



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-003947
First-tier Tribunal No: HU/05143/2020

THE IMMIGRATION ACTS

Heard at Field House IAC
On the 13 December 2022

Decision & Reasons Promulgated
On the 14 February 2023

Before
Upper Tribunal Judge Perkins
Deputy Upper Tribunal Judge Mailer

Between
MOHAMMAD ASHFAQ ALII JOOMUNBACCUS
NO ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For Appellant: Mr N Paramjorthy, counsel, instructed by FA Legal Ltd
For Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. We shall refer to the parties as they were before the First-tier Tribunal.
2. The appellant appeals with permission against the decision of First-tier Tribunal Judge C Scott – ‘the Judge’ - who dismissed his appeal against the decision of the respondent refusing his human rights claim in a decision dated February 2020. A deportation order was made in accordance with the UK Borders Act 2007: [3] - [6].

Background to the appeal

3. The appellant is a 31 year old national of Mauritius. He entered the United Kingdom in November 2005 as a visitor with his mother and brother. His visa was valid until 12 May 2006.
4. He made an application for leave to remain on 9 February 2017 which was refused on 9 January 2018. An appeal against that decision was lodged on 17 January 2018. No information has been provided as to the progress of that appeal.
5. On 20 September 2018 the appellant was sentenced at the Snaresbrook Crown Court to a custodial sentence of 16 months for two offences of dangerous driving contrary to s.2 of the Road Traffic Act 1988.
6. A week later he was served with a notice of decision to make a deportation order in accordance with s. 32(5) of the UK Borders Act 2007. On 8 October 2018 he made a human rights and asylum claim. He withdrew his asylum claim on 18 April 2019. His human rights claim was refused by the respondent in a decision dated February 2020 when a deportation order was made.

Appeal to the First-tier Tribunal

7. The appellant appealed to the First-tier Tribunal against the respondent's decision.
8. In a determination promulgated on 1 August 2022 Judge Scott referred to the 'legal framework,' noting that she was required to have regard to the considerations listed in s.117B of the 2002 Act and, in cases concerning the deportation of foreign criminals, to the considerations listed in s.117C [27].
9. She noted at [35] that the appellant accepted that he had not been lawfully resident in the UK for most of his life. His visa was valid until 12 May 2006. Despite repeated applications by him and his family for leave to remain, he has never been granted leave to remain. Accordingly, Exception 1 did not apply to him [35].
10. It was also accepted by the appellant that Exception 2 did not apply to him. He did not have a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting relationship with a qualifying child.
11. She considered whether there were "very compelling circumstances over and above" Exceptions 1 and 2. She directed herself in accordance with the decision of the Lord Chief Justice in AS [2019] EWCA Civ 417, that in immigration cases, including those concerned with deportation which engage Article 8, it is desirable that the Tribunal structure its judgments by adopting the "balance sheet" advocated by Lord Thomas of Cwmgiedd in Hesham Ali [2016] UKSC [60] at [83-84]. She stated that her assessment must also treat the welfare and best interests of any child affected by the decision as a "primary consideration" in accordance with s.55 of the Borders, Citizenship and Immigration Act 2009 and the UNCRC - [37].
12. She considered the evidence regarding the 'appellant's mental health illness and diagnosis of Dr Persaud' - [38-44]. She attached little weight to his report for

reasons set out at [45–47], including his assertions regarding the risk of suicide on the appellant's return to Mauritius. These findings have not been challenged.

13. She then had regard to the effect of the appellant's deportation on his sister, B-, who was born in the United Kingdom on 15 December 2008 and is a British citizen. She stated at [49] that where children are involved their best interests are of 'paramount importance', but that does not mean to say they are determinative. Their best interests are an integral part of the proportionality assessment under Article 8. The best interests of the child must be a primary consideration, although not always the only primary consideration [49].
14. She considered the report of Ms Catherine Kinyanjui, an independent social worker, regarding the effect that the appellant's deportation would have on B- - [50]. The report dated 11 January 2020 was prepared in respect of the appellant, his brother O-, his parents and B-. She considered not only what effect his removal from the UK would have on the family, but also the effect that her removal, along with that of her parents and siblings, would have on her.
15. She set out Ms Kinyanjui's conclusions that there would be a risk of emotional harm for B-, even if separated for a short period of time; the family is very close to each other and she is particularly close to her brothers. They help her with homework, take her to activities outside of the school as her parents are usually not able to do this for her.
16. Ms Kinyanjui noted that the family were concerned that any change in the family circumstances would have a detrimental effect on all their wellbeing, and especially B-, who is under the age of 18 and wondering what is next for the family. She supported this view as, at the time of the assessment, the family appeared settled and had a stable and secure family life. In her view, any change in B-'s current circumstances would present a risk to her opportunities to achieve the five outcomes identified in the Children Act 2014. Any significant change in B-'s circumstances would have a negative impact on her wellbeing - [50(f)].
17. She had regard at [51] to what was said by the appellant regarding his relationship with B-. He or his brother generally attends her parents' evening with either one or both of their parents. If either of them were returned to Mauritius it would no doubt negatively impact his parents and invariably his little sister. They have developed a close family unit and rely upon each other heavily for different kinds of support.
18. Judge Scott concluded at [53] that it was apparent on the evidence that the appellant and B- have a close relationship. They live in the same house and are part of a close knit family. Having regard to the social welfare report, there is evidence that the appellant's separation from B- would affect her negatively.
19. She bore in mind however that whilst the appellant's separation from B- would negatively affect her emotional wellbeing, she would continue to be supported by both her parents and her brother O- who in all likelihood would continue to live

with her. His removal would not result in the relationship coming to an end. He could continue to communicate via telephone and video calls. B- could visit the appellant in Mauritius. She found that the appellant's deportation would be contrary to the best interests of B- [53].

20. She proceeded to consider the appellant's life on return to Mauritius. As to whether there are very compelling circumstances, she considered the impact that his return to Mauritius would have on him [54].
21. She concluded at [57] that establishing a life in Mauritius would be difficult for him and a culture shock on return. Whilst there were hurdles to his starting a new life in Mauritius, it is likely he could overcome them. He could use the qualifications gained in the UK along with his experience here. Whilst attaching little weight to his diagnosis of major depression she noted that the appellant is prescribed medication for depression by Dr Persuad for reasons already given, and in the event that he considered it necessary to take medication, such medication is likely to be available in Mauritius [57].
22. She found that the appellant's risk of reoffending was low [58] and that since his release from prison he has taken positive steps to dissociate with the negative peer group at the time of the offence.
23. She had regard to the "proportionality balance sheet" at [60]. She noted that the very compelling circumstances required are circumstances sufficient to outweigh the strong public interest in the deportation in the foreign criminals concerned. She employed the balance sheet approach to the proportionality issue, setting out the respondent's interests on one side and the appellant's interests on the other, which were factors of varying weights. She stated at [63](b) that his deportation would be contrary to the best interests of B-. Where children are involved their best interests are "of paramount importance", but it does not mean that they are determinative. She afforded significant weight to this in the balancing exercise.
24. She stated that the "very compelling circumstances" test is a demanding one. Having weighed the factors set out, she concluded that the strong public interest in the deportation of the appellant outweighed the best interests of B- and the interests of the appellant and other family members.
25. Accordingly, his deportation is in the public interest and not disproportionate to the legitimate aim She dismissed the appeal on human rights grounds.

Appeal to the Upper Tribunal

Grounds of appeal

26. There are two grounds of appeal.
27. Ground 1 contends that the Judge attached 'insufficient weight' to the report of Miss Kinyanjui, despite accepting the conclusions as the impact on B- were the appellant to be deported to Mauritius. She erred by finding that the appellant's

parents can provide B- with support and that her close bond with her brother would continue by means of modern communications. The Judge did not engage with the significant adverse effect that his deportation would have on B- and the harm it would cause her.

28. Ground 2 contends that the Judge erred by finding that the appellant could adapt to life in Mauritius and integrate into society there. She attached insufficient weight “as to the fact that he has no financial means nor support in Mauritius to enable him to commence any sort of life in Mauritius”. The appellant has been in the United Kingdom for about 17 years, having entered as a 12 year old.
29. Ground 3 contends that the Judge has not carried out the proportionality assessment correctly. She failed to give sufficient weight to the factors in favour of the appellant and the fact that this ‘clearly outweighs the deportation’.
30. On 31 August 2022 First-tier Tribunal Judge Boyes granted the appellant permission to appeal on grounds 1 and 2 only. As to ground 1, he stated that the Judge's conclusions are succinct and it is arguable that a more detailed examination may have been more appropriate. As to the Ground 2 contention that the Judge failed to consider the details of life “on the ground” for the appellant, he stated that the Judge's findings ‘...are arguably deficient in respect of consideration of the lack of access to funds, etc’.
31. The assessment as to the public interest was however, fair and balanced.
32. The respondent's Rule 24 Response was submitted on the day of the hearing.

Submissions

33. Mr Paramjorthy adopted his grounds of appeal which he prepared on 14 August 2022. He relied in particular on paragraphs 2 and 3 of the grounds with regard to the appellant's sister, B-. He submitted the Judge did not engage with the adverse effects that his deportation would have on her and the harm it would cause her.
34. With regard to the appellant's return to Mauritius, although the Judge engaged with the appellant's evidence that he has a paternal uncle there, who suffers from depression, she attached insufficient weight to the fact that he has no financial means, nor support in Mauritius to enable him to commence any sort of life there.
35. On behalf of the respondent, Mr Tufan submitted that the Judge has in fact considered the report of Ms Kinyanjui at [48-53]. The appellant did not meet the requirements under either Exception 1 or nor Exception 2. The appellant sought to rely on very compelling circumstances which constitutes a high test. He submitted that the appellant did not reach that high threshold. The Judge's conclusions are sustainable.

Discussion and conclusions

36. We remind ourselves of the need to show appropriate restraint before interfering with the decision of the First-tier Tribunal as emphasised by the Court of Appeal: R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982 at [90]; UT (Sri Lanka) v SSHD [2019] EWCA Civ 1095 at [19]; AA (Nigeria) v SSHD [2020] EWCA Civ 1296 at [41] and Lowe v SSHD [2021] EWCA Civ 62 at [29-31].
37. It is submitted that insufficient weight was accorded to the report of Ms Kinyanjui. There is also a challenge as to the weight given to lack of financial means and support available to the appellant in Mauritius.
38. As submitted in the Rule 24 response, the weight to be attached to the evidence is a matter for the Tribunal who has heard the evidence in the round. There is no contention that the findings are in any way irrational or perverse. Nor could there be.
39. Contrary to the appellant's submissions, we find that the Judge Scott has considered Ms Kinyanjui's report in some detail. She has set out Ms Kinyanjui's conclusions relevant to the appeal at [50].
40. She also had regard at [51] to what the appellant said about his relationship with B- as set out in his witness statement. She referred to the various character reference letters in support of the appeal [52].
41. She concluded that the appellant and B- have a close relationship. She accepted that, based on the report of Ms Kinyanjui it is evident that the appellant's separation from B- would affect her negatively.
42. Nonetheless, she also bore in mind that she would continue to be supported by both her parents as well as her brother O-, who in all likelihood, would continue to live with her.
43. Nor would the removal of the appellant result in the relationship coming to an end. Although his deportation would be contrary to B-'s best interests, they would be able to communicate by telephone and video calls. She could also visit him in Mauritius.
44. She referred to the UN Convention on the Rights of the Child at [48]. The best interests of the child shall be a primary consideration. She said that whilst their best interests are "of paramount importance" this did not mean that they are determinative. They must be afforded significant weight. She concluded in the same paragraph [49] that in making the assessment, the best interests of B- must be a primary consideration. Those interests can be outweighed by the cumulative effect of other considerations, but no other consideration can be treated as inherently more significant.
45. We find that Judge Scott has carefully assessed the effect on B- of her separation from her brother. Her conclusion on Ground 1 is sustainable.

46. Ground 2, constitutes a challenge to the weight regarding the lack of financial means and support that the appellant would have in Mauritius.
47. Judge Scott did however consider the effect on the appellant's life following his return to Mauritius. She considered the impact that his return would have on him as set out at paragraphs [55] and [56]. He confirmed in oral evidence that he has a paternal uncle living in Mauritius although he states that he suffers from depression so that it would be difficult to live with him. He also stated that he does not have friends there, having lost contact with them when he came to the United Kingdom [56].
48. Judge Scott had "no doubt" that establishing a life in Mauritius would be difficult for him. She referred to the difficulties with regard to his being without family, including that he would have to learn the language [57]. In the event that he would be unable to live with his uncle he would have to find accommodation and would have to find employment.
49. Despite those hurdles, she found that he could overcome them. He could use the qualifications gained in the United Kingdom and his work experience here. This would enable him to obtain meaningful employment to meet his accommodation and bills. It is also likely that medication for his depression would be available in Mauritius. No evidence was presented to the contrary [57].
50. She took into account that the appellant's risk of reoffending is low and that he had taken positive steps since release from prison to dissociate with the negative peer group he was involved with the of the time of his offences [59].
51. In assessing whether there are very compelling circumstances over and above the two Exceptions, she employed a balance sheet approach as to the proportionality issue. She set out the competing interests, including especially, the strong public interest in the deportation of foreign criminals, noting Laws LJ's observation in SS (Nigeria) [2013] EWCA Civ 550 at 554 that for a claim under Article 8 to prevail there must be "a very strong claim indeed". She noted however that this is not a factor of unvarying, immutable weight. She gave 'great weight' to this factor in the proportionality assessment. Inherent in this is the principle of general deterrence - [62](a)].
52. She emphasised the nature and seriousness of the appellant's offences. She set out the Judges' sentencing remarks at [62](b)]. The sentencing Judge noted that the appellant was "very fortunate that he did not kill someone or himself or one of the passengers in the car". He noted that the appellant had driven on both occasions at excessive speed on the wrong side of the road and through red traffic signals. On both occasions he was driving in this manner in order to avoid being apprehended by the police. He committed the second dangerous driving offence whilst on bail for the first offence.
53. She set out and weighed the various factors "on the appellant's side." At [63](b) she stated that when children are involved, the best interests are "of paramount

importance”, but this does not mean that they are determinative. She afforded significant weight to B’s interests in the balancing exercise. She had earlier stated that the best interests of the child constitutes a primary consideration - [48-49].

54. We find that Judge Scott has properly addressed the difficulties that would initially face the appellant when establishing a life in Mauritius on return [57]. Medication for depression would be available in Mauritius. She has properly weighed the competing factors. She was well aware that “the very compelling circumstances test” is a demanding one. Her finding that the public interest in the appellant’s deportation outweighs the best interests of B-, the appellant and other family members is sustainable. This is the inevitable consequence of repeated offending resulting in a custodial sentence.

Notice of Decision

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

No anonymity direction made.

Signed

CR Mailer

Date 24.12.2022

Deputy Upper Tribunal Judge Mailer