



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/01518/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 2 July 2014

Determination Promulgated
On 11th July 2014

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR MOHAMED AMIN RASHID AHMED HAFEJEE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Ms Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals with permission against the determination of the First-tier Tribunal (a panel comprising Designated Judge McClure and Dr T Okitikpi) promulgated on 12 February 2014 dismissing his appeal against the decision of the respondent made on 15 July 2013 that he is a person to whom Section 32(5) of the UK Borders Act 2007 applies and therefore must be deported.
2. The appellant entered the United Kingdom on 15 January 2003 with leave to enter as a fiancé. He was subsequently granted leave to remain as a spouse until 23 June 2005. That marriage however broke down around April 2004 and he applied for

further leave to remain on 6 June 2005 based on his human rights. That application was refused; the appeal against that decision was dismissed. Subsequent to that, in 2010 he submitted an application for a certificate of approval for marriage, which was refused on 17 January 2011.

3. The appellant has been convicted of a number of driving offences, specifically dangerous driving, driving without insurance and driving whilst disqualified. He was disqualified for a further period and again in 2009 was convicted of driving while disqualified and using a motor vehicle whilst uninsured.
4. On 10 May 2011 the appellant was tried and convicted of conspiracy to supply crack cocaine and heroin for which he was sentenced to a term of imprisonment of 58 months and two months' imprisonment for driving whilst disqualified. It was as a result of these convictions that the respondent concluded that the appellant was a person to whom Section 32(5) of the 2007 Act applies.
5. The appellant has had a number of relationships in the United Kingdom in addition to the marriage and proposed marriage as referred to above. These are:-
 - (1) a relationship with AH by whom the appellant has a child born 15 August 2006;
 - (2) a relationship with TB with whom he had a child born on 4 September 2009;
 - (3) a relationship with HC with whom the appellant had a child born on 26 July 2011 and a second child in February 2014.
6. The appellant's case is that his removal would be a disproportionate interference with his right to respect for his private and family life as his deportation to India would interfere significantly with his relationship with HC and his children including his children by AH.

The Respondent's Case

7. The respondent's case is set out in the notice of decision dated 15 July 2013. In summary the respondent considered that as the appellant had been sentenced to a term of imprisonment in excess of four years neither paragraph 399 or 399A of the Immigration Rules applied to him; that it would only be in exceptional circumstances that the public interest in deportation would be outweighed with other factors and that there were no exceptional circumstances raised which would outweigh the public interest in deporting him in the absence of documentary evidence to substantiate his claim that he was in a subsisting and genuine relationship with HC or had been supporting his children or had played an active role in their upbringing. She considered that it was in the children's best interests to remain with their primary carer and thus on the basis of his rights to family life did not outweigh the public interests in him being deported and that there was no evidence or apparent reason why the appellant would not be able to re-establish a private life on return to India, a country where he had lived until he was aged 20. She considered that any interference would be justified and that the appellant's conviction for the possession

of drugs is one which is to be regarded as serious compelling her to give significant weight to the question of protecting society against crime and the health and morals of others, noting that re-offending is not the most important thing to consider when weighing up the public interest particularly in serious cases.

8. Although noting that the appellant suffered from depression and was taking antidepressants she did not consider, given that he could get appropriate treatment in India, that his deportation gave rise to exceptional circumstances.
9. On appeal the Tribunal heard evidence from the appellant, the appellant's partner and an independent social worker. The Tribunal noted;
 - (i) that the appellant had begun a relationship with AH in August or September 2005 [40] and by November/December 2005 she had become pregnant. They underwent an Islamic marriage ceremony although he had not yet divorced his first wife;
 - (ii) that the appellant moved to live with AH's family in Bolton and continued to do so until December 2009 [42];
 - (iii) that in December 2008 the appellant commenced a relationship with TB who became pregnant and gave birth to a child in September 2009 [43];
 - (iv) that the appellant went to live with TB and their child in January 2010, subsequently putting in an application for a certificate of approval to marry [44], that application being refused as by that point the relationship had broken down;
 - (v) that the appellant began a relationship with HC in August 2010, HC having met in June or July 2010 when the appellant, despite being disqualified, was driving around and picked up HC and her friend RC [46, 48];
 - (vi) that the appellant was arrested in connection with drugs offences in October 2010 and was detained thereafter [51]; that according to HC's statement, she did not get back in touch with the appellant until 2012 as she did not know the number to contact him on although her friend RC was in touch with the appellant throughout the whole period [52]; that it appears from the letters between AH and the appellant and HC and the appellant, which appear in the appellant's bundle, and were sent to him whilst he was in prison that the appellant was in contact with AH and that it was clear from the letters that he was proposing that he resume his relationship with her [54] and they start to live together again, the letter being indicative that he was using AH to obtain bail [56];
 - (vii) that at the same time he was seeking to move forward the relationship with AH he had resumed contact with HC who was visiting him in September 2012 when she is described as his partner, HC not being aware that AH was also in contact and would be living with the appellant in future [58]; that HC was

totally unaware of the contents of the letter which directly contradicted the evidence of the appellant that she knew what was being said [60] and that whilst she was visiting him the appellant was also writing letters to AH seeking to re-establish the relationship; that after his release from prison around April 2013 the appellant had moved in with HC and her second child was due [67] (note to self - evidence was also given by HC's sister and father);

- (viii) that there was no contact between the appellant and his child by TB [85] and that the social worker, Miss Brown, had not approached the issues of the best interests of the children, the impact on the children of the removal of the appellant with independence and objectivity and, had not investigated or checked evidence that did not support the contention the appellant should remain for the benefit of the children and at times the evidence was obvious and easily verifiable [98]; that the appellant was saying different things to different people about his education and his remorse for his offences and about whom he was to establish a permanent relationship on release from prison [106];
- (ix) that the appellant continued to deny the very serious drugs offence [108];
- (x) that upholding the deportation order would be a significant severance of the relationship between the appellant and HC and the appellant and his children [123] but this was proportionate given that the offence is so serious [124].

10. The appellant sought permission to appeal on the grounds that the panel had erred;
 - (i) in concluding that the letters written to his former partner, AH, had been written at the same time as he had rekindled his relationship with HC, and that the quotation from a letter at [61] said to be a letter to AH was in fact a letter from HC;
 - (ii) that the judge strongly indicated that the Social Services were involved with HC and the child;
 - (iii) that the Tribunal had unfairly doubted that he was at low risk because he had not accepted the guilt of his offence; that the panel had not given proper weight to the opinion of the probation officer and had assumed that the risk of reoffending was dependent on admission of guilt.

11. On 3 April 2014 First-tier Tribunal Judge Eshun granted permission to appeal stating:

“It is arguable that the Tribunal made a material error of fact when they found at paragraph 61 that the appellant was stringing along two partners when in fact the letter relied on for that finding was written to HC (the appellant's current partner) not AH. It is also arguable that the Tribunal erred in law in questioning the appellant's risk of reoffending when he had been assessed as a person of low risk. The grounds disclose arguable errors of law.”

12. The appellant was not represented when he appeared before me. He explained that he did not have the full set of papers as they had not been forwarded by his former lawyers but he was unable to provide any documentary evidence of that. He did however have copies of the grant of permission and the determination and I was satisfied that given the limited scope of the hearing, that the appellant would not be disadvantaged by not having a full set of papers and I offered to give him a set of court papers should he require them. In the event he did not do so.
13. I consider the grounds in turn.

Ground 1

14. The starting point for considering this ground is the bundle of material submitted by the appellant to the First-tier Tribunal. As he submitted, it is evident from the printout of prison visits covering 28 October 2010 to 22 April 2013 that while HC him, visited as did her son, L, there is no indication of visits by AH although her son appears to have visited on several occasions. Ms Johnston did not, in her submissions take issue with that.
15. The index to the bundle describes the letters at page 178 to 191 as being between HC and the appellant; the letters at pages 192 to 212 are between AH and the appellant. The letters are not, for the most part clearly signed or dated, which makes it difficult to discern with ease when they were written or by whom. Given the contents of the letters, however, it is evident that the authors of the letters are as set out in the index to the bundle.
16. As to the dates of the letters, those between HC and the appellant are evidently from 2012, and consistent with the evidence that she only in that year regained contact with the appellant.
17. Turning to the letters between AH and the appellant, the letter at page 192 appears to have been franked on 31 March 2011, the other letters are less clear; the letter at page 201 is clearly date stamped 11/2010 and the subsequent letter at page 207 to 208 appears to have been franked on 19/11/2010. As Miss Johnstone accepted, these letters do not appear to have been contemporaneous with the appellant's renewal of his relationship with HC. She also fairly accepted that the letter quoted at paragraph 61 is in fact written to HC and not AH. It is also evidenced that the letter referred to by the Tribunal at [62] (page 184 to 187) in fact appears to be from HC given the reference to L (page 186), her son.
18. It is therefore evident that the Tribunal did make errors of fact as to when the letters were written which led them to conclude that the appellant's attempts to reconcile with AH were contemporaneous with his re-establishing his relationship with HC.
19. It does not, however, follow that this finding was material to the outcome of the appeal. What concerned the Tribunal was that the appellant said that HC had seen the letters between him and AH, but that in her evidence [53] HC said she had not

seen them, her understanding being that the appellant was in touch with AH because they had a child and he wanted to see the child. They record [54]:-

“It was evident in the hearing that HC was taken much aback about the contents of some of those letters. In the letters it is clear and evident that the appellant is proposing that he resume his relationship with AH and that they start to live together again. HC was clearly not aware that that had been intended or suggested. *Whatever else can be said the appellant had not told the truth about HC knowing of the contents of the letters and having seen them [my emphasis].*”

It appears from paragraph 56 that the Tribunal thought that some of the correspondence between AH and the appellant was in fact correspondence between HC and the appellant and thus their conclusion [58] that the appellant was seeking to put forward his relationship with AH *at the same time* as having resumed a relationship with HC is incorrect.

20. That said, it does not appear from the rest of the determination that this error of fact infected the principal findings of the Tribunal. Whilst they refer [81] to the contemporaneous relationships, that reference is oblique.
21. It is correct that the Tribunal did [93] state that the letters give a different complexion to the appellant’s position whilst in custody. That is sustainable because on any view the appellant had lied to HC about that nature of his correspondence with AH and that he had tried to reconcile with her; the Tribunal’s findings go only to the extent of the lies. It is manifest from the letters from AH that she had been encouraged by the appellant to believe that he wished to resume their relationship, despite his by then having had relationships with TB and HC both of whom had borne him children.
22. This is not, however, the only source of the Tribunal’s doubts about the appellant’s character. They were clearly, and for sustainable reasons, not impressed with the report of Ms Brown, an independent Social Worker. Have set out their valid criticism, the panel concluded:

“[94] There does not appear to be any assessment of the nature and commitment of the appellant of the relationship with AH in the report. The appellant appears clearly to have been willing to manipulate not only AH but also HC and others in his efforts to further his own ends.

[95] It is also to be noted that much of what is set out is due wholly to what the appellant and those immediately connected to him are now saying. Given the appellant’s ability to manipulate individuals in the past there appears to be no checking with Social Services, who appear to have been involved with a number of these young ladies and children, or the Domestic Violence Unit or previous partners. Indeed other than HC and the immediate family there is no evidence from Social Services or any other young ladies involved as to the relationship of the appellant and their children.”

23. Those criticisms are equally valid in light of the fact that the appellant had lied to HC about the nature of his relationship with AH while in prison, and the nature of that relationship.
24. Viewing the determination as a whole, it is evident that the conclusions the Tribunal reached with regard to the appellant's manipulative behaviour are not based exclusively or even mainly on the fact of what they wrongly thought was an attempt by the appellant to maintain or re-develop his relationship with AH whilst developing his relationship with HC. This is only one of a number of factors, nor is it the strongest. They rightly noted that the appellant had lied to HC about the nature of his relationship with AH while he was in prison.
25. It is also evident that the panel's conclusions with regard to Miss Brown's report are fundamental, wide-ranging and only partially related to her failure to engage with the appellant's apparent stringing along of two women at the same time, in this case AH and HC, and it is noted that there is no mistake as to the fact that the appellant had left AH with a child to enter into a relationship with TB with whom he had a child and then attempted to rekindle a relationship with AH whilst, at best, no longer in contact with HC and it does show that in light of the other concerns that the panel had [103] and [106] that the Tribunal fairly reached the conclusion that the appellant appeared to be saying different things to different people about his education, his remorse for offences, and about whether HC knew of the contents of letters between him and AH.
26. The errors and conclusions do not, however, appear to have affected the panel's conclusion [120] that the appellant has a significant relationship with HC and the child and took into account the positive aspects of the relationship. It is that relationship that the panel took into account in assessing proportionality.
27. It must also be borne in mind, in assessing the Tribunal's approach that this is case where the appellant had been sentenced to a term of imprisonment in excess of 4 years, and thus, it would only have been where there was something compelling which would, exceptionally, outweigh the significant weight attached to the public interest in deporting a foreign criminal.
28. Accordingly, I am not satisfied that this error was capable of affecting the decision in any material way.

Ground 2

29. It is not properly arguable that in recording at paragraph 95 that "as there appears to be no checking with Social Services, who appear to be involved with a number of these young ladies and children, or the Domestic Violence Unit or previous partners is a finding by the Tribunal that they were involved with HC and were involved with her son. It is merely a reference to the fact that there was documentary evidence before them that there was involvement with Social Services and other women with whom the appellant had had relationships. This ground is therefore without merit.

Ground 3

30. Contrary to what the appellant submitted, it is not properly arguable that the Tribunal erred in concluding that the appellant was not of low risk. The panel was not bound by the probation report and they were entitled to take account of the fact that probation report was prepared on the basis that, as it transpired, [104] the appellant had not told the truth about his educational background. It was also open to them on the evidence to conclude that the appellant, contrary to the impression he had given to the probation officer, did not fully accept the guilt for his crime.
31. While I note the appellant's submission that he had not denied his guilt, in his witness statement he says [71]:

"I have pleaded not guilty to the drugs offence because I did not know that Sayied had drugs on him. I maintain that I did not assist him in his supplying the drugs or helping him in any way. I think I was convicted because he turned prosecution witness and gave evidence against me. It was my word against him."

This is a clear indication that the appellant does not accept the finding by the court and the jury that he had conspired to supply the drugs. The panel were entitled to take this sustained denial into account in concluding that the appellant is not of low risk.

32. Further, and in any event, propensity to reoffend is not, particularly in the case of serious offences, a matter of great significance. As the Court of Appeal in **AM v SSHD [2012] EWCA Civ 1634** made clear, that the deportation in pursuit of a legitimate aim for preventing crime and disorder is therefore not to be seen as one dimensional in its effect, there is the effect from not only removing the risk of reoffending of the deportee himself but of deterring other foreign nationals in a similar position and the deportation of foreign criminals preserves public confidence in a system of control whose loss would itself tend towards crime and disorder. Again, in **DS (India) [2009] EWCA Civ 544** the public interest goes well beyond deterrence of crimes.

Conclusion

33. Accordingly, for the reasons set out above, I am satisfied that the First-tier Tribunal's decision did not involve the making of an error of law materially affect the outcome of the decision. I uphold the decision.

Signed

Date: 10 July 2014

Upper Tribunal Judge Rintoul