



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07962/2017**

THE IMMIGRATION ACTS

**Heard at Bradford
On 8 November 2018**

**Determination & Reasons
Promulgated
On 14 November 2018**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PETER ROBINSON

Respondent

Representation:

For the appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the respondent: None

DECISION AND REASONS

1. The appellant has appealed against a decision of the First-tier Tribunal ('FTT') dated 16 May 2018, in which Mr Robinson's appeal against a decision to make a deportation order was allowed on human rights grounds. I shall refer to the appellant as the SSHD and the respondent as Mr Robinson for the remainder of this decision.

2. Mr Robinson is a citizen of Serbia. He entered the United Kingdom ('UK') with his parents in 1971 when he was 15 months old. In 1974 he was granted indefinite leave to remain alongside his parents. In 1977 he was the subject of a care order and did not return to live with his parents until he was 16. His mother returned to Serbia in 1989/1990. She died in Serbia in 2009/10. He received a conditional discharge for theft in 2011. His father died in 2015. On 24 October 2016 he was sentenced to 18 months imprisonment for causing death by dangerous driving. The pre-sentence report indicates that there was no evidence to suggest that he was driving in a reckless or dangerous manner and he appeared genuinely remorseful. The offence was considered to be a tragic accident or momentary lapse of concentration and his reoffending risk was assessed to be low.

Procedural history

3. In a decision dated 16 July 2018, the Upper Tribunal ('UT') granted permission to appeal on the basis that arguably:
 - (i) further evaluation of the public interest in Mr Robinson's removal was required, as against what the FTT considered to be the very significant obstacles to his integration in Serbia.
 - (ii) Given that he had spoken Serbian to his parents before he was taken into care, the FTT was not entitled to assume that he would not be able to pick it up again.
4. The UT's first observation appears to be based upon the understanding that the public interest must be further factored into the exceptions set out at section 117C of the Nationality, Immigration and Asylum Act 2002 - see the guidance in MM (Uganda) v SSHD [2016] EWCA Civ 450. This submission does not appear in the SSHD's grounds of appeal.
5. The UT's second observation is based upon the SSHD's grounds of appeal, which entirely focus upon the contention that the findings of fact in support of the conclusion that Mr Robinson would face very significant obstacles in integrating into Serbia were not open to the FTT.
6. The matter now comes before me to decide whether the decision contains an error of law.

Hearing

7. Mr Diwnycz made it clear at the beginning of the hearing that he did not wish to rely upon the UT's first observation, when granting permission to appeal. He correctly accepted that following KO

(Nigeria) v SSHD [2018] UKSC 53 (24 October 2018) exception 1 in section 117C of the 2002 Act left no room for further balancing and is self-contained – see [21] and [22] of the judgment in KO.

8. Mr Diwnycz agreed with me that this left one ground of appeal relevant to the third criterion in section 117C(4) of the 2002 Act, i.e. sub-section (c), it being accepted that (a) and (b) were met. Mr Diwnycz submitted that the FTT was not entitled to make the factual findings it did, in support of its ultimate conclusion that Mr Robinson would face very significant obstacles to integration in Serbia.
9. I invited Mr Diwnycz to explain in what way the factual finding that Mr Robinson would find it difficult to ‘pick up’ Serbian was erroneous in law. He accepted that he was unable to do so and accepted that the FTT was entitled to make this finding of fact.
10. Mr Diwnycz made a brief passing reference to SSHD v Garzon [2018] EWCA Civ 1225, but accepted when pressed that this case is of very limited assistance here. The case dealt with the concept of ‘very compelling circumstances’ in section 117C(6) and in any event the factual matrix was very different.
11. Having heard from the SSHD, I did not need to trouble Mr Robinson, and indicated that there was no error of law in the FTT decision. I now give my written reasons for this.

Discussion

Findings of fact

12. The FTT heard oral evidence from Mr Robinson and two close friends. The FTT clearly considered detailed evidence explaining Mr Robinson’s troubled history as a child. Contrary to the UT’s observation when granting permission to appeal, the FTT noted the date of the care order. Mr Robinson was made the subject of a care order in 1977 when he had just turned 8 [3] and he remained living apart from his family until he was 16 [27]. Even when he returned to his family, he lived with his father and then his mother briefly, as his father threw him out and his mother returned to Serbia [27]. The FTT was therefore well aware that he must have spoken some Serbian when he was young but was entitled to accept the evidence that his knowledge was “*very limited*” at [51] given his extended period of time in care. The FTT was also entitled to reject the SSHD’s submission that he would find it very difficult to “*pick it up*” for the reasons provided: he had a difficult upbringing which affected his educational achievements.
13. I do not accept that the FTT ‘assumed’ that Mr Robinson would not be able to pick up Serbian to the extent required in normal life. The

FTT clearly considered with care the evidence advanced by the appellant to explain why he would have particular difficulties in the use of the language of Serbia and has not erred in law in accepting that evidence.

High threshold

14. The FTT directed itself to the high threshold required at [45], [53] and [55]. The submission in the grounds of appeal that the FTT, did not apply the requisite threshold, merely disagrees with the findings of fact reached. The FTT was entitled to find that the high threshold of very significant obstacles to integration was met given the following accepted findings of fact: Mr Robinson will be 50 in 2019 but spent almost the entirety of his life in the UK, having arrived as a toddler in 1971; the majority of his childhood was spent in care and he had a difficult upbringing which affected his educational achievements; he has no close family or friends in Serbia but has his step-mother and entire friendship network in the UK, who he is close to; he knows little about Serbia apart from six visits when he was younger but he has not returned for 27 years; he is unable to read or write Serbian and will not be able to pick it up. This difficulty in communication will be a barrier to finding and sustaining employment, and he will be entirely unable to support himself in Serbia. The FTT was entitled to find that the obstacles to integration for Mr Robinson are very significant, when these matters are viewed cumulatively. This is not a case of mere 'culture shock'. Rather, the FTT has identified why in this particular case there would be obstacles that meet the threshold of "very significant". The FTT was entitled to take into account Mr Robinson's very lengthy residence from a toddler in the UK and the communication difficulties he would have with the Serbian language.

Decision

15. The FTT decision does not contain a material error of law and I do not set it aside.

Signed: *UTJ Plimmer*

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
8 November 2018