



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

Appeal Number: DA/00202/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5th May 2016**

**Determination Promulgated
On 19th May 2016**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

ABDULLAH KARIM OMAR

Respondent

Representation:

For the Appellant: Mr D Clark, Senior Home Office Presenting Officer
For the Respondent: Mr C Emezio of Roli solicitors

DETERMINATION AND REASONS

1. The SSHD sought and was granted limited permission to appeal the decision of a First-tier Tribunal panel (First-tier Tribunal Judge Dineen and Mrs L R Schmitt JP) which allowed Mr Omar's appeal against a decision to deport him.
2. Permission was sought on the grounds – in essence – that
 - (i) The panel erred in allowing the appeal under Article 8 outside the Immigration Rules when the Immigration Rules provide a complete code;

- (ii) The panel made a material misdirection in law in finding that Mr Omar met Exception 1 in paragraph 399A of the Immigration Rules;
- (iii) The panel materially erred in failing to have adequate or any regard to evidence produced regarding Mr Omar's alleged criminal behaviour that had not resulted in criminal convictions, in so far as they affected conduct
- (iv) The panel materially erred in law in failing to refer to or address the public interest considerations in particular the risk of re-offending; the need to deter foreign criminals and the role of deportation as an expression of society's revulsion.

Permission was not granted with regards to (iii) namely the alleged criminal behaviour. The SSHD did not seek to renew the application for permission on that ground.

3. The SSHD sought permission to adduce evidence which was not before the First-tier Tribunal but was, it was submitted, relevant to the issues before the First-tier Tribunal in reaching their decision as to the credibility of Mr Omar and his mother and thus the credibility of the account given and in particular the length of time spent away from his country of origin. Mr Clark submitted that the evidence sought to be adduced was necessary in order to assist in the establishment of the materiality of the errors of law in the First-tier Tribunal panel decision. Mr Emezie submitted that the material sought to be adduced did not meet the *Ladd and Marshall* test, in particular that the material could not reasonably have been made available to the First-tier Tribunal panel if the SSHD had acted with due diligence prior to or at the hearing before them and that this had in effect been accepted by Mr Clark because it was acknowledged that the material was there although not on Mr Omar's file.
4. I heard submissions from both representatives on the basis both that I accepted the new evidence and that I did not. Having considered the provenance of the evidence sought to be adduced I refuse to admit it. The evidence was on Mr Omar's mother's Home Office file. Mr Omar had arrived in the UK as a dependant of his mother, who had applied for asylum with him as her dependant. She had been refused asylum but eventually granted indefinite leave to remain and he had been granted ILR in line. The evidence sought to be adduced included Mr Omar's mother's earlier asylum claim in a false name. Mr Clark said that although the material was available at the date of the First-tier Tribunal panel hearing, it had not been adduced because it was not before the caseworker and was not on his file. It was however plain, or should have been to the caseworker, from Mr Omar's file, that Mr Omar had arrived in the UK as a dependant of his mother and applied for asylum as her dependant and obtained ILR in line with her. Given the seriousness of potential deportation it would have been reasonable and indeed expected that the caseworker would have considered whether there was information about other family members available that could have been relevant to the consideration whether Mr Omar should be deported. These investigations would be the same as undertaken by the SSHD if a witness is tendered on behalf of an appellant who is not a British Citizen by birth – it seems to be usual practice for the SSHD to obtain disclosure of that witness's immigration history to enable effective cross-examination. The SSHD put her case in the manner she did based upon the evidence she relied upon;

she had not sought to obtain any additional evidence prior to the hearing and did not seek an adjournment in order to obtain such evidence. In these circumstances the evidence is not admitted.

5. In considering the grounds upon which permission to appeal was obtained, I have put out of my mind the evidence the SSHD sought to adduce.
6. Mr Omar arrived in the UK in 2004 aged 10. At the date of the decision the subject of appeal he was aged 19. His first conviction was in August 2011 and since that date he has accrued 20 convictions including seven offences of possession of cannabis, two of theft, one of robbery, one of resisting or obstructing a constable, one of possession of a bladed article or pointed article in a public place, one of possession of an offensive weapon, one of using threatening, abusive or insulting language or behaviour, one of making false representations and one of criminal damage.
7. The First-tier Tribunal panel found that notwithstanding the fact that Mr Omar had given Dr Marco false information (he had denied any drug use and failed to take any part in a future care plan), they accepted that he remained significantly dependant upon his mother, suffered from depression and that there still existed family life between him and his mother. The First-tier Tribunal do not identify the nature of the family life that exists between him and his mother. Mr Omar's evidence was that he did not go out, suffered from depression and relied upon his mother. He is stated to assist her with shopping but no other household chores. Dr Marco described the relationship as symbiotic.
8. A description of a relationship as symbiotic is a strong term to use. The First-tier Tribunal in adopting this analysis of Dr Marco has failed to take into account the evidence that was placed before Dr Marco and the acknowledgement by Mr Omar that he had given the Dr false information. There has been no analysis by the First-tier Tribunal of whether and to what extent the conclusions of the Dr are infected by this. There has been no analysis of Mr Omar's evidence that his convicting was because he had been led astray; an apparent failure by him to admit to any personal responsibility. It is difficult to see any analysis by the First-tier Tribunal of the impact of this and his offending on his mother given the claimed symbiosis of the relationship. There is a considerable difference between a symbiotic relationship and a relationship with his mother that is significant emotionally or psychologically. There has been no attempt by the Tribunal to consider the extent of that relationship, Mr Omar's age and the impact of that upon the relationship or his significant number of convictions over a relatively short period of time despite the claimed relationship with his mother.
9. The First-tier Tribunal make a finding that Mr Omar has been in the UK for most of his adult life. Whilst he has been in the UK for all of his adult life he had not, at the date of decision been in the UK for most of his life.
10. The First-tier Tribunal finds that Mr Omar is socially and culturally integrated in the UK. There is no reasoning for this finding. Indeed, the First-tier Tribunal states that his integration has to a large extent been anti-social. Mr Omar's evidence was that he has no interest in developing any skills or acquiring

education; he takes drugs. There was no recorded evidence that he has any interaction with society other than through his criminal behaviour. The First-tier Tribunal have not provided any reasons for finding that he is therefore socially and culturally integrated.

11. The First-tier Tribunal also found that he had no cultural or social ties with his country of origin. That is not the question. The question to be asked is whether there are insurmountable obstacles to his re-integration. There does not appear to have been any evidence why, if he does have such a close relationship with his mother, she could not return to Iraq with him (she is an Iraqi national) or why she would not be able to provide him with support. That he has been in the UK for a number of years does not necessarily result in obstacles to reintegration particularly given the lack of evidence before the Tribunal to make a finding that he had no family or other connections and that he had no outside interests (other than criminal activity). There has been no finding on the mother's role or potential role in re-integration. Given the evidence that he does not engage with society (other than through criminality) and given the evidence that he has a close relationship with his mother, it was incumbent upon the First-tier Tribunal to assess the extent to which, through her, he had retained knowledge and awareness of his cultural and social heritage and the extent to which that knowledge would or would not assist in re-integration. That was not done.
12. The finding by the First-tier Tribunal that Mr Omar meets s117C (4) Nationality Immigration and Asylum Act 2002 is plainly, on the basis of the evidence recorded and the reasoning applied, a material error of law.
13. In the light of the need to make primary findings of fact and that the scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal, I set the decision of the First-tier Tribunal and remit the case to the First-tier Tribunal to be re-made – no findings of fact to be retained.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit the appeal to the First-tier Tribunal for re-hearing.



Upper Tribunal Judge Coker
Date 16th May 2016