



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

Appeal ref: HU/04771/2018

THE IMMIGRATION ACTS

Heard at Glasgow

Decision & Reasons
Promulgated

On 14 February 2019

On 19 February 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

MOHIT SONNY GOGNA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Maguire, Solicitors,
Glasgow

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant has permission to appeal against the decision of FtT Judge Lea, promulgated on 25 July 2018, dismissing his appeal against deportation ("the 2018 decision"). He insists only on paragraphs 3 (ii), (iv) and (v) of his grounds.
2. Ground (ii) contends thus:

“... the FtT erred as there was no, or inadequate, evidence in order for it to depart from the previous FtT’s findings [in 2014] that it would be unduly harsh for the appellant to be deported to India or for the FtT to depart from the previous finding that there were exceptional circumstances notwithstanding his further criminal offending – *Devaseelan* [2003] Imm AR 1. Further and in any event the findings at [20] ... are inconsistent with the previous FtT decision.”

3. Mr Winter referred to the decision of the FtT promulgated on 6 March 2014, reference DA/00138/2014 (“the 2014 decision”), upheld by the UT in a determination promulgated on 11 February 2015. He submitted that the only additional factor was the further offending, which did not bear upon whether there were exceptional circumstances or very harsh consequences. The 2014 decision, in particular at [41] and [45], was based on the same facts, and had regard to the same factors, such as the appellant’s visits to India. All relevant matters having been in existence, and having been taken into account, it was an error of law to come to another conclusion.
4. Mr Govan submitted on ground (ii) that the judgement of what was unduly harsh was fluid, not fixed for all time by the 2014 decision, but dependent upon the circumstances at a further date of decision, including serious continued offending after clear warnings from the respondent and from tribunals. There was no error in reaching a different view of whether there were exceptional compelling circumstances.
5. There was no dispute about the test in this case, which is the highest to resist deportation - in terms of paragraph 398 of the rules, whether “there are very compelling circumstances over and above those described in paragraphs 399 and 399A”. In 2014 the appellant succeeded (just) on the view that he met the requirements as the rules as they then stood - “no ties”. The 2018 decision might have been more precisely framed in the language of the rules, but it is clear enough from [20-21] that the appellant failed to show that he met paragraph 399A(c) as it is now - “very significant obstacles to his integration”. There were difficulties in the way of integration in India but not very significant obstacles, and nothing which took the case above the next test, the one it had to meet.
6. The FtT took the 2014 decision as a starting point at [16], and carefully noted its terms. Ground (ii) does not show that there is any principle in *Devaseelan* which should have governed the FtT’s decision-making in 2018 any further than it did.
7. Ground (iv) is as follows:

“... [the judge erred] by misunderstanding or operating on a misapprehension as to what the expert report said. The FtT states in the last sentence of [20] that it is suggested that the appellant’s conviction would cause him additional difficulty but the FtT notes that this would only be a difficulty if he was found indulging in any criminal activity in India. However, this is not what the expert report says. The expert report... states at page

36 (page 43 appellant's 3rd FtT bundle) ... that there is a risk of double jeopardy (regardless of whether the appellant commits further offences in India). The expert report also states ... that if the appellant is categorised as a "habitual offender" the appellant is at risk of preventive detention (regardless of whether the appellant commits further offences in India). As such the FtT erred in law and it is not inevitable that had the FtT properly understood the terms of the expert report it would have reached the same decision, particularly when the FtT has, itself, categorised the appellant as a persistent offender at [19]."

8. The expert report does say at page 36 that the Indian courts may punish the appellant for offences he has committed in the UK "regardless of whether or not he has already [been] tried in the foreign court". That statement is not justified by the legal materials cited in the report on extra-territorial jurisdiction. Those are to the effect of taking cognisance of convictions abroad, and of jurisdiction to try offences committed outside India. There is nothing which shows double jeopardy, or which would not be mirrored in the law of the UK, or which might contribute to a finding of "very compelling circumstances".
9. The second point in ground (iv) is the existence of preventive detention.
10. The ground is incorrect in suggesting that the report shows there to be such a possibility irrespective of offending in India.
11. The report does substantiate that preventive detention might arise if there were to be further offending in India. However, the judge accurately noted that matter at the end of [20], and obviously it did not lead her to allow the appeal. There is no error in that.
12. This is ground (v):

"[the judge erred] by failing to assess the psychological report... in particular section 7(iv) when read in light of the expert report and information demonstrating there is limited access to adequate facilities to deal with mental health issues."
13. There is, as Mr Govan pointed out, a glancing reference to the psychological report at [16]. However, that is the only reference and the decision does not deal with what the report says about the impact on the appellant of deportation.
14. The assessment at [6] of the report is that the appellant is experiencing stress and agitation over the possibility of return, which would be "likely to increase [his] vulnerability to developing psychological difficulties if faced with significant sources of stress ... for example, with regards to being deported ...". The author does not profess to be an expert on facilities in India, but suggests at [7 (iv)] that they are unlikely to be at the level of the UK.
15. Comparative lack of facilities may broadly be accepted; no doubt there are some excellent resources, but they will not be free to the general public.

16. Judge do not have to mention every item of evidence. Even if this might be considered an oversight, there was nothing in the psychological report which might have led to another outcome.
17. The grounds, separately and together, do not show that the 2018 decision should be set aside for having involved the making of any error on a point of law. That decision shall stand.
18. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

14 February 2019
UT Judge Macleman