



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

Appeal Number: HU/05817/2020

THE IMMIGRATION ACTS

Heard at Field House via MS Teams

On: 15 November 2021

**Decision & Reasons
Promulgated**

On: 22 November 2021

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

OC

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

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

For the Respondent: Ms H Vamedeva, counsel instructed by UK Migration
Lawyers Ltd

DECISION AND REASONS

Introduction

- 1.** This is an appeal against the decision of First-tier Tribunal Judge Kemp MBE, promulgated on 17 February 2021. Permission to appeal was granted by First-tier Tribunal Judge Scott Baker on 6 April 2021.

Anonymity

- 2.** An anonymity direction was made previously and is reiterated below because the respondent is suffering from serious mental health issues.

Background

- 3.** The respondent was born in the United Kingdom in 1994 and is a national of the Turkish controlled area of Cyprus. He was granted indefinite leave to remain in 2003 based on his length of residence. The respondent was convicted of an offence in 2016 and sentenced to 90 months' imprisonment. On 7 October 2019, a decision was taken to refuse the respondent's human rights claim and to decide to deport him. It is this decision which is the subject of this appeal. The respondent relied only on his private life including his place of birth and that he had always lived in the UK. Owing to the length of his sentence, the respondent was required to demonstrate that there were very compelling circumstances in play. The Secretary of State was not satisfied that he could do so.
- 4.** The respondent was removed from the UK on 4 December 2019. He sought revocation of the deportation order. That application was refused on 1 May 2020, and it is this decision which is the subject of this appeal.

The decision of the First-tier Tribunal

- 5.** The First-tier Tribunal heard evidence from the respondent's mother and two brothers and considered a psychiatric report which addressed the respondent's current mental state and ability to cope in Cyprus as well as his medical records which showed that he was suffering from serious psychotic symptoms in the years leading up to his conviction. The First-tier Tribunal judge concluded, inter alia, that the respondent was suffering from a significant mental health problem which had yet to be effectively addressed and that he lacked support in Cyprus and that these circumstances amounted to very compelling circumstances which outweighed the continuation of the deportation order. Thus, the human rights appeal was allowed.

The grounds of appeal

- 6.** There was one ground of appeal, that the judge failed to give adequate findings on a material matter, that matter being the judge's finding that the test of very compelling circumstances was met.
- 7.** Permission to appeal was granted on the basis sought.
- 8.** The respondent did not file a Rule 24 response.

The hearing

- 9.** Mr Whitwell relied on the grounds drafted by his colleague. He relied on *EYF(Turkey)* [2019] EWCA Civ 592, arguing that the First-tier Tribunal

failed to acknowledge that deportation following criminal offending should be the usual course of events. He added that the respondent's mental health was not relied upon as mitigating circumstances for the offending and that it was strange it was being used for revoking a deportation order. Mr Whitwell contended that adequate reasons had not been provided and requested that the decision and reasons be set aside.

- 10.** Ms Vamedeva contended that the Judge provided adequate reasons and that the finding of very compelling circumstances was based on Dr Ahmed's medical report. In that report the respondent's circumstances were analysed, including the deterioration of his mental health and his need for family support. While the respondent's maternal grandparents were in Cyprus, they are aged in their eighties and unable to provide the support he needs. Compelling reasons were discussed in the decision, and it was incorrect to say the judge had not analysed the legal framework, he did so and that is why he arrived at the decision he did. Dr Ahmed's report did not comment on services in the country of return but concluded that the respondent required psychological support which could be provided by his relatives in the United Kingdom, including six siblings, who are British citizens.
- 11.** At the end of the hearing, I informed the representatives that there was no material error of law in the decision of the First-tier Tribunal and that the decision was upheld.

Decision on error of law

- 12.** The sole ground in this case is that the judge failed to give adequate reasons for concluding that there were very compelling circumstances in this case. Mr Whitwell relied on the grounds in full and had very little to add. The only new point was his submission that the judge failed to take into consideration that deportation was the usual consequence of offending, with reference to *EYF(Turkey)*. I find that the judge demonstrated awareness of this duty, indeed at [17] the judge says, *"given the length of the appellant's sentence then it will only be in exceptional circumstances that the public interest in maintaining the deportation order will be outweighed by other factors."* It is beyond doubt that the judge correctly directed themselves regarding the public interest and the relative rarity of a case being able to succeed in the light of such offending.
- 13.** The grounds make much of what is little more than the judge recording the respondent's submissions at [27] as to his failure to challenge his removal. There is no support for the suggestion made in the grounds that the respondent had been prejudiced and that this somehow contributed to the judge allowing the appeal. While the judge found that the respondent lacked the capacity to defend himself, this was borne out by the facts, as summarised by Ms Vamedeva. Those facts include that the respondent had a day's notice of his removal, and his family were unable to find legal

representation in that time. In any event, this issue played no part in the judge's finding of very compelling circumstances.

- 14.** The grounds comment at paragraph 4 that there was a lack of clarity as to why Dr Ahmed found that the respondent could not access mental health services. As Ms Vamadeva submitted, Dr Ahmed specifically avoided commenting on what mental health treatment was available in Cyprus; the focus of his opinion was the appellant's need for psychological support.
- 15.** The other issues mentioned in the grounds amount to mere disagreement with the judge's decision.
- 16.** The First-tier Tribunal judge provided a detailed and careful assessment of the respondent's Article 8 claim. The judge gave clear reasons for concluding that there were very compelling circumstances from [25] onwards. Those reasons include the following. The respondent was living in poor conditions near his elderly grandparents with whom he could not interact owing to the pandemic restrictions [26]. The respondent's mental state had declined since his removal, and he was expressing suicidal ideation. The mental health symptoms had led to the respondent not wanting to or failing to take either his psychotropic medication or that which he required for epilepsy. The judge accepted the evidence of Dr Ahmed as well as that of the respondent's mother to the effect that the respondent's grandparents were unable to provide the constant supervision he needed. The judge further accepted the evidence of the respondent's brother, which was consistent with other evidence, that the respondent was displaying delusional thoughts and behaviour. There is no criticism of any of these findings in the grounds.
- 17.** Contrary to what is suggested in the grounds, the judge took account of the submissions made on behalf of the Secretary of State regarding the availability of mental health services in Cyprus as well as the respondent's attitude to treatment. The judge was further entitled to find it relevant that the appellant had been born and spent his formative years in the UK and had hitherto had little contact with his relatives in Cyprus and that he was not found to be a dangerous person by the sentencing judge. The judge carried out a balance sheet exercise which fully considered the public interest in deportation as well as other matters which were not in the respondent's favour. The Secretary of State's challenge in this case is little more than a disagreement with the decision reached.
- 18.** There was no material error of law in the judge's decision and reasons and the decision is upheld.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is upheld.

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 their 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.

Signed:

Date 16 November 2021

Upper Tribunal Judge Kamara

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent" is that appearing on the covering letter or covering email.