IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004247
UI-2023-004439

First-tier Tribunal No: PA/53012/2020
PA/53012/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

19th February 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

Secretary of State for the Home Department

Appellant

and

AB
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Parvar, Senior Presenting Officer
For the Respondent: Ms Solanki

Heard at Field House on 2 January 2024

DECISION AND REASONS

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

1. I shall refer to the appellant as the respondent and to the respondent as the appellant as they appeared respectively before the First-tier Tribunal. The appellant is a 35-year old national of Somalia. He appealed to the First-tier Tribunal against the respondent's decision of 24 November 2020 to refuse his protection and human rights claim. The respondent has made a decision to deport the appellant on account of his criminal convictions; the index offence relates to 6 convictions on 11 December 2018 for supplying controlled drug – Class A – Cocaine and Heroin for which he was sentenced to 40 months concurrent imprisonment. The respondent has also issued a certificate under section 72 of the Nationality, Immigration and Asylum Act 2002 on the ground that the appellant has been convicted of a particularly serious crime and that he constitutes a danger to the community.

2. The First-tier Tribunal dismissed his appeal on asylum, Article 3 ECHR and humanitarian protection grounds but allowed it on Article 8 ECHR grounds. He did not uphold the section 72 certificate. The Secretary of State now appeals, with permission, to the Upper Tribunal.

3. I was told that the appellant has filed a renewed application for permission to appeal against the First-tier Tribunal's decision on asylum but the papers were not before me. I told the parties that I would proceed to hear the Secretary of State's appeal and that the appellant's application, if successful, would have to be determined at a later date. I shall refer briefly to the section 72 certificate but will otherwise focus only on the appeal on Article 8 ECHR grounds.

4. The respondent argues that, having found at [30] that the appellant had rebutted the presumption that he is a danger to the community, the judge then failed in the assessment of rehabilitation at [78] and the factors counting in the appellant's favour in the assessment of very compelling circumstances at [80] to make reference to the findings which supported his section 72 conclusion. The grounds submit that the 'informed reader would, therefore, understandably assume that the FTTJ ultimately attached little weight to this.' I do not agree. The judge's decision needs to read as a whole. There is no obvious reason why unequivocal findings in respect of one part of the analysis should need to be repeated to support another part of that analysis. Indeed, it would arguably be perverse to conclude that the judge had jettisoned his earlier findings at [30] simply because he failed to reiterate them when addressing a different part of the same appeal. A finding elsewhere in the decision does not vanish simply because it is not repeated when considering, as here, the 'factors in [the appellant's] favour' in the very compelling circumstances test at [80].

5. The grounds of appeal at [4] state;

   The s117C(6) 'very compelling circumstances' test requires 'over and above' those described in the exceptions to deportation. As indicated above many of

the same factors the FTTJ finds amount to very compelling circumstances must have formed part of the same factual assessment that led to the unchallenged conclusion that the deportation exceptions were not met. The SSHD respectfully contends that this supports a view that either the reasoning is irrational/perverse or at least inadequate or the FTTJ has imposed a lower threshold to the evidence than that lawfully required by the s117C(6) test resulting in a material misdirection in law.

6. The respondent's complaint, therefore, is that the same factors which the judge found did not enable the appellant to satisfy the Exceptions (s.117C(4) and (5) of the Nationality, Immigration and Asylum Act 2002) were found capable of satisfying the very compelling circumstances test, thereby rendering the reasoning perverse.

7. I do not agree. The very compelling circumstances test does not require an appellant to first satisfy one of the Exceptions to deportation. If it did, the test would not need exist because an appellant would succeed by having satisfied the Exception. Further, factors which do not form part of or play only a limited role in the exceptions tests may take on a different relevance in the test for very compelling circumstances. At [80-81] the judge concluded:

   80. I turn to consider the factors in his favour. As explained, I am able to consider these cumulatively. I bear in mind that he left Somalia as a child in traumatic circumstances. I bear in mind that he has not returned to Somalia since. I bear in mind the private life he has acquired here over many years which includes his role as an official carer for his brother who suffered from schizophrenia. I accept this is likely to have taken a toll on the appellant. I bear in mind the loss of his niece and the effect this is likely to have on his sister with whom he has a close bond. I bear in mind the emotional consequences his departure will have on his sister. I take into account that although it is not a "parental relationship" he does have a close relationship with N and this is demonstrated by the evidence given by his sister and an expert report upon which I place weight. The expert expressed concern given N special needs as to how she would cope with the loss of a primary attachment figure in her life and witnessing the distress of her mother.

   81. I weigh the factors set out in the balancing exercise above and find the culmination of all the factors in the appellant's favour mean that the appellant makes out the very compelling circumstances threshold. In particular I bear in mind the relationship he has with his sister and N and the support he continues to provide for them both and the consequences his absence will have on their wellbeing and on the family unit as a whole.

8. In my opinion, the judge makes clear his reasons for finding that, whilst the appellant cannot satisfy the Exception regarding a relationship with a Qualifying Child because his sister is 'the parent [to N] in this situation' [73] he 'does have a close relationship with N and this is demonstrated by the evidence given by his sister and an expert report upon which I place weight.' Further, the reason he highlights at [81] for finding the very compelling circumstances threshold to have been crossed ('the relationship he has with his sister and N and the support he continues to

provide for them both and the consequences his absence will have on their wellbeing and on the family unit as a whole.') was capable of being significant in that test even if it does not carry the same weight in the more prescriptive Exceptions tests. The respondent's submission that the judge has made inconsistent findings or has given weight to those findings inconsistently is not made out.

9. I also reject Mr Parvar's submission that the judge has found that the very compelling circumstances test is satisfied because the appellant had, on the facts, only narrowly missed meeting the statutory Exceptions. There is nothing at all in the judge's analysis which suggests that was his approach. Rather, I find that the judge has concluded that this appellant falls into that very small group of cases which fail to meet the statutory criteria but which should nonetheless find relief under Article 8 ECHR. I accept that not all judges would have reached the same conclusion on the facts but that is not the point. The judge has reached a conclusion which was open to him on the facts and has supported his decision with cogent and clear reasoning.

10. Otherwise, the respondent's grounds amount to nothing more than a series of disagreements with findings available to the judge on the evidence. Conjecture and rhetorical questions (eg. 'The FTTJ does not seemingly suggest that the mother (a special needs teacher [45] herself) would be unable to suitably care for her child in the Appellant's absence. Nor does the FTTJ consider what, if any, additional LA support could be provided if needed?) fail to identify any legal error in the judge's reasoning. There is no reason to consider that the judge failed to take into account all relevant factors in reaching his decision. That decision is not, in my opinion, either perverse or irrational.

11. In the circumstances, the Secretary of State's appeal is dismissed.

Notice of Decision

The Secretary of State's appeal is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 15 February 2024