



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

Appeal Number: HU/17820/2019

THE IMMIGRATION ACTS

**Heard remotely via Skype for Decision & Reasons Promulgated
Business
On 24 February 2021** **On 4 March 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AH

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mrs Pettersen, Senior Home Office Presenting Officer
For the Respondent: Mr Brown

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 in 1999 and is a citizen of Gambia. He appealed to the First-tier Tribunal against a decision of the Secretary of State refusing his human rights application following the making of a deportation order. The First-tier Tribunal (Judge Moxon) allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The judge records [4] that the facts were agreed. Those facts (which include the appellant's criminal conduct for which he was sentenced in May 2018 to 40 months' imprisonment and that the appellant had been a victim of trafficking in the United Kingdom) are helpfully summarised by the judge at [4 (a-x)]. The judge concluded [24] that this 'is one of the few and exceptional cases where there are very compelling circumstances over and above those specified in Section 117C [of the 2002 Act] that outweigh the public interest in the deportation of the appellant.' The judge proceeded to give his reasons for that finding which include the fact that the appellant, as shown by becoming a victim of trafficking, was vulnerable to manipulation; that he had shown remorse for his single act of criminal offending; that his risk of re-offending following treatment for his mental health problems was now assessed as medium.
3. There are several grounds of appeal. First, the Secretary of State asserts that the judge erred by accepting, without examining the author's credentials, social worker evidence that the appellant had rehabilitated following his criminal offending and also that the appellant enjoys family life with his mother and step father capable of attracting the protection provided by Article 8 ECHR . At the initial hearing, Mrs Pettersen, who appeared for the Secretary of State, told me that the decision of the First-tier Tribunal was not, in the respondent's opinion, perverse; she accepted that, on the agreed facts (see [2] above), it had been possible for the appellant to succeed. Rather, the Secretary of State's complaint was that the judge had given inappropriate weight to particular factors in his analysis of the relevant evidence. In the light of that submission, I find that the first challenge is without merit. It was open to the judge to place weight on the social worker's evidence without considering in detail her 'credentials'. In any event, the grounds do not indicate what, if anything, in those credentials should have led to the judge to attach less weight to her evidence. Further, as regards family life, the Secretary of State appears to accept that it was open to the judge on the facts to find that family life existed between the adult appellant and his adult family members and I cannot see anything wrong in his analysis of the evidence or application of the relevant case law (in particular, see *Kugathas* [2003] EWCA Civ 31, which the judge cites at [11]).
4. The second ground challenges the judge's application of the relevant jurisprudence in his consideration of the weight attaching to the public interest concerned with the application's deportation, in particular *Akinyemi* [2019] EWCA Civ 2098. However, whilst the judge has correctly sought to extract the legal principles from the case law which may be relevant in the instant appeal, the grounds criticise him for failing to distinguish *Akinyemi* on the facts. Comparisons of the facts of cases before the Court of Appeal and First-tier Tribunal are rarely helpful and a failure to undertake such comparisons is unlikely to amount to an error of law. I am satisfied that the judge has applied the relevant case law correctly.
5. The third ground of appeal focuses upon the judge's findings at [24]. The judge found that the appellant was 'vulnerable to manipulation' and, whilst

his mental health problems had been addressed during his time in the United Kingdom, the judge found that the medication he requires would not be available in Gambia. The Secretary of State complains that the judge had no evidence before him to show that the traffickers who had targeted the appellant in the United Kingdom operate in Gambia (*'not connected with Gambia whatsoever'*) and would present a threat to the appellant there. This submission misunderstands the judge's finding. The judge did not find that the appellant would be at risk of being targeted by the same traffickers as in the United Kingdom but rather that the appellant's vulnerability, which had been demonstrated by the fact that he had fallen victim to traffickers at all, would be likely to expose him to a risk of similar treatment in Gambia. It is true that the judge does not refer to any background material detailing trafficking in Gambia but, equally, the Secretary of State does not seek to argue that such activity does not occur there. Further, the characterisation by the judge of the appellant's family contacts with Gambia (*'some family but nobody to support him'*) was available to him on the evidence.

6. Finally, I do not accept, as the Secretary of State argues, that the judge 'played down' the public interest. Throughout his decision, the judge has remained mindful of the public interest concerned with the deportation of the appellant. His conclusion that, on the particular facts in the appeal, the appellant did cross the significant threshold of showing that there exist very compelling circumstances over and above the factors referred to in section 177C was, as Mrs Pettersen acknowledged, open to him. Another judge may, on the same facts, have concluded otherwise but that is not the point. The judge has reached an outcome which both parties accept was available to him on the evidence. In reaching that outcome, he has not had regard to irrelevant matters whilst he has evaluated all relevant evidence. He has given appropriate weight to the public interest and the seriousness of the appellant's offending and he has accurately applied relevant case law. In the circumstances, I can identify no good reason to interfere with his decision.

Notice of Decision

The Secretary of State's appeal is dismissed.

Signed

Date 24 February 2021

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.