



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

**Appeal Number: HU/04027/2019**

**THE IMMIGRATION ACTS**

**Heard in the Royal Courts of Justice**

**Decision & Reasons  
Promulgated**

**On the 13<sup>th</sup> September 2021**

**On the 20<sup>th</sup> October 2021**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**LEONARD THAQI**

(anonymity direction not made)

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

(extempore judgment)

1. This is an appeal against a decision of the First-tier Tribunal, Judge Adio, promulgated on 12 March 2020, dismissing the appellant's appeal against a decision to refuse him leave to remain on human rights grounds dated 18 February 2019.
2. Before me the Secretary of State was represented by Mr S Whitwell and the appellant appeared in person. The appellant has previously been represented by Counsel and asked me to rely on the grounds and further grounds for permission drawn by Ms Helen Foot of Counsel who has represented him on

several previous occasions. Before me the appellant conducted himself calmly and with considerable dignity and I appreciate that. He made clear that he wanted me to decide the case on the basis of Ms Foot's submissions.

3. This case has a history of delay and adjournment. Mr Thaqi was particularly aggrieved that it looked at some point as though he had failed to attend and was being difficult with the Tribunal when in fact he was in no position to attend because he was in custody. With respect he misunderstood the position; he was not being blamed for any of the delays or adjournment and I am happy to say so on the record. Further, although it is plainly right the case, Mr Whitwell agreed any earlier delay has not been the appellant's fault and he is not being criticised or penalised in any way for the previous failures to progress the case. Where mistakes have been made that have not been the fault of the appellant.
4. This is a case where, as well as the grounds and renewed grounds, I have a skeleton argument rather than a Rule 24 notice from the Secretary of State. I have given them particular attention because they set out clearly the difference between the parties.
5. There are three grounds challenging the First-tier Tribunal's decision. These were renewed in the renewal grounds although they are explained slightly differently.
6. The third ground is plainly right but not necessarily material. It is as the appellant's case before the First-tier Tribunal that the case should be decided outside the Immigration Rules because it was not decided within the Immigration Rules and the Rules did not apply. The judge decided to follow a decision known as **Andell** but since then another case has been reported, namely **SC (paras A398 - 339D: 'foreign criminal': procedure) Albania [2020] UKUT 00187 (IAC)** which makes quite plain that **Andell** was wrongly decided and Mr Whitwell concedes that this ground is made out but it is only relevant if both ground 1 and ground 2 are sustained.
7. Ground 2 is the next one to consider because it is in some ways very straightforward. The Secretary of State's decision was on the basis that the appellant is a persistent offender. I have to say I do find this extraordinary because it has been established that the appellant is somebody who has caused serious harm. This was decided by the Upper Tribunal, overturning a contrary decision of the First-tier Tribunal, and the Upper Tribunal's decision was expressly endorsed by Lord Justice Laws in the Court of Appeal. Why the Secretary of State bothered herself with issues of "persistence" when there is a clear finding that the appellant had caused serious harm is a mystery that I do not have to resolve.
8. It is difficult for a judge when points that are obvious have not been taken by the Secretary of State because the judge has a duty to be fair, and that means being fair to both sides, but even when hearing an appeal the judge is not normally a primary decision maker.
9. However, in the context of Article 8 appeals the judge is obliged to apply Part 5A of the Nationality, Immigration and Asylum Act 2002 and is obliged to work through the criteria set out there. If the judge had done that, and he did not,

he would have had to have asked himself if the offender is someone who has caused serious harm and would have had clear evidence that that was a finding that was binding on him and that nothing whatsoever in the papers suggested a contrary conclusion. Mr Whitwell argued that failure to apply the 2002 Act was an error that was wholly immaterial because it could only have been resolved one way and that way was to find that Part 5A of the Act applied. I follow that. I have decided that that is correct and that is sufficient to lead me to dismiss the appeal but it is not my main reason for dismissing the appeal.

10. My main reason for dismissing the appeal is that, having the benefit of considering the papers very carefully, I find no actual error in Judge Adio's decision that the appellant is a persistent offender. The phrase "persistent offender" is, probably quite deliberately, not defined precisely and is curious phrase in that a person can cease to be a persistent offender and become a persistent offender again by renewing the offending. The judge was very aware of this and directed himself expressly to the decision in **Chege ("is a persistent offender") [2016] UKUT 00187**.
11. What the judge did not do, and what the judge is criticised for not doing in ground 1, is say expressly that a "persistent offender" is somebody who persistently gets into trouble. There is merit in criticism and that is probably why permission was granted, but when I read the decision as a whole it is a criticism that cannot be sustained. What Judge Adio plainly did was look at the number of offences and the period of time in which they took place and concluded that they were sufficient to make the appellant a persistent offender. The point of a person being a persistent offender is they become subject to deportation even though the offences themselves are not of the utmost severity. When they are persistent the Secretary of State is entitled to take the view that enough is enough and a person who persistently offends is subject to Part 5A of the Act. The weakest spot in the judge's reasoning is there was a gap of close to three years between the last offence and the decision but that is not the kind of gap that means the judge was not entitled to conclude that the appellant was a persistent offender, he was somebody who the judge found kept getting into trouble and even though the Decision and Reasons would have been improved if there had been express reference to that test, I cannot say that this decision is perverse or in any way wrong in law.
12. The decision was open to the judge and adequate reasons have been given. It follows therefore that the appeal is dismissed.
13. There is another matter which I mention in passing. On an earlier occasions Upper Tribunal Judge Canavan gave directions intended to encourage the final determination of the appeal without a further adjournment if an error of law had been found.
14. It has been established that the appellant has now reoffended and has been sentenced to prison for over twelve months, I think it was for fifteen months, for drugs offences. That puts him in the category of "foreign offender" beyond any possible argument and, in the event of his appeal having to be re-made, it will be re-made in the light of the evidence of his current circumstances, including his being a "foreign offender".

15. The appellant had made no application to adduce further evidence before me even though the mechanism for doing that was explained clearly in Judge Canavan's order.
16. Judge Adio found in very clear terms, and quite contrary to the Secretary of State's position, that the appellant does have a long term relationship with his partner. His partner attended today and I note was here early, in good time, and has been alert and interested in proceedings. The decision of the First-tier Tribunal to dismiss the appeal was not criticised in any way for its approach to family life between partners.
17. It is an unhappy feature of deportation cases that partners are often left without the person they care about because of something the person has done, not the partner. It is how deportation works and it is not attractive but the answer to that is to avoid criminal behaviour.
18. It follows therefore that having considered the arguments I am satisfied that there is no material error in the decision and I dismiss the appeal.

**Notice of Decision**

19. The appellant's appeal is dismissed.

Jonathan Perkins

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

Dated 24 September 2021