Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11760/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26 November 2019	**On 6 December 2019**

Before

HIS HONOUR JUDGE BIRD
UPPER TRIBUNAL JUDGE PLIMMER

Between

SAMI [M]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: None
For the respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant has appealed against a decision of the First-tier Tribunal ('FTT') sent on 16 July 2019, in which it dismissed his appeal on human rights grounds.

Background

2. The appellant is a citizen of Egypt. He entered the United Kingdom ('UK') a long time ago in 1994. His immigration history is therefore lengthy but it suffices to say that he has not had leave to remain in the UK since 9 October 2015.

3. The appellant has been convicted of offences in 2010 for which he received a custodial sentence of three months concurrent, suspended for 12 months.

4. On 4 September 2015 he was convicted of theft, false imprisonment and assault occasioning actual bodily harm for which he was given a custodial sentence of 45 months in total. The victim of these latter offences was the appellant's ex-wife and the mother of his children. The sentencing remarks of the sentencing judge make it clear that although the appellant was separated from his ex-wife at the time, he nonetheless falsely imprisoned her and subjected her to violence, over a number of hours on 25 August 2014. The appellant has two children in the UK, a son born in December 1997 ('A') and a daughter born in July 2001 ('B'). A was therefore 21 and B nearly 18, at the date of the hearing before the FTT.

5. On 10 August 2016 the respondent issued the appellant with a deportation order and refused his application to remain on the basis of Article 8, ECHR in a decision dated 19 September 2017. It was this decision that the appellant appealed to the FTT, without success.

FTT hearing

6. The appellant was represented by Counsel at the hearing before the FTT. His Counsel accepted that the appellant no longer relied upon asylum or Article 3, ECHR but rested his case upon his family life with his daughter and his private life in the UK. The FTT heard evidence from the appellant and A and reached the following findings of fact:

   (i) Although the appellant has a genuine and subsisting relationship with B, a qualifying child, the effect of his deportation on her would not be unduly harsh in the light of the matters set out at [40] and [41], including the fact that the majority of his contact with his nearly adult daughter has been by telephone. The appellant was therefore unable to meet the high threshold demanded by the unduly harsh test in paragraph 399A of the Immigration Rules.

   (ii) The appellant was unable to establish that he met any of the three requirements contained in paragraph 399A of the Immigration Rules - see [42] to [45].

   (iii) There were no additional compelling reasons to allow his appeal under Article 8 – see [46].

7. The FTT therefore dismissed the appeal for these reasons.

Appeal to the Upper Tribunal

8. The appellant appealed against this decision and permission to appeal was granted by FTT Judge O'Brien in a decision dated 12 August 2019. We refer to the grounds of appeal in more detail below.

Hearing

9. At the hearing before us there was no appearance by the appellant. We noted that he no longer had any representatives acting for him. We are satisfied that the appellant was notified of the hearing date, a notice dated 18 September 2019 together with directions bearing the same date, having been sent to the home address that was provided for him.

10. There has been no explanation for the appellant's failure to comply with directions or his failure to attend the hearing. In all the circumstances, and bearing in mind the overriding objective we decided that it was in the interests of justice to proceed with the hearing.

11. We indicated to Mr Tufan that there was no material error of law in the FTT's decision (for the reasons we set out below), and we did not need to hear from him.

Discussion

12. Paragraphs 399 and 399A of the Immigration Rules are reflected within s. 117C of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act'). This is a case in which the FTT provided adequate reasons why the exceptions in that section could not be met.

13. The written grounds of appeal challenge the decision of the FTT in three respects, which we address in turn.

14. First, the submission at [1] of the grounds that the FTT disregarded B's witness statement is wholly devoid of merit. The FTT clearly took into account all the relevant evidence emanating from B – see [20], [24], [30] and [31]. At [31] the FTT expressly indicated it had taken into account B's witness statement. The suggestion in [2] of the grounds that B could not relocate to Egypt fails to acknowledge that the FTT found that B could remain in the UK with her mother without any undue harshness.

15. Second, the submission in [4] to [5] of the grounds, that the FTT failed to take into account relevant matters or apply s. 117C(6) of the 2002 Act is not a material error of law. In RA (s.117C "unduly harsh": offence: seriousness) Iraq [2019] UKUT 00123 (IAC), the President said this:

> "22. It is important to keep in mind that the test in section 117C(6) is extremely demanding. The fact that, at this point, a tribunal is required to engage in a wide-ranging proportionality exercise, balancing the weight that appropriately falls to be given to factors on the proposed deportee's side of the balance against the weight of the public interest, does not in any sense permit the tribunal to engage in the sort of exercise that would be appropriate in the case of someone who is not within the ambit of section 117C. Not only must regard be had to the factors set out in section 117B, such as

> giving little weight to a relationship formed with a qualifying partner that is established when the proposed deportee was in the United Kingdom unlawfully, the public interest in the deportation of a foreign criminal is high; and even higher for a person sentenced to imprisonment of at least four years."

And then immediately supported this by referring to the reasoning of Jackson LJ in NA (Pakistan) & Another v SSHD [2016] EWCA Civ 662:

> "23. Jackson LJ put it as follows:-
>
> > "33. Although there is no 'exceptionality' requirement, it inexorably follows from the statutory scheme that the cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare. The commonplace incidents of family life, such as ageing parents in poor health or the natural love between parents and children, will not be sufficient.
> >
> > 34. The best interests of children certainly carry great weight, as identified by Lord Kerr in HH v Deputy Prosecutor of the Italian Republic [2012] UKSC 25; [2013] 1 AC 338 at [145]. Nevertheless, it is a consequence of criminal conduct that offenders may be separated from their children for many years, contrary to the best interests of those children. The desirability of children being with both parents is a commonplace of family life. That is not usually a sufficiently compelling circumstance to outweigh the high public interest in deporting foreign criminals. As Rafferty LJ observed in Secretary of State for the Home Department v CT (Vietnam) [2016] EWCA Civ 488 at [38]:
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> > > "Neither the British nationality of the respondent's children nor their likely separation from their father for a long time are exceptional circumstances which outweigh the public interest in his deportation.""

16. The FTT was entitled to conclude that there was an absence of compelling circumstances at [46] having made factual findings entirely open to it, with the exception that the appellant could reside with his second wife in Egypt, which we turn to later. Had the FTT applied the "extremely demanding" test in s.117C(6) to the appellant's case (even taken at its highest) and balanced these against the strong public interest in his deportation, in the light of his immigration history and very serious offending, it would have inevitably concluded that the high test could not be met.

17. Even if it was a mistake of fact for the FTT to find that the appellant could live with his wife upon return to Egypt (as submitted at [7] of the grounds), this error is immaterial given the high test to be applied and the FTT's clear findings that he would be able to support himself in Egypt.

18. Third, even assuming as submitted at [6] of the grounds, that the FTT was wrong not to treat Ms Pargeter as a country expert, this is not a material error of law. This is because at [35], the FTT went on to deal with her evidence in the alternative. This is clear from the sixth line: "*Even if I were to treat her as an expert, I find that the expert has left a number of important aspects of the appellant's life out of her consideration…*".

19. We are therefore satisfied that the written grounds of appeal are not made out and the appeal must therefore be dismissed.

Notice of decision

20. The decision of the FTT does not contain a material error of law and we do not set it aside.

Signed: *UTJ Plimmer*

Ms M. Plimmer
Judge of the Upper Tribunal

Date: 4 December 2019