Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/24299/2018 (V)**

THE IMMIGRATION ACTS

Heard remotely from Field House	**Decision & Reasons Promulgated**
On 29 July 2021	**On 04 October 2021**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MEHRABUDDIN TARAKHEL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Ms J Rothwell, Counsel, instructed by Osmans Solicitors
For the respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Hodgkinson ("the judge"), promulgated on 4 September 2019. By that decision, the judge dismissed the appellant's appeal against the respondent's decision, dated 15 November 2018, refusing a human rights claim which had been made in the context of deportation proceedings.

2. The appellant is a citizen of Afghanistan, born in 1994. He arrived in this country in 2005 as a minor, was initially granted discretionary leave to

remain on that basis, and then obtained indefinite leave to remain in March 2014. Between 2011 and 2016, the appellant accrued seven convictions for offences including criminal damage to possession of Class B drugs. The police also obtained information suggesting that he had been involved in additional criminal activity for which no prosecutions had resulted. In August 2018 the respondent notified the appellant that deportation proceedings were being initiated on the basis of his criminality. The appellant put forward representations which were deemed to constitute a human rights claim. These representations asserted that the appellant had established a significant private life during his time in the United Kingdom and was in a genuine and subsisting relationship with a British citizen, Ms K. The respondent refused the human rights claim, concluding that the appellant was a "persistent offender", that there was no genuine and subsisting relationship with Ms K, and that in all the circumstances Article 8 ECHR did not preclude removal from the United Kingdom.

The decision of the First-tier Tribunal

3. The judge considered both the convictions and the evidence relating to additional criminal conduct. On the basis of that evidence, including admissions or non-denials from the appellant himself, the judge found that there had been involvement, as claimed by the police. Taking all matters into account, the judge concluded that the appellant a "persistent offender" within the meaning of section 117D(2)(c)(iii) of the Immigration, Nationality and Asylum Act 2002, as amended (the 2002 Act). He then concluded that, in respect of the private life exception under section 117C(4) of the 2002 Act, the appellant had not shown that he was socially and culturally integrated in the United Kingdom. In a further finding the judge concluded that there were no "very significant obstacles" to the appellant reintegration into Afghan society.

4. As to the family life exception under section 117C(5) of the 2002 Act, the judge accepted that the appellant's relationship with Ms K was genuine and subsisting. However, Ms K could not be regarded as the appellant's "partner" due to the absence of cohabitation. Further, he found that it would not be unduly harsh for Ms K to go and live with the appellant in Afghanistan, nor would a separation have unduly harsh consequences for her.

5. Finally, the judge considered whether there were any very compelling circumstances in the appellant's case and concluded that there were not. The appeal was therefore dismissed.

The grounds of appeal and grant of permission

6. As drafted, the grounds of appeal essentially raised three challenges. First, it was said that the judge erred in concluding that the appellant was a persistent offender. Second, it was said that the private life exception was met and the judge was wrong to have concluded otherwise. Third, it was said that the judge erred in his assessment of Ms K's circumstances.

7. Permission to appeal was granted by Upper Tribunal Judge Lindsley on 25 February 2020.

8. Following the grant of permission, the respondent provided a rule 24 response, opposing the appellant's challenge on all grounds.

9. An application by the appellant to adduce new evidence under rule 15(2A) of the Upper Tribunal's procedure rules was made in advance of the hearing. It was accepted that this had no bearing on the error of law issue.

The hearing

10. Ms Rothwell acted with customary professionalism in acknowledging that her challenge was limited to the issues raised in the grounds of appeal (of which she was not the author). There was no application to amend those grounds and, for the avoidance of any doubt, any such late application would have faced a very steep uphill struggle indeed.

11. The three ground of challenge identified above were relied on. The essential thrust of the submissions under the first ground was the absence of any or any adequate reasons by the judge in respect of the persistent offender issue. On the second ground, it was said that the judge should have concluded that there was social and cultural integration, particularly in light of the judgment of the Court of Appeal in CI (Nigeria) [2019] EWCA Civ 2027, which had come out after the judge's decision had been promulgated. Finally, the judge had failed to consider all relevant factors when assessing whether Ms K could go to Afghanistan with the appellant.

12. Ms Rothwell quite properly recognised that there had been no challenge to the judge's finding on the separation limb of the family life exception. She tentatively suggested that there was a "Robinson obvious" issue in this regard.

13. Mr Tufan relied on the rule 24 response and submitted that there were no errors, at least none which were material.

Conclusions on error of law

14. I have concluded that there are no errors of law in the judge's decision.

Ground 1

15. The judge was of course entitled to rely on the seven convictions accrued by the appellant, all save one having occurred after he reached his majority in July 2012. There has been no dispute in this case as to the ability of the judge to have taken into account criminality which had not resulted in convictions. Thus, the meaning of the term "offender" in the phrase "persistent offender" does not fall for detailed consideration here.

16. As to the judge's assessment of the evidence relating to the additional criminal conduct, I conclude that he was entitled to take into account not simply the untested evidence from the police officer who had compiled the

evidence (but did not attend the hearing), but also the implicit acceptance by the appellant that he had indeed been involved in conduct which, on any reasonable view, was criminal in nature. It is clear to me that the judge was aware of the various sentences imposed on the appellant and was conscious of the fact that the police officers evidence had not been subject to cross-examination. Contrary to the assertion made in the grounds and amplified by Ms Rothwell, adequate reasons were provided by the judge between paragraphs 44 and 56 of his decision. The stated finding in the first sentence of that last paragraph must be read in light of what preceded it. In all the circumstances, the appellant's challenge in truth seeks to require for reasons for reasons.

17. The judge correctly directed himself to the guidance on the meaning of who is a "persistent offender". He quoted key passages from the decision in Chege ("is a persistent offender") Kenya [2016] UKUT 187 (IAC). That guidance was subsequently approved by the Court of Appeal in SC (Zimbabwe) [2018] EWCA Civ 929. I can see no misdirection in law on the judge's part. He applied the facts to the law and reached a sustainable conclusion.

18. There is no error in respect of ground 1.

Ground 2

19. On the issue of social and cultural integration, the judge correctly identified the question as being fact-sensitive. He directed himself to what was said in Binbuga (Turkey) [2019] EWCA Civ 551 and the impossibility of having had regard to CI (Nigeria) really makes no material difference: the issue remains a fact-sensitive one, to be assessed in light of all relevant circumstances. Here, the judge had regard to a variety of factors: the overall criminality; the absence of any significant work history in this country; the absence of evidence to indicate involvement in "prosocial society"; the absence of involvement in any criminal gang; the relationship with Ms K; the absence of immediate custodial sentences; the appellant's age when the offending took place. It is quite clear that the judge had in mind the appellant's relatively lengthy residence in United Kingdom and the age at which he arrived here.

20. All-told, I am satisfied that no errors have been committed.

Ground 3

21. There is an insuperable obstacle in the appellant's path here. Whatever the merits of the challenge to the judge's finding that it would not be unduly harsh for Ms K to go and live in Afghanistan, the fact remains that no challenge has been made to the additional finding that separation would not be unduly harsh either.

22. I do not regard the issue as being "Robinson obvious". Indeed, the judge's conclusion is perfectly sustainable. Thus, there is no error in respect of the family life exception under section 117C(5) of the 2002 Act.

23. In any event, I see no errors in relation to the judge's assessment of the "go" scenario. The judge took account of matters relevant to Ms Khan, including her mental health.

Other matters

24. Whilst nothing else of any substance was raised in the grounds of appeal, for the sake of completeness I conclude that there are no errors in relation to the judge's assessment of very compelling circumstances under section 117C(6) of the 2002 Act, or indeed any other aspect of his decision.

25. My conclusions inevitably lead to the dismissal of the appellant's appeal to the Upper Tribunal.

26. In light of recent events in Afghanistan, it may be that further correspondence between the appellant and the respondent will take place. That of course is not a matter for me in this appeal.

Anonymity

27. The First-tier Tribunal made no direction and nor do I.

Notice of Decision

28. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

29. The appellant's appeal is dismissed and the decision of the First-tier Tribunal shall stand.

Signed: H Norton-Taylor Date: 23 August 2021

Upper Tribunal Judge Norton-Taylor