IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006704

First-tier Tribunal No: EA/52927/2021
IA/11961/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 12 August 2024

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

IAN THONGORI NJUGU
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr D Sellwood, counsel instructed by Turpin Miller LLP
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 31 July 2024

DECISION AND REASONS

Introduction

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge T Lawrence dated 29 July 2022.

2. However, for ease of reference hereafter the parties will be referred to as they were before the First-tier Tribunal.

3. Permission to appeal was granted by Upper Tribunal Judge Pickup on 31 May 2024.

Anonymity

4. No anonymity direction was made previously, and there is no reason for one now.

Factual Background

5. The appellant is a national of Kenya now aged thirty-two. He entered the United Kingdom during his childhood and was issued with permanent residency on account of his stepfather being a French national. On 4 November 2019, the appellant was convicted of possession of heroin and cocaine with intent to supply and sentenced to three years and four months imprisonment. He acquired a further conviction on 3 June 2020 for a similar offence and was sentenced to 8 weeks' imprisonment to be served concurrently.

6. The Secretary of State made a decision to deport the appellant which was served under the cover of a letter dated 1 July 2021. It was noted that the appellant been continuously resident in the United Kingdom for ten years, however it was contended that regulation 27(4) of the Immigration (European Economic Area) Regulations 2016 did not extend the imperative grounds protection to non-EEA citizens. It was decided that the deportation of the appellant was justified on serious grounds of public policy or public security, that it was proportionate to expect him to return to Kenya and deportation would not prejudice rehabilitation prospects. His Article 8 claim was refused on the basis that the exceptions to deportation contained in 117A-D of the Immigration, Nationality and Asylum Act 2002, as amended, did not apply.

The decision of the First-tier Tribunal

7. At the hearing before the First-tier Tribunal, the respondent accepted that the appellant's expulsion may only be justified on serious grounds of public policy or security. The agreed issues were firstly, whether the appellant represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society and secondly whether his deportation would be proportionate. The judge concluded that the appellant did not represent such a threat and that his deportation was disproportionate.

The appeal to the Upper Tribunal

8. There is a single grounds of appeal, that is that the First-tier Tribunal failed to give adequate reasons for findings on a material matter. The accompanying arguments are set out in full here.

> 4. At [34] the FTTJ states that s/he gives weight to the assessments that the appellant poses a low of harm to the public and a low risk of reoffending. However, in making this finding the FTTJ has failed to have adequate regard to the appellant's multiple drug offences and the sentencing judge's remarks setting out the significant role the appellant played in the supply of Class A drugs in the Swansea area and the negative impact this has on society in general, not only the drug-users themselves.
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> 5. There is no evidence as to why appellant should now be considered to pose a low risk when he has repeatedly offended, it is noted that there is inadequate evidence that he has rehabilitated [34] and there has been insufficient time since his last release from detention on 13/7/2021 to demonstrate that he no longer poses a risk and will not reoffend.
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> 6. Furthermore, the Judge has failed to consider the seriousness of the consequences of re-offending in line with Kamki [2017] EWCA Civ 1715. It is submitted that the consistency of the Appellant's offending is in itself strongly indicative of a propensity to re-offend and that the potential consequences of re-offending are serious.

9. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

> Whilst at [14] of the decision the judge has had regard to the sentencing remarks indicating that the appellant was a significant supplier of drugs and profited from it, and the other factors raised in the grounds addressed at [15] and [16] of the decision it is at least arguable that inadequate weight was accorded to those factors. Put another way, it is arguable that the balancing exercise between those public interest considerations and the appellant's rights in which he may only be expelled on serious grounds of public policy or public security was flawed, being overly influenced by the positive factors highlighted from the risk assessment, and by an over-emphasis on the requirement that he represent a 'present' threat and neglect of the argument that past conduct is relevant to present threat.

10. A respondent's Rule 24 response was filed on 8 July 2024, in which the appeal was opposed, with the grounds being characterised as mere disagreement.

The error of law hearing

11. The matter comes before the Upper Tribunal to determine whether the decision contains an error of law and, if it is so concluded, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. The hearing was attended by representatives for both parties as set out above. Both representatives made submissions and the conclusions below reflect those arguments and submissions where necessary. A bundle was submitted by the Secretary of State containing, inter alia, the core documents in the appeal, including the appellant's and respondent's bundles before the First-tier Tribunal.

Discussion

12. In the light of the guidance given by the Court of Appeal at paragraph [77] of *KM* [2021] EWCA Civ 693, I recognise that judicial restraint should be exercised when examining the reasons given by the First-tier Tribunal Judge for his decision and that it should not be assumed too readily that the Judge misdirected himself owing to not every step in his reasoning being fully set out.

13. I will first address the grounds and then the comments in the grant of permission as well as Ms McKenzie's expansion of the grounds in her submissions.

14. The first point made in the grounds is that the First-tier Tribunal failed to have 'adequate regard' to the appellant's drug offences, the sentencing judge's remarks and the negative impact such offending has on society in general. This is plainly wrong. At [4-6] of the decision and reasons, the judge set out all the appellant's offending in detail. Furthermore, at [14], the judge devotes a lengthy paragraph to the judge's sentencing remarks and at [15] the judge similarly sets outs and analyses the respondent's concerns as to the fundamental interests of society including the wider societal harm caused by offences related to the misuse of drugs.

15. The second point made in the grounds, that there was 'no evidence' to support the judge's finding that there was a low risk of harm posed by the appellant, is also incorrect. At [21-24], the judge reproduces the evidence of the appellant's Prison Offender Manager, his former Community Offender Manager and his present Community Offender Manager. The consistent view provided in these assessments was that the appellant posed a low risk of harm and of future

offending. The judge did not simply adopt these assessments but subjected them to critical analysis at [25-31] of the decision. In particular, the judge points to shortcomings in that evidence before concluding at [31], that despite his 'misgivings,' the assessments were accorded 'significant weight.'

16. At this point it is worth noting that Ms McKenzie sought to argue that the judge erred in taking into account the evidence pointing to low risk because of the judge's analysis of the assessments. No permission was sought or granted for her to amend the grounds in this manner. In any event, Mr Sellwood was able to briefly address this matter. I find that the judge evidently made no error in carefully examining and weighing the evidence before him prior arriving at a settled conclusion.

17. The remaining comments in the second point in the grounds regarding rehabilitation and insufficient time since the appellant was released from prison are no more than an attempt to reargue the case.

18. The last point made in the grounds, that the judge failed to consider the seriousness of future offending is simply not made out as a cursory glance at [15-16] of the decision demonstrates. I was referred to no evidence to support the unsupported claim made in the grounds that the appellant's previous offending is 'in itself strongly indicative of a propensity to reoffend.'

19. Ms McKenzie sought to rely upon the comments of Judge Pickup in granting permission, regarding an absence of a balancing exercise. Again, this was not a matter mentioned in the grounds of appeal and nor was an application made to amend the grounds. This point was unaccompanied by persuasive argument.

20. As can be seen from the decision at [32-38], the judge fairly considers all relevant factors prior to reaching a decision on proportionality. Those factors included the lack of evidence of rehabilitation as well as all the issues referred to in the decision as a whole. It was not necessary for the judge to repeat factors upon which the respondent relied given that they had been rehearsed at length earlier in the decision.

21. The decision of the First-tier Tribunal contains no material error of law. The decision shall stand.

Notice of Decision

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

The decision of the First-tier Tribunal shall stand.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

1 August 2024

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email