



IAC-AH-SAR-V1

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

Appeal Number: HU/12212/2017

THE IMMIGRATION ACTS

**Heard at Bradford
via Skype for Business
On 11 September 2020**

**Decision & Reasons Promulgated
On 16 September 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SUZANNE LILI MAY
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Lindsay, Senior Home Office Presenting Officer

For the Respondent: Mr Nicholson.

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born 7 July 1976 and is a female citizen of the United States of America (USA). She was sentenced to 3 years imprisonment in April 2016 having been convicted of the offences of false accounting and fraud by abuse of position. She was served with a notice of intention to deport her in response to which she made representations on the basis of human rights. Her human rights claim was refused by decision dated 2

October 2017. A decision in an appeal to the First-tier Tribunal was subsequently set aside and the appeal remitted to the First-tier Tribunal for a further hearing. That hearing took place on 6 January 2020 and the judge promulgated his decision in writing on 9 January 2020. The Secretary of State now appeals against that decision to the Upper Tribunal.

2. The grounds are lengthy and as Mr Lindsay, who appeared for the Secretary of State at the initial hearing explained, in parts inaccurate. However, the Secretary of State continues to pursue the appeal. She complains that at [39] the judge had, in effect, made a finding that the appellant would not at any time be able to reintegrate into the society of the USA including finding employment and accommodation of her own. The judge found that, if the appellant were not accompanied by her partner Mr Reed, such reintegration would not be possible whilst her own 'vulnerable mental health' would render her position untenable. Mr Lindsay submitted that the judge's finding was too sweeping and that the evidence did not support a finding that the appellant would never obtain employment given that she had shown whilst in the United Kingdom that she had found employment relatively easily and worked hard in many of her jobs. Moreover, with financial support from Mr Reed, the appellant would be able to access the medication for her mental health conditions.
3. Mr Lindsay also submitted that the judge at [29] and incorrectly referred to a singular 'very serious incident of offending'; it was clear that the appellant's offences had occurred over a period of time and that by referring to a singular offence, the judge in this paragraph was effectively seeking to minimise the offending and its impact. I note that that submission is contradicted by reference in the same sentence to the appellant's 'convictions' in the plural. Moreover, the fact that those convictions were the only time the appellant had come to 'adverse attention' in the United Kingdom is incontrovertible. I do not accept, having read the entire decision very carefully, that the judge has fallen into the trap of minimising the seriousness of the appellant's offending.
4. The Secretary of State also complains that the judge was wrong to find that the public interest concerned with the appellants deportation may be, if appropriate, be diminished. Mr Nicholson, who appeared for the appellant before the Upper Tribunal, describes in his skeleton argument [22] the judge's application of the relevant jurisprudence (including *Akinyemi v The Secretary of State for the Home Department (No 2)* [2019] EWCA Civ 2098, in *Hesham Ali v Secretary of State for the Home Department* [2016] UKSC 60) as 'textbook.' I agree. In a very careful decision, the judge has not erred in his application of the law. At [44] and applying *Akinyemi*, the judge has explained in detail that, whilst it is necessary to give considerable weight to Parliament's intention that foreign criminals are to be removed, there were in 'this particular case... factors which substantially reduce the public interest' in deportation.

5. The grant of permission highlights the Secretary of State's contention that the judge failed to make any properly reasoned finding under paragraph 399A(c). However, as Mr Nicholson pointed out, there was no suggestion that the appellant could meet the conjunctive requirements of paragraph 399 given that she had not been resident in the United Kingdom for the required period of years. As regards reintegration in the USA, the judge has provided a cogent analysis supported by reasons. I agree with those submissions. I find that the judge made no material error by not addressing each part of paragraph 399.
6. Mr Lindsay told me that he did not seek to argue that there could be only one outcome (dismissal of the appeal) on the facts as found by the judge. He also told me that the Secretary of State did not seek to minimise the weight which the judge had attached to the appellants mental health difficulties. The judge's errors lay in the process by which the decision had been achieved rather than the outcome itself.
7. With that latter submission in mind, I refer to the findings and observations which I have detailed above. In my opinion, the judge has indeed adopted a textbook approach to the finding of facts, his discussion of the appellant's medical condition and in his application of the relevant law. Allowing the appeal on human rights grounds was an outcome available to the judge, whose findings on the particular facts that there was a diminished public interest in the appellant's deportation, set against the existence of very compelling circumstances (mainly arising from the appellant's mental health condition) are not tainted by legal error for the reasons advanced by the Secretary of State or at all. Accordingly, this appeal is dismissed.

Notice of Decision

The appeal is dismissed.

Signed
Upper Tribunal Judge Lane

Date 11 September 2020