



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

Appeal Number: HU/08884/2019

THE IMMIGRATION ACTS

Heard at Field House

On 14 January 2020

Decision & Reasons

Promulgated

On 30 January 2020

Before

**THE HONOURABLE LORD UIST
UPPER TRIBUNAL JUDGE KOPIECZEK**

Between

**F B
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Maqsood, Counsel instructed by Caversham Solicitors Ltd

For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Algeria born in 1984, appealed to the First-tier Tribunal against a decision dated 1 May 2019 to refuse a human rights claim within the context of a decision to make a deportation order.

2. The deportation order followed the appellant's convictions for two offences of possession or control of identity documents with intent to deceive committed on 7 August 2018, and one offence of possession or control of an article for use in fraud, committed between 1 January 2016 and 7 August 2018, for which he received a total sentence of 18 months' imprisonment on 19 October 2018 in the Crown Court at Canterbury. He has an earlier conviction on 27 February 2007 for possession of falsely or improperly obtained identity documents for which he received a sentence of imprisonment of six months.
3. The appellant's appeal against the respondent's decision dated 1 May 2019 came before First-tier Tribunal Judge Pooler ("the FtJ") at a hearing on 29 October 2019 which resulted in the appeal being dismissed.

The Grounds and Submissions

4. The grounds of appeal in relation to the FtJ's decision contend that the FtJ erred in concluding at [24] that the appellant demonstrated a propensity to act impulsively and at [25] that he had minimised his offending behaviour. In relation to the former, that appears to relate to the identity documents offence in 2018 whereby, on the appellant's account, his mother died earlier in the year and he attempted to leave the UK. It is argued that those facts are not sufficient to show propensity to act impulsively in circumstances where the appellant was "aggrieved" as a result of his mother's death, a matter which it is argued the FtJ did not consider.
5. In relation to the latter point (minimisation of his offending behaviour) it is contended that the FtJ was in error at [25] when stating that the appellant described his offending "as a big mistake", when what the appellant actually said was that it was his "biggest mistake". He had also said that he regretted his offending. What the appellant said ought to have been considered in the context of English not being his first language, it is argued.
6. The grounds further contend that there was no consideration of the risk or likelihood of reoffending which, on the facts, is a matter that would be resolved in the appellant's favour. It is further argued that there was no consideration of the character references provided and that "This factor is relevant in calibrating the scales of undue harshness".
7. In terms of the appellant's partner's health and the appellant's anxiety and depression, it is said that the FtJ erred in concluding that it would not be unduly harsh for the appellant's step-daughter M, to remain in the UK without the appellant. A relevant factor in that respect is that M's biological father does not have any involvement in her life and the appellant has stepped into her father's shoes to provide stability and security.

8. In addition, there was evidence of on-going treatment of the appellant's partner with a spinal specialist, a matter which the Ftj did not make any findings about. Furthermore, there was evidence as to M having felt neglected and having been referred to counselling due to the appellant's incarceration and evidence of his partner struggling with childcare. It is argued that the Ftj failed to make any findings on that evidence which was also relevant to the issue of undue harshness.
9. The grounds refer to evidence from the appellant's partner about her mother's depression and anxiety and her inability to provide support to the appellant's partner in his absence. Again, that is said to have been a matter that the Ftj failed to take into account.
10. Similarly, it is argued that the Ftj failed to assess the fact that the appellant's partner is now pregnant and due to give birth in April 2020, and how that would affect her ability to take care of M, particularly with her own health problems. Lastly, it is said that there was no consideration of the appellant's own health and the fact that he would be returning to Algeria with no family support, savings or property.
11. In submissions, Mr Maqsood relied on the grounds and skeleton argument which mirrors the grounds. His oral submissions emphasised different aspects of the grounds. It was submitted that in terms of the appellant's lack of family support, savings or property in Algeria, although that may at first sight not appear relevant to the question of undue harshness in relation to his step-daughter, it is relevant in terms of the role he would be able to play in her life, taking into account his health.
12. Whilst it was accepted that the Ftj did not need to set out every point relied on by the appellant, it was submitted that the issues that have been highlighted did need to be adjudicated upon.
13. In her submissions, Ms Jones also relied on her skeleton argument. We were referred to *Secretary of State for the Home Department v PG (Jamaica)* [2019] EWCA Civ 1213, in particular at [43] and [46] in terms of the analysis of undue hardship. *RA (s. 117C: "unduly harsh"; offence: serious) Iraq* [2019] UKUT 00123 (IAC) was similarly referred to in general terms in relation to its guidance on undue harshness.
14. Although there were character references from relatives and evidence from the appellant's partner, the weight to be attached to that evidence was a matter for the Ftj, it was submitted.
15. Similarly, Ms Jones argued that the Ftj was entitled to conclude as he did in relation to the propensity to act impulsively and in terms of minimisation of his behaviour.
16. As regards the complaint about a failure to take into account a lack of property, income or savings on return to Algeria, that matter has to be seen in the context of the appellant having attempted to return to Algeria

for his mother's funeral and using false documents to do so. It was submitted that his evidence as to his circumstances there could not be relied on.

17. In terms of medical evidence, before the FtJ there was only evidence of a referral for counselling in relation to M when the appellant was in prison. There was no other (documentary) evidence on the point.
18. As regards the appellant's mental health, Article 3 was not relied on and that matter must be balanced against his conduct.
19. The FtJ concluded that it would be unduly harsh for M to live in Algeria but found that it would not be unduly harsh for her to remain in the UK without the appellant.
20. In terms of the appellant's partner's pregnancy, there were no documents from social services or from the school to say that she was unable to cope with the demands of looking after a child. This was a matter that the FtJ assessed at [34] and [39].
21. In his reply, Mr Maqsood submitted that the respondent's submissions are relevant only to any re-making of the decision. The matters set out in the grounds are interconnected in terms of showing what effect the appellant's removal would have on the sponsor's ability to look after two children. For example, in terms of the evidence of her chronic back pain and treatment from a spinal specialist.

Our Assessment

22. We do not consider that there is any error of law in the FtJ having concluded that the appellant demonstrated a propensity to act impulsively. That finding at [24] was made in the context of the appellant wanting to leave the UK and going to Dover in order to do so, using false identity documents. The appellant's evidence before the FtJ, as summarised at [24], was that he acknowledged that he could have approached the respondent in order to return to Algeria but that would have taken too long. We consider that the FtJ was entitled to make the finding that he did in relation to those circumstances. Furthermore, that finding must also be seen in the context of what the FtJ described as a "clear pattern of offending behaviour". The appellant was convicted in 2007 for possessing an identity document to which he was not entitled, convicted in 2018 for similar offences, and has made attempts to enter the UK unlawfully, often with false documents, including in addition to those previously described, in about 2002, and again in 2010 and 2012 ([26]).
23. Similarly, the appellant having described the latest offence as a "mistake", was a clear basis for the FtJ's conclusion that the appellant sought to minimise his offending behaviour, particularly when seen in the context of his conduct overall. The emphasis in the grounds on the FtJ describing the appellant as having said it was a "big" mistake as opposed to "biggest"

unjustifiably seeks to elevate what is a trifling difference to one of significance.

24. In any event, even if, contrary to our view, those are findings to which the Ftj was not entitled, we do not consider that such would amount to an error of law, still less one that is material.
25. Although the grounds contend that the Ftj's failure to take into account the appellant's partner's on-going treatment with a spinal specialist was relevant to the issue of undue harshness in her remaining in the UK without the appellant, we are not satisfied that there is any merit in that complaint. In the first place, that relates to paragraph 399(b) in terms of his relationship with his partner but the appellant is not able to meet the requirements of that aspect of the Rules because it is not a relationship formed when the appellant was in the UK lawfully and when his immigration status was not precarious.
26. It is a matter that is relevant to s. 117C(5) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") but the Ftj made an assessment of that provision, from [37]. At [39] he concluded that the appellant's partner would undoubtedly face difficulties as a single parent who was pregnant at the date of hearing, but those difficulties would be faced by any partner bringing up children as a single parent. He found that it had not been established that the degree of harshness goes beyond what would necessarily be involved for any partner in those circumstances. We do not regard the absence of reference to his partner's back problems as establishing any error of law in the decision. In the first place, the Ftj was plainly aware of that evidence, having recorded it at [8]. Secondly, the medical evidence was that the deterioration in her back condition was caused by her having to drive for around three hours each way to visit the appellant whilst he was in detention. Those circumstances plainly would not apply in the event of the appellant's removal.
27. The contention that the Ftj failed to take into account the appellant's partner's pregnancy is plainly unsustainable, the Ftj having referred to it at [39].
28. Likewise, the Ftj undoubtedly did take into account the evidence in terms of M's feelings on separation from the appellant, at [30] referring to M's wishes and feelings and noting at [34] that there was no professional report in respect of M to indicate a level of concern outside the family. He found that whilst the outcome for her may be regarded as harsh, that level of harshness was one that was acceptable or justifiable in the context of the deportation of a foreign criminal.
29. As regards the appellant's circumstances on return to Algeria, as Ms Jones submitted, it is relevant that the appellant himself sought to return to Algeria in 2018, albeit that that was following the death of his mother.

30. In terms of the appellant's own health and his circumstances on return to Algeria, those are not matters that are directly relevant to the issues of undue harshness as it affects the appellant's partner. Neither could it realistically be argued that those matters, in combination with any of the other matters in favour of the appellant, amount to very compelling circumstances within paragraph 398, or over and above the Exceptions within s. 117C (see *NA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 662 at [27]), such as to outweigh the public interest in his deportation. Although the grounds at [18] assert that the appellant would have no family support in Algeria, according to the FtJ's typed record of proceedings the appellant's evidence was that he had married sisters in Algeria as well as his father. Even if we do not have regard to that record of the evidence, given that the parties did not have the opportunity to address us on it, it is nevertheless the case that the appellant has not said that he has no family there.
31. As regards the character references, whilst there is no express reference to them in the FtJ's decision, such a lack of reference does not amount to an error of law. A judge is not expected to refer to every piece of evidence. Secondly, those references, which, for the most part, refer to the appellant's character, could not inform the assessment of undue harshness in terms of the appellant's partner or his step-daughter M. They would, otherwise, attract minimal weight in terms of any assessment outside the Rules or Exception 1 within s. 117C as to very compelling circumstances.
32. In summary, we are not satisfied that there is any error of law in the FtJ's decision in any respect.

Decision

33. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to dismiss the appeal therefore stands.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Upper Tribunal Judge Kopieczek

23/1/20