



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00866/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 10 November 2015

On 18 November 2015

Prepared 10 November 2015

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

MUHAMMAD SHAMRIZ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative

For the Respondent: Mr Walker

DECISION AND REASONS

1. The appellant, a citizen of Pakistan, born on 23 March 1971 appeals, with permission, against a decision of Judge of the First-tier Tribunal Ruth who in a determination promulgated on 3 March 2015 dismissed his appeal against a decision of the Secretary of State made under the provisions of Section 32(5) of the UK Borders Act 2007 to deport him.
2. The decision was made after the appellant had been convicted at the Old Bailey on 6 July 2013 for facilitating the acquisition of criminal property contrary to Section 328 of the Proceeds of Crime Act 2002. He was sentenced to 30 months' imprisonment.

3. The appellant entered Britain illegally in 1997 and asserts that he has remained here thereafter. In February 2012 he applied for leave to remain on the basis of long residence. That application was granted on 24 May 2012.
4. The appellant was informed of his liability to deportation and claimed that deportation would interfere with his rights under Article 8 of the ECHR.
5. The judge heard evidence from the appellant and also from a Romanian national, Ms Luca Petronela whom the appellant claimed to have married in a proxy marriage which had taken place in Guinea. There was no evidence that such a marriage would be regarded as lawful in Romania.
6. Having heard evidence which included Ms Petronela's evidence that she would be unable to live in Pakistan because she did not speak Urdu and feared being kidnapped there, the judge set out his findings of fact and conclusions in paragraphs 40 onwards of the determination.
7. He first considered the issue of private and family life. He noted a number of extremely serious discrepancies. These included the fact that the appellant relied on a marriage certificate from Guinea which had been celebrated on 16 October 2014 in the presence of two witnesses and following the payment of a dowry, whereas Ms Petronela had said that she was not married and there had been no marriage ceremony but she hoped to marry the appellant sometime in the future. She said that there was no marriage certificate and there had been no discussions with her family about marriage. There were considerable discrepancies between what the appellant said about how they had met and the evidence of his spouse. The appellant was unable to say which part of Romania his wife came from and the judge pointed out that in any event they did not share a common language, the appellant giving evidence through an Urdu interpreter and Ms Petronela through a Romanian speaking interpreter. Moreover also there had been a number of statements regarding the appellant's character put in from friends and family, none had mentioned his relationship with Ms Petronela.
8. The appellant had attended the Tribunal for an adjourned hearing in the past and had not mentioned having an EEA spouse and indeed he had informed the probation service in February 2014 that he had been in a relationship with a Pakistani woman for a long time but she had returned to Pakistan because of the length of the sentence.
9. The judge did not accept the evidence of the appellant's supporting witnesses and gave reasons for that.
10. He stated that the evidence of the appellant's private life was limited. Although he claimed to have worked as an upholster for many years, there was no document put forward in relation to his alleged employment. He noted a number of letters from the appellant's friends.

11. The judge, having referred to the judgment of the Court of Appeal in **MF (Nigeria) [2013] EWCA Civ 1192** referred to the provisions of paragraphs 398, 399 and 399A of the Rules stating that if the appellant did not meet the terms of those paragraphs it was appropriate to consider whether or not there were “‘exceptional circumstances’ as set out in paragraph 398 (now defined as ‘very compelling’ circumstances)”.
12. He stated the term “exceptional circumstances” dealt with the question of assessing proportionality on Article 8 grounds.
13. Having found that the appellant could not meet the requirements of paragraph 399(a) and 399(b) he considered that the appellant had been living continuously in Britain since 1997 but said there was no dispute that he had lived in Britain unlawfully between 1997 and 2012 and therefore the appellant could not satisfy the requirements of those rules. He went on to consider whether or not there were “very compelling circumstances” and having considered the evidence, the fact of the appellant’s crime and relevant case law, considered there was nothing to make the deportation of the appellant disproportionate. He noted, in any event, that the appellant had left Pakistan when he was already an adult and spent more of his life in Pakistan than in Britain.
14. Grounds of appeal were submitted which stated that the judge had failed to consider correct paragraphs 398 and 399(a) correctly in that he had referred to the issue of unlawful residence when considering paragraph 399(a) but that only related to post-July 2014 decisions as did the term “very compelling circumstances”. The grounds alleged that the judge had erred in equating “very compelling circumstances” to the provisions of Article 8 and that he had not addressed the relevant factors in Sections 117A through D of the 2002 Act. Moreover it was argued that he had ignored the length of the appellant’s residence in Britain and it was asserted that his attitude to the appellant’s reoffending was wrong as it was at odds with the probation officer’s report. It was then argued that he was in a durable relationship with an EEA family member.
15. The Secretary of State served a Rule 24 notice pointing out that the judge had directed himself appropriately and made reasonably sustainable findings which were open to him on the evidence. It was argued that Sections 117A to D did apply and that the judge had applied the correct Rules when considering paragraph 398 onwards of the Rules. The judge had properly addressed the issue of whether or not there were significant obstacles to the applicant’s integration into Pakistan in paragraph 80 of the determination and that his findings were sustainable.
16. On 27 October an application for an adjournment was made on the basis that the appellant’s Counsel was not available for the hearing. The application was refused on the basis there was sufficient time to arrange a new Counsel and a competent Counsel would be able to master the detail of the case.

17. At the hearing of the appeal before me the appellant appeared in person and was not represented by Counsel. He told me that his lawyer had had to go away urgently and that he had been unable to find another solicitor. I stated that as the application for the adjournment having been refused – the appellant was fully aware of this as he had a copy of the letter refusing the application for an adjournment with him – I was not prepared to adjourn the hearing but would hear from him. I made arrangements for an Urdu interpreter to be present. I noted from the file that, in the First-tier, an appeal on 1 December 2014 had been adjourned, directions being given by the Immigration Judge that:-

“The appellant take notice that this appeal will not be adjourned again because of any failure on his part to instruct his representatives or produce whatever documentation on which he relies.”

In reaching my decision I also took into account the nature of the grounds of appeal before me. Moreover, I consider that it is inappropriate for the court, when presented with a *fait accompli* – in a situation where an appellant turns up without a representative knowing full well that the application for an adjournment has been refused – to adjourn an appeal.

18. The appellant was asked for his submissions but only again stated that he applied for an adjournment. I asked him where his wife was. He stated that she was working and had not attended the hearing. Mr Walker then made his submissions relying on the Rule 24 notice and stating that it was abundantly clear that the judge had properly applied the relevant Rules and that it was clear that the appellant was not in a durable relationship with an EEA family member.
19. I asked the appellant if he wished to make any further submissions and he said that he did not.

Discussion

20. I consider that there is no error of law whatsoever in the decision of the First-tier Judge and indeed I consider that the grounds of appeal were misleading and without merit. The judge did apply the correct Immigration Rules and in paragraph 80 of the determination was correct to indicate that the term “very compelling circumstances” set out a test which was, in effect, the same as the test of whether or not a decision was disproportionate under Article 8 of the ECHR.
21. The judge moreover was correct to state that he had taken into account the requirements Section 117 of the 2002 Act as amended. The reality is that there is nothing whatsoever in that Section that could be of any assistance to the appellant.
22. Given the sentence received by the appellant, the judge was correct to point out that the appellant had committed a serious crime leading to a sentence of imprisonment for 30 months and to stress the public importance of the deportation of those who commit crimes: of relevance is

the deterrent effect. The issue of whether or not the appellant was likely to reoffend was therefore of far less relevance than the fact that the appellant could not meet the terms of the Rules and indeed that his claimed marriage to an EEA national was clearly a sham. It was correct to consider the reintegration of the appellant into Pakistan and the judge was entitled to find that he would be able to do so.

23. The judge correctly considered all relevant factors and his decision was fully open to him. I therefore find that the determination of the judge shall stand.

Signed

Date

Upper Tribunal Judge McGeachy