



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

Appeal Number: DA/02423/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29 October 2014**

**Determination Promulgated  
On 3 November 2014**

**Before**

**Upper Tribunal Judge Southern**

**Between**

**FATEH SIAMER**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T. Hodson, counsel instructed by Elder Rahimi, solicitors  
For the Respondent: Mr S. Walker, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, who is a citizen of Algeria born on 2 February 1970, has been granted permission to appeal against the decision of First-tier Tribunal Judge Traynor, sitting with a non-legal member of that tribunal who, by a determination promulgated on 19 August 2014, dismissed the appellant's appeal against the deportation order made as a consequence of his conviction of an offence of possessing controlled drugs with intent to supply, for which he was sentenced to 18 months imprisonment.

2. The grounds upon which the appellant appealed against the deportation order were founded upon a claim that there would be an impermissible interference with rights protected by article 8 of the ECHR. That was because the appellant had fathered a child in the United Kingdom as a consequence of a brief relationship with the child's mother. Although he had never lived with the child's mother (although his former representatives had incorrectly asserted otherwise in letters sent to the respondent) he said he had a continuing relationship with the child that should be respected, both to accommodate the child's best interests and to afford the respect to their family life together that was assured by the Convention.
3. The appellant had first come to notice in April 2002 when he applied for asylum, saying that he had arrived in the United Kingdom a few days earlier having produced a forged Italian identification card to secure entry, He said that the only country he had travelled through prior to entering the United Kingdom was France, but that was not true because sometime later his Algerian passport was produced showing a Schengen visa issued in Spain in 2001. The date offered as to his date of entry cannot be considered reliable either because he was subsequently to assert, when unsuccessfully seeking a residence card on the basis of a relationship with an EEA national, that he had arrived in 2000.
4. The appellant's appeal against the removal decision that accompanied refusal of his asylum claim was dismissed following a hearing before an adjudicator on 4 November 2002. In rejecting as untrue all that the applicant had advanced in support of his claim to be at risk on return to Algeria the adjudicator said:

"I have reached the firm conclusion that this appellant is not an honest and truthful witness. He has fabricated the central part of his claim."

5. Despite that, the appellant did not leave the United Kingdom and he was not removed. In 2004 he was married to a Portuguese national but two applications for a right of residence on that account were refused, in September 2005 and February 2006, because it was established that she was not exercising Treaty rights in this country. Undeterred, the appellant made a third such application, this time successfully, with the result that he was granted a right of residence until 11 July 2011. Interestingly, in that application the appellant gave a third different date of entry into the United Kingdom. Having said previously that he had arrived in April 2002 and December 2000, he now asserted that he entered in December 2001.
6. It was in February 2011 that the appellant was arrested for the offence for which he was subsequently sentenced to imprisonment and it was in response to a request from the respondent that he provide any reasons why he should not be made subject to a deportation order that he gave details of his daughter, who was born on 16 June 2010 and who lived with her mother, Ms R, who is a Tunisian national present with limited leave to remain. The appellant no longer sought to rely upon a relationship with an EEA national and there had been a divorce in respect of the marriage he had entered into with the Portuguese national relied upon for the earlier applications for a residence card.
7. The respondent considered all that had been advanced on the appellant's behalf but decided that the deportation order was appropriate. The appellant was a foreign

criminal whose deportation was in the public interest and the respondent did not accept that he fell into any of the statutory exceptions provided by section 33 of the UK Borders Act 2007. No evidence had been provided that the child or the child's mother relied upon the appellant for emotional, financial or physical support and the respondent did not accept that there was a genuine and subsisting relationship with the child. Even if that had been the case, the appellant did not meet the requirements of the immigration rules because neither the child nor her mother were British citizens or settled and, alternatively, there was nothing to suggest that any family life that might exist could not be carried on together in Tunisia. Nor could the respondent identify anything disclosed by the application that called for the grant of leave outside the rules in order to secure an outcome compliant with article 8 of the ECHR.

8. The appellant's appeal against that decision came before the judge of the First-tier Tribunal on 10 June 2014. He heard oral evidence from the appellant, Ms R the mother of his child and from two other witnesses called to support the appellant's case. In what can only be described as a detailed and carefully written determination the judge set out a summary of the evidence before him and an explanation for his decision to dismiss the appeal.
9. The judge noted that after the appellant had secured his residence card on the basis of marriage to the Portuguese national from whom he is now divorced, he was able to travel to Algeria for visits in 2007, 2008 and 2009. The appellant said that his marriage to the EEA national had failed in November of 2009 and he had met Ms R in September 2009. A relationship developed although it came to an end shortly after the birth of the child in June 2010. He was arrested in March 2011 after having retrieved the package containing 12.9 kilograms of cannabis he had hidden in the home occupied only by Ms R and her daughter, he having retained a key to Ms R's home. He was released on bail until sentenced to a term of imprisonment on 15 November 2011 but during that period was not living with Ms R.
10. The appellant said that while in prison he had maintained contact with his daughter by telephone and after his release continued to maintain contact. Although he lived in London and the child lived with her mother in Huddersfield, he said he had visited them in Huddersfield and they had visited him in London. By the date of the appeal hearing his daughter was nearly 4 years old. He wanted to remain here so that he could play a positive part in his daughter's life.
11. In cross examination, the judge recorded, the appellant said that he had lived with the child and her mother for only a few months after her birth in June 2010. There was telephone contact between March and May 2011 while he was on bail following his arrest, although it was pointed out to him that in her witness statement Ms R had said that he had had no contact with her daughter. However, since his release from prison the appellant insisted that he had seen his daughter regularly, "every month or two months and sometimes every fifteen days".
12. In her oral evidence before the judge Ms R said that after she had moved to Huddersfield in October 2011 there was no contact with the appellant for over a year. She accepted that a letter that purported to be from her which had indicated something different had been written by a friend and was not true in what it

asserted. She confirmed also that assertions made in an earlier witness statement that were supportive of the appellant's account of his relationship with his daughter were also not true, for which she apologised.

13. The judge recorded that Ms R's evidence was that the appellant had never lived with her and her daughter. Although he came to spend days with them he would not stay. He did though maintain regular contact with his daughter by telephone and Skype and when she came to London to visit friends during school holidays the appellant would see his daughter almost daily and on one occasion she had spent two nights with him.
14. The judge's findings are lengthy and detailed and are set out between paragraphs 59-75. Mr Hodson, who appeared before the First-tier Tribunal also, realistically and quite properly made clear at the outset of that hearing that it was accepted that the appellant could not succeed under the immigration rules and it was not arguable that his claim considered outside the rules could succeed on private life grounds under an article 8 assessment. Therefore, the focus of his submissions was upon the family life between the appellant and his daughter and what was in the best interest of that child. Having considered in detail the aspects of the evidence he considered important, the judge drew all this together and said:

“The tribunal is obliged to give the public interest significant weight when considering the criminal conduct of the appellant. Whilst we find that he does have a relationship with his four year old child, we take into account the child's very young age and the fact that the vast majority of communication is not face-to-face but through the medium of telephone contact and Internet contact through Skype. We are satisfied that if the child's mother wishes to maintain that level of contact between the appellant and the child then it is open to her to ensure that those lines of communication can be maintained upon the appellant's return to Algeria. We find that the child's best interests will be best served by her continuing to live with her mother, who is the only parent with whom she has ever lived. We are satisfied that when the appellant's mother has visited London it has, in the main, been at half term and school holidays to visit her friends and not as a specific arrangement for the child to see the appellant. Given the age of the child and the fact that she has barely started her education, we find that visits at half term or school holidays can only have occurred on a few limited occasions. Whilst we accept that there is photographic evidence depicting the appellant with the child, we find that most of the photographs have been taken within the course of the past six months and have been taken with a view to seeking to present a relationship which, in reality, is no more than that which we have described above, namely telephone calls and Internet contact.

Therefore, when we have taken this evidence and weighed it in the balance, we find that the interests of the child will not be adversely affected as a consequence by the appellant's removal and the respondent's obligations to protect the wider public of the United Kingdom from crime and disorder significantly outweighs that relationship. Following the decision in **AD Lee** we are satisfied that the appellant's conduct justifies removal and if one of the

consequences is that he will not have the opportunity of occasionally seeing his child face-to-face then that has to be the outcome of his own actions.

Therefore, in answering the question as to whether or not there are exceptional circumstances in this case, we find there are none. Even if we are wrong in that respect, following the approach directed in **Razgar**, whilst we accept that there is a limited family life between the appellant (and) the child, because we accept the relationship is being maintained, we nevertheless find that such interference is both reasonable and proportionate when weighed against the respondent's obligations to protect the wider public of the United Kingdom from crime and disorder. We would emphasise that in reaching a decision we have made the child's interests our primary consideration but find that the child would not be adversely affected by the appellant's removal, over and above the fact that she may not see him on those infrequent occasions when she has visited London. We find there is no evidence that the appellant has actually visited her in Huddersfield and discount the opponent's claims that he has done so."

15. Mr Hodson's grounds for seeking to appeal against those conclusions fall broadly into two categories. He submits that the judge left out of account material matters and that there were errors of fact which, being factored into the decision making process, render the decision itself unsafe.

16. The first issue raised by Mr Hodson is the approach taken by the judge to the sentencing remarks of the judge who sentenced the appellant to imprisonment. He submits that Judge Traynor took a flawed approach because he failed to appreciate that the appellant was indicted with a number of others whose role in the overall conspiracy was far more serious, as reflected in the sentences imposed. He said that the judge was wrong to say, at paragraph 68 of the determination:

"... the Sentencing Judge considered the Appellant's conduct to be particularly serious..."

Because, properly understood, all the sentencing judge was saying, as he was required to, was that the offence was of a level of seriousness such that only a custodial sentence could be justified. Indeed, the judge made clear that he distinguished the appellant from other defendants in recognising that he played a more limited role in the overall conspiracy than did others.

17. I do not accept that submission. Mr Hodson is entirely correct to say that the judge reflected in the sentences imposed the varying roles in the overall conspiracy taken by the various defendants. But in sentencing this appellant he said also this:

"You pleaded guilty, I recognise, at a very early stage to one Count of supplying cannabis on 2 February. Your role was limited to that extent, but nevertheless you knew full well what Mr Amri was involved in. You agreed to get involved in that, and it did involve you in quite a detailed operation, even over that short period of time. You had to go and collect that drug from somebody. You had to then take it back to your premises, or your girlfriend's premises, and make arrangements to store it, albeit over a fairly limited period of three days.

What is more important is that you knew precisely what was in that package – 12.9 kg of cannabis. It was a significant amount of the drug. People like you, who help conspirators of this nature, are crucial to the operation of a criminal conspiracy of this type. Without people like you, willing to hold on to the drug, willing to supply it to whoever it needs to go to, the operation of that conspiracy is made all the more difficult. It is impossible not to treat this offence as being so serious, I am afraid, that's only custody is the option in your case."

18. The approach urged in not, in any event, the correct one because it leaves out of account an important matter. As the appellant does not fall within one of the statutory exceptions, there is a statutory presumption that deportation is in the public interest because the appellant is a foreign criminal. He is a foreign criminal because he has committed an offence for which he was sentenced to more than 12 months imprisonment. That presumption is not displaced and the public interest in his deportation is not in any way reduced by the fact that he committed the offence in association with others who were more deeply involved in the criminal venture to which they each contributed.
19. The grounds assert also that the judge erred in failing to take account of the appellant's "personal mitigating factors" and post-sentence developments including his conduct following release from prison. But when invited to identify what those factors were that were ignored by the judge Mr Hodson was unable to do so.
20. Next, Mr Hodson submitted that the judge erred in failing adequately to have regard to what was said in the pre-sentence report and the OAsys report, both of which were before the sentencing judge, about the low risk of reoffending that the appellant represented. Again I am not persuaded that there is any merit in that submission. There is nothing in the determination to suggest that the judge proceeded on the basis that the appellant represented other than a low risk of reoffending, but the risk of an individual re-offending is just one part of the public interest in the deportation of foreign criminals. In any event, as I have observed in respect of the argument concerning the sentence imposed relative to the other defendants, that approach somewhat misses the point. The public interest requires the appellant's deportation because he is a foreign criminal who does not fall within one of the statutory exceptions. He is a foreign criminal because of the commission of this particular offence and not because this offence is thought to be part of a series of offences that may be committed in the future.
21. It might be observed also that there is an indication that the appellant sought to mislead the author of the pre-sentence report, and therefore the sentencing judge as to his domestic circumstances because he told the probation officer that his reason for needing money, and hence becoming involved with the supply of controlled drugs, was because he and his wife were expecting a baby. That was, of course, not true. The relationship with the lady who he had married had come to an end and there was never any pregnancy. Ms R, who was expecting the appellant's child, has said that the appellant had never "lived with her".
22. The grounds complain also that the judge took no account of the appellant's "excellent prison record" and the many letters of support. Neither of those complaints are made out. At paragraph 26 of the determination the judge noted the appellant's evidence that "he tried to the best of his ability to be a model prisoner"

and the judge made clear at paragraph 15 of the determination that he had taken account of all the documentary evidence the parties had put before him, including that contained within the appellant's bundle. At paragraph 59 he repeated that he had "given careful consideration to the documents placed before us...". The judge was certainly not required to discuss in the determination each document in the bundle to demonstrate that he had done precisely that which he said he had done.

23. On the other hand, turning to consider the second category of the grounds, Mr Hodson has identified that the judge has made some errors of fact. The judge was wrong to say that Ms R and her daughter had no lawful status in the United Kingdom because there is a pending and unresolved application for further leave to remain and so their previous temporary leave has been extended by operation of s.3(C) of the Immigration Act 1971. The judge was wrong to say that Ms R and the child had not visited him in prison because his representatives have provided documentary evidence confirming that they had done so. The judge was wrong to say that the appellant had not visited his daughter in Huddersfield because a photograph had been produced of the appellant and his child together in what is plainly a school setting and as this child, who was still not quite 4 years old, has only ever attended a school in Huddersfield then that must establish such a visit.
24. As those errors have been identified the question to be addressed is whether the outcome could possibly have been any different if that had not been made. In my judgement the only answer that can be returned to that question is in the negative.
25. In respect of the immigration status of Ms R and her child, Mr Hodson submits that the error by the judge may have been significant. That is because the judge thought that Ms R may have an incentive to say and do whatever she could to assist the appellant because if he were successful in his attempt to secure leave then she would potentially benefit from that in her own application. That was because there would be an argument to be advanced that she should remain in the United Kingdom so that contact between her daughter and the appellant could continue. However, even if that were so, the same incentive, if it arose in her mind, would exist whether or not she had a pending application which would be informed by the immigration status of the father of her child. In any event, the decision of the judge was predicated upon an assessment of the relationship that existed between the appellant and the child and that was not something that depended upon the immigration status of the child and her mother.
26. Similarly, as the judge accepted that there was continuing contact of one kind or another after the appellant had been released from prison, it is unrealistic to suggest that it would have made any difference to the outcome had the judge factored into his assessment the fact that Ms R and her daughter had in fact visited him in prison.
27. True it is that the judge has said both that there was a photograph of the appellant with his daughter at a school, although that was "contrived and staged to demonstrate that he has a more meaningful relationship with her" (paragraph 64) and that there was no evidence that the appellant had "actually" visited her in Huddersfield (paragraph 75) so that the judge did not accept he had done so. That may appear to be a contradiction but it may also reflect the fact that the photograph

of the child in what appeared to be a school setting, considered in the context of the appellant being a person who had not only repeatedly given untruthful and misleading evidence over the years in his attempt to establish a basis upon which to remain in the United Kingdom but persuaded others to do so on his behalf was something that the judge was simply not prepared to accept established was asserted. In any event, even if the judge had accepted that such a visit had been made it seems to me to be inconceivable it would have made any difference to the outcome of this appeal.

28. In a slightly different context, Mr Hodson submits that the judge was mistaken to apply the guidance offered by the Court of Appeal in *Ad Lee v SSHD* [2011] EWCA Civ 348 because the facts were not sufficiently similar and so the position of this applicant were clearly distinguishable from those of Mr Lee. However, once again, the decision to dismiss the appeal was not predicated upon that guidance, even though it is mentioned. Further, although Mr Lee had indeed committed a much more serious offence he was living with the child in a family unit which this appellant was not. Also, this was a serious matter in the context of the particular case, the appellant leaving a large quantity of controlled drugs in his daughter's home without the knowledge of her mother.

29. Drawing all of this together, the position can be summarised succinctly. The judge has directed himself correctly in law before carrying out a careful examination of all the evidence the parties chose to put before him. In this well structured determination he has explained his assessment of the evidence he considered to be of importance and has given clear and legally sufficient reasons for reaching conclusions that were plainly open to him on the evidence. It has not been established that he left out of account any material considerations and he certainly was not required to comment specifically upon all the evidence, just to make clear he had looked at it. He was required to do no more than to make clear the reasons why he reached the decision he did. While he may have made a very few factual errors, none of those are of a nature such as to consider that the outcome would have been any different in the absence of such errors.

#### Summary of decision

30. The First-tier Tribunal did not make any error of law.

31. The appeal to the Upper Tribunal is dismissed and the determination of Judge Traynor is to stand.

Signed



Date: 30 October 2014

Judge of the Upper Tribunal



