnosis of any particular mental or organic physical illness. Given that the medical evidence was so inconclusive and that no submission was made to the judge by professional representatives that the Tribunal should treat the appellant as a vulnerable witness, I do not consider that the ground of appeal has been made out.
9. I find that the judge has provided a detailed and cogent analysis taking account of all relevant evidence. He has made cogent findings of fact and has applied relevant statute and case law to those facts. I find that the judge was not erred in law for the reasons asserted in the grounds of appeal or at all. Accordingly, the appeal is dismissed.

Notice of Decision

This appeal is dismissed.

Signed

Date 30 July 2019

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.