



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/01879/2013

THE IMMIGRATION ACTS

Heard at Field House
On 15th July 2015

Determination Promulgated
On 14th August 2015

Before

UPPER TRIBUNAL JUDGE SOUTHERN
UPPER TRIBUNAL JUDGE FINCH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ARMAN KRASNIQI

Respondent

Representation:

For the Appellant: Ms A. Brocklesby- Weller, Senior Home Office Presenting Officer
For the Respondent: None

DECISION AND REASONS

History of Appeal

1. The Respondent, who was born on 10th October 1990, is a national of Kosovo. He was granted entry clearance in July 1999 to join his father in the United Kingdom after the family had experienced persecution in Kosovo. His father's application for asylum was subsequently refused after a long delay and after the situation in Kosovo had changed and the Appellant was a party to an appeal which was allowed on Article 8 grounds on 1st June 2006. He was granted indefinite leave to remain in the United Kingdom on 13th September 2010.

2. By that time he had already met and started a relationship with his present fiancée in 2008. He had also been sentenced to a community order and a 12 month conditional discharge for taking a motor vehicle without consent, driving without insurance or a licence and theft and handling.
3. On 17th February 2011 he committed an offence of violent disorder for which he was subsequently sentenced to 18 months imprisonment on 6th January 2013. On 25th April 2012 he had also been sentenced to 8 months in prison for three counts of supplying a Class B drug, which offences were committed in December 2011.
4. On 9th September 2013 the Secretary of State decided that Section 32(5) of the UK Borders Act 2007 applied and made a deportation order against the Respondent. The Respondent appealed on 13th September 2013 and his appeal was allowed by First-tier Tribunal Judge Cameron in a decision promulgated on 7th October 2014.
5. The Secretary of State appealed on 15th October 2014 on the basis that the First-tier Tribunal Judge had failed to apply sub-paragraph 399(b)(iii) of the Immigration Rules. She also asserted that there were no insurmountable obstacles to the Respondent's fiancée relocating to Kosovo. In addition, she said that the Respondent's circumstances were not exceptional, any separation would have been caused by his own actions and his case was not sufficiently strong to outweigh the public interest in his deportation. She also submitted that the First-tier Tribunal Judge had erred in his assessment of what amounted to very significant obstacles to integration. In addition, she asserted that he had failed to give adequate consideration to the public interest in the Respondent's deportation, given the severity of his offence and had not properly balanced it in the proportionality assessment.
6. On 27th October 2014 First-tier Tribunal Judge Levin refused permission to appeal on the basis that neither the grounds nor the determination disclosed any arguable errors of law.
7. The Respondent renewed her application and on 19th February 2015 Upper Tribunal Judge Macleman granted permission to appeal on the basis that in substance the grounds "qualified for debate on whether the First-tier Judge's conclusions on the exceptions available to the Appellant under the Rules and statute were adequately supported by the evidence and the reasoning".

Error of Law Hearing

8. The Secretary of State accepted that the Respondent was in a genuine and subsisting relationship with his fiancée and that she is a British citizen. But at the hearing the Home Office Presenting Officer submitted that the Judge had not applied the correct test when he considered the effect on the Appellant's fiancée if he were to be deported to Kosovo.
9. In particular, the Home Office Presenting Officer pointed out that when considering sub-paragraph 399(b)(ii) of the Immigration Rules at paragraph 106 of his determination and reasons, the First-tier Tribunal Judge had referred to whether it was reasonable for the Appellant's fiancée to return to Kosovo. He had then considered whether it would be unjustifiably harsh for her to return in paragraph

114 before articulating the correct test of whether it would be unduly harsh for her to return in paragraph 124. Having considered the Home Office Presenting Officer's submissions, we are not satisfied that in itself this amounted to a material error of law as in paragraph 124 the First-tier Tribunal Judge did say that he was also "satisfied for the reasons already outlined above that it would be unduly harsh to expect the Appellant's fiancée to return to Kosovo to maintain her relationship with him there". Therefore, it is plain that he had considered all the evidence before applying the correct legal test.

10. Ms Brocklesby-Weller also sought to rely on extracts from Immigration Directorate Instructions *Chapter 13: Criminality Guidance in Article 8 ECHR Cases* in order to argue that the First-tier Tribunal Judge had not adopted the correct definition of 'unduly harsh'. However, these IDIs were not put before the First-tier Tribunal Judge and no reference was made to them in submissions. It was not an error of law for the judge to have no regard to something upon which no reliance was placed by a party's legal representative at the hearing before him.
11. But it is clear from the determination and reasons that at no point did the First-tier Tribunal Judge consider whether, for the purposes of sub-paragraph 399(b)(iii), it would be unduly harsh for the Respondent's fiancée to remain in the United Kingdom without him. The requirements in sub-paragraphs 399(b)(ii) and (iii) are disjunctive and both had to be satisfied for the exception to the presumption to deportation to apply when an appellant is in a genuine and subsisting relationship with a British citizen. In our view this did amount to an error of law but, for the reasons given below, we do not find that it was a material error of law, as the Appellant benefitted from another exception to the general rule relating to the public interest in the deportation of foreign criminals. The consequence is that the outcome of the appeal would have been no different had the legal error we have identified not been made.
12. The Respondent also sought to rely on the case of *AD Lee v Secretary of State for the Home Department* [2011] EWCA Civ 348 but that case considered the effect on a child of the removal of a father as a consequence of a deportation order. It did not consider the situation when an offender had himself been present in the United Kingdom from a very early age.
13. The First-tier Tribunal Judge also found that the Appellant fell within the exception contained in paragraph 399A of the Immigration Rules and Section 117C of the Nationality, Immigration and Asylum Act 2002. It was not disputed that he had been granted entry clearance to the United Kingdom at the age of 8 and that he was now 33 years old. The Respondent did not assert that his presence here had been unlawful during that time. In 2006, Designated Immigration Judge Coleman had found that the Appellant was already "westernised" and settled into his local school and neighbourhood and First-tier Tribunal Judge Cameron also accepted that the Appellant was socially and culturally integrated into the United Kingdom. The key remaining issue was whether there were very significant obstacles to his re-integration in Kosovo.
14. Ms Brocklesby-Weller submitted that the First-tier Tribunal Judge had misapplied the test as to what amounted to very significant obstacles and had merely relied on the length of the Appellant's residence in the United Kingdom.

15. We do not accept that submission. The First-tier Tribunal Judge gave detailed consideration to the serious nature of the Appellant's offences in paragraphs 108 and 118 of his decision and reasons. Between paragraphs 108 and 127 he also balanced all the necessary factors relating to the Appellant's return to Kosovo when considering whether there were very significant obstacles to his return there.
16. At paragraph 66 of his decision and reasons, the First-tier Tribunal Judge confirmed that in accordance with *Devaseelan* [2002] UKIAT 00702 he had taken as his starting point the findings of Designated Immigration Judge Coleman, who found that between 2002 and 2006 the Appellant was seriously ill with PTSD and that when he entered the United Kingdom the Appellant's father had been in need of international protection. At paragraph 68 of his decision and reasons the First-tier Tribunal Judge also noted that when the Appellant was in prison in 2013 he was receiving medication for his mental health problems. He also noted that Designated Immigration Judge Coleman found that the Appellant would not be able to obtain appropriate treatment in Kosovo and the First-tier Tribunal Judge also adopted this finding. The respondent offered nothing to justify any departure from those findings of fact, which the judge correctly accepted as an authoritative assessment of the circumstances as they were at the earlier hearing. Put another way, the judge has correctly applied the *Devaseelan* principle and his approach cannot be faulted. Further, it can be noted that the judge himself, at paragraph 68 of the determination, recorded the fact that the Respondent had said in evidence that he no longer took medication and so it is plain that regard was had to that change in the circumstances.
17. The First-tier Tribunal Judge also referred to *Masih (deportation – public interest – basic principles) Pakistan* [2012] UKUT 00046 (IAC) and the Upper Tribunal's finding that "for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in [this] country, very serious reasons are required to justify expulsion". In addition, the First-tier Tribunal Judge explicitly referred to the role of deterrence in paragraph 99 of his decision and reasons, so that it is plain that his approach was correct, identifying factors that spoke both for and against deportation and seeking to strike a balance between the competing interests in play. .
18. This may not have been the only outcome possible on the evidence. But this was a fact based assessment for the judge to make and, having heard oral evidence, he was best placed to do so. It is not possible to say that it was not reasonably open to him to reach the conclusion he did and his reasons for doing so, considered as a whole, are legally sufficient.
19. For all of these reasons we are satisfied that the judge made no material error of law so that there is no basis upon which his decision can be disturbed.

Conclusions:

1. The First-tier Tribunal Judge made no material error of law
2. The decision of First-tier Tribunal Judge Cameron is to stand.

3. The Secretary of State's appeal to the Upper Tribunal is dismissed.

Nadine Finch

Upper Tribunal Judge Finch

Date: 16th July 2015