



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

Appeal Number: IA/08313/2012

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice
On 9 February 2015**

**Decision & Reasons
Promulgated
On 10 March 2015**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**SHERIF EL GAZZAZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Ward, instructed by Sutovic & Hartigan

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Egypt. He appealed to a judge of the First-tier Tribunal against the respondent's decision of 25 March 2012 refusing to revoke the deportation order made against him on 29 September 2010. The First-tier Tribunal allowed his appeal, but subsequently Upper Tribunal Judge McGeachy found there to be material errors of law in that determination, and directed that the determination of the First-tier Tribunal be set aside and the matter be heard afresh.

2. The appellant was born on 20 December 1986. He came to the United Kingdom with his family in June 1999 and was granted indefinite leave to remain in March 2003. In August 2005 he was convicted of violent disorder and was sentenced to three and a half years' imprisonment. A decision to make a deportation order was made and he appealed against that decision. His appeal was dismissed in a determination promulgated in June 2006. The deportation order was signed on 21 November 2006.
3. On 14 January 2008 the appellant was given a two month sentence, having been convicted of criminal damage during the Harmondsworth riots in November 2006.
4. On 29 October 2009 the appellant was seen by a Mr Sulliman, a registered mental health nurse, who assessed him as having a probable diagnosis of schizoaffective disorder. He gave clear symptoms consistent with a diagnosis of psychosis. He was subsequently seen by Professor Freeman in December 2009, and Professor Freeman explained that the reference to psychosis should not be regarded as a firm diagnosis but regarded the case as difficult to assess. He neither ruled out nor affirmed the diagnosis of schizophrenia.
5. The application to revoke the deportation order was based on that medical evidence and refused in a decision of 25 March 2010 which certified the application to revoke the order as being clearly unfounded. That certificate was in due course quashed by consent and hence the appeal came before the First-tier Tribunal.
6. Prior to that hearing the appellant's condition deteriorated. On 1 April 2011 he was transferred from immigration detention to hospital under Section 28 of the Mental Health Act 1983, and remained there until 1 August 2011 when he was released on bail and went to live with his family. There he received care from the local community mental health team led by Dr Mehrotra, a consultant psychiatrist.
7. In his first report, dated 30 May 2012, Dr Mehrotra diagnosed the appellant as suffering from Post Traumatic Stress Disorder and schizoaffective disorder, a "serious enduring mental illness" with psychotic symptoms. He advised that the appellant was then in a "relapsed state" and that any prospect of recovery would be inhibited by increases in stress. He considered that the appellant required support throughout the day to meet the activities of daily living and required prompting from his family to maintain personal care and hygiene and feed him. He was socially isolated and required input from his family for companionship and could not leave the property without support from his family.
8. Dr Mehrotra went on to say that he would think that the appellant's family remained important in his rehabilitation at that time and that without their input he believed the appellant would have deteriorated further in psychological health, jeopardising his self care, sustenance and

compliance with the treatment plan. He had little structure in his day, given his present level of disability and was actively avoidant of social contact.

9. On 12 June 2012 Dr Mehrotra advised that contrary to his previous view, owing to a further relapse in the appellant's condition, he was no longer capable of making a statement for the purposes of the appeal, and it continues to be the view of his treating doctors that he is not fit to attend court.
10. In a further report of 7 November 2012 Dr Mehrotra advised that the appellant's illnesses had left him feeling inadequate, without a clear sense of identity, and he was occupying passive roles in interpersonal relationships. His mental health treatment was to focus on him developing more autonomy and an improved attitude. It was Dr Mehrotra's view that the appellant would be less able, compared to a normal person, to withstand pressure and suggestions from others and he believed he would be vulnerable to follow the instructions of others he trusted and with whom he had a relationship. Dr Mehrotra also advised that the appellant was unfit to plead and stand trial in relation to criminal proceedings, which arose as a consequence of him having been remanded in custody following his arrest for possession of a firearm and ammunition. On 7 November 2013 the appellant was found to have committed the offences with which he was charged, although he was not fit to stand trial for them.
11. Dr Mehrotra has provided two further reports, as well as giving oral evidence today. In the first report, of 30 November 2013, he considered that even if the appellant were to leave prison, the level of functional dependency on his family would remain as previously described in his reports, given his need for security and affection. He would require prompting for self-care and reminding to take his medication. He would be unable to leave the family home unaccompanied and would strongly prefer to be socially isolated. He could not maintain his sustenance without assistance. He would not attend appointments with healthcare professionals unless supported by the presence of his family members and any positive changes to this clinical picture would be likely to take several years to come into effect.
12. Following that report the appellant was transferred from prison to the Three Bridges Medium Secure Unit at Ealing Hospital under section 38 of the Mental Health Act 1983. In a subsequent report of 4 July 2014 Dr Mehrotra reported that there had been some improvement since the transfer, but that the appellant's illness had a relapsing nature and he needed to be subject to recall to hospital in the future. On 18 July 2014 a Hospital Order was duly made at Isleworth Crown Court under section 37 of the Mental Health Act 1983, with restrictions under section 41 of the Act.

13. In his oral evidence Dr Mehrotra said that in 2013 he had seen the appellant in connection with a criminal matter and felt he was unfit to plead, and Dr Kamal had agreed. There had a trial and he had been convicted and went to Belmarsh Prison. Dr Kamal and Dr Mehrotra had felt that a hospital order was appropriate and the court had invited their opinion and hence the subsequent recommendation in respect of Section 37 and 41. In some sense he now had an indeterminate sentence.
14. As to how the events leading to conviction came about, he had been arrested in July 2012 initially in connection with possessing and smoking cannabis, and his room at his mother's house had been searched and a firearm and ammunition were found. Dr Mehrotra had been the appellant's treating doctor at the time.
15. He considered that the appellant was vulnerable to influence by others. He had had a number of personality tests, mainly in 2011, and was found to have a dependent personality with a tendency to be submissive. In 2012 he had been found to be significantly socially disabled and not assertive and prone to being influenced by those around him. As regards the circumstances of these events Dr Mehrotra had not been able to explore with the appellant nor had an in-depth account been obtained by his treating team. Dr Mehrotra thought there had been a barrier. The appellant had had quite a florid psychotic illness and it was hard to get access to his thoughts and feelings. As regards Dr Arya's report, they had discussed it and he agreed with the contents of her report and it fitted in with his view of the appellant's mental illness and the challenges in treating him.
16. As regards how long he might require in-patient treatment, the view from the team was that it would be at least one to two years security treatment and thereafter there might be an application to step down his treatment but it would remain in a secure context and again would be for a year or two and it was hard to give a prognosis of where he would go then though there was a possibility of staying in a hostel with 24 hour supervision.
17. As to how relevant to any decision to remove him through the system the family support would be, he had a lot of security and help from the family and also visits. They had helped him comply with his treatment. When the appellant had been under Dr Mehrotra's care in 2012 the family had prompted him with self care and it could be that he would need that again if he returned to the family home. Under the restriction order the Secretary of State retained the power to impose conditions on the appellant. As to the likelihood that he would ever be absolutely discharged, Dr Mehrotra's experience of Section 41 patients was that the Secretary of State/Ministry of Justice took a very risk averse attitude to them and there was a very small likelihood of such a discharge in the next few years.

18. If the appellant were conditionally discharged into the community he could be required to co-operate with a range of conditions which would be set out by his treating team and agreed by the Secretary of State/Ministry of Justice. If he had no access to family or mental health support then it was less likely he would recover and there would be a more robust delivery of appropriate care if there was family support. Their input was helping his recovery. The literature also supported the likelihood of this being the case.
19. When cross-examined by Ms Everett Dr Mehrotra was asked how important medication was as a factor in the appellant's treatment and he said it was perhaps the most important aspect of his treatment. His needs would change and he would move from medication to a more holistic treatment including such matters as psychotherapy. He agreed that it was fair to say that at the moment medication was the most significant part of the appellant's treatment. It was likely that he would always require medication. He had quite a significant history of relapses. He was asked whether the appellant's mother telephoned as well as providing other support and said yes but he did not know how often. He had been staying with his mother at the time when the most recent offence had been committed. It was the case that he was vulnerable to the influence of others. He was asked why then he had still been so influenced when he was staying with the family, and Dr Mehrotra said the appellant had given him a view and an account and said that a number of his acquaintances told him to stop his medication in the weeks leading to the offence and that this was an insidious influence in some respects. As regards the question whether more than the medication was required, he said that he did not think the medication would provide the only way to manage the risk. It enabled a number of interventions to take place and he had medication for better awareness of the consequences of his actions.
20. By way of initial submissions Ms Ward relied on her skeleton argument.
21. In her submissions Ms Everett relied on the refusal letter and the supplementary decision of 17 March 2012 and the judge's determination in 2006. The appellant's mother and other family members were not here today and the Tribunal was asked to draw a negative inference from their absence. It would have been possible to ask about levels of support they would be able to give the appellant on return such as telephone calls and visits.
22. The main argument about revocation was his illness in recent years. It was a significant component of his private life, and there was little evidence otherwise of private life. It was the case that he had significant contact with his family also. His leave had been curtailed since 2006. He was detained under sections 37 and 41 of the Mental Health Act so he was under the Secretary of State's control, but the Secretary of State had not taken responsibility for his case in respect of the deportation. It should be found that the Section 117 exceptions did not apply. The appellant had

not been in the United Kingdom with immigration leave since 2006. There was evidence that he needed a significant level of support to comply with his treatment. It had not been shown that the drugs and/or the other treatment were not accessible if he were returned to Egypt. There was evidence about the stigma of seeking mental health treatment and there had been the recent disruption in Egypt, but that did not show that he could not access medication. He had been assessed as a risk to the community at large and it was a relevant and significant factor as to whether or not the order should be revoked.

23. On the question of the relationship between what had been said by the Court of Appeal in MJ (Angola) [2010] 1WLR 2699 that “very serious reasons” were required to justify deportation in comparison with the requirement under section 117C of the 2002 Act, as amended, that unless one of the exceptions listed in that section applied or there were “very compelling circumstances” the public interest required the deportation of a foreign criminal, it must be right that the statute applied. It did not trump the case law that the proportionality exercise might have been different if those had been the statutory considerations in force at the time of MJ.
24. In her submissions Ms Ward argued that on that point it was necessary to consider section 117C initially and whether the section applied and then the court was directed by the statute and the High Court as to whether there was a breach of Article 8 and in doing so it was necessary to take into account the respondent’s policy and section 117C. One example of very compelling circumstances would be a person such as the appellant, and the appellant in MJ, where all the facts were similar and that was how they fitted together. Also the statute and the Immigration Rules were intended to give effect to the jurisprudence on Article 8 and indeed the terminology in the Rules and the Act had been taken from that case law. It could not be said that MJ was no longer good law. There would be exceptional cases under the Rules and under statute. MJ and Maslov were still good law in a proper approach to the question of proportionality of deportation of a person who had spent a large part of their youth in the United Kingdom and that could amount to very compelling circumstances. Part 5A of the Rules applied in respect of Article 8 and not just deportation.
25. Ms Ward relied on the points made in her skeleton argument and amplified certain of them. As regards the section 117C issue, and whether or not the appellant was lawfully resident, otherwise he had been in the United Kingdom for considerably more than half of his life. As regards the effect of the order curtailing his indefinite leave to remain, he had not evaded attempts to remove him and had remained in detention. He was an in-patient now and would be for the foreseeable future. He was not here lawfully as being a person with leave to remain but he could not be said to be here unlawfully either as he had had no choice in the matter. In any event, if the Tribunal was against Ms Ward on the exception point, that to be seen in light of the fact that he had not remained when he should not

have remained and had not evaded or overstayed, and also his young age when he arrived should be borne in mind and the difficult family life which could be seen evidenced in the witness statements. Also there was of course the serious mental illness from which he now suffered. These were very compelling circumstances.

26. The Tribunal was referred to the evidence as to his level of functioning in June 2012. He had been unable to walk 50 metres down the road without needing calming. The question of his ability to return to Egypt and fend for himself and access treatment was fanciful. As regards the possibility of the family returning to provide support, his younger brother was a minor and studying for A levels and his mother was a carer for that younger brother and of his two sisters, one had a family and the other was studying. To say they could or should uproot and leave was not made out on the evidence.
27. The evidence did not show there was no treatment in Egypt but it did show it was patchy and difficult to access. The Tribunal was referred to C25, C28 and C29 of the more recent bundle. The appellant would therefore have to seek out treatment himself which the evidence showed he was unlikely to be able to do. C44 was of relevance to this. Such treatment was difficult to access especially for someone who was suffering from a psychotic illness and PTSD, especially given the current circumstances in Egypt. That would be likely to exacerbate his PTSD.
28. As regards the question of him being a danger in the community, of course he was not in the community and would not be until it was decided he was safe to be there and even then the overwhelming likelihood was that he would be subject to a conditional discharge as long as it was thought to be appropriate and he would have to comply with conditions to prevent the risk of a relapse and he could be recalled if it was thought there was a risk of relapse. It was therefore not a case of risk of re-offending. There had been past offending and it weighed heavily in the balance against him, but on the other side of the balance were all the factors such as the length of time in the United Kingdom, the need for family support to enable him to benefit from treatment, the need for the treatment itself, his complete inability to fend for himself on return and the need to ensure he did not become a danger to himself or others which amounted to a stark prospect on return and likely relapse, and coming under the influence of others, strong matters on the other side of the balance. The appeal should be allowed.
29. I reserved my determination.

Discussion

30. The issue in this appeal concerns the Article 8 rights of the appellant, bearing in mind that under section 32 of the UK Borders Act 2007 the respondent is required to make a deportation order

“(5)in respect of a foreign criminal (subject to section 33), and the relevant exceptions in section 33 are

(2) ...where removal of a foreign criminal in pursuance of the deportation order would breach -

(a) a person’s [European] Convention [on Human Rights] rights.”

31. In the decision letter of 17 March 2012 the respondent accepted that the appellant had established family ties in the United Kingdom, but did not accept, given that he was now an adult, that this could be said to be family life without further elements of dependence beyond normal emotional ties. There was not considered to be any such evidence. It was accepted that he had lived in the United Kingdom for just over thirteen years, although it was noted that a substantial part of his life in the United Kingdom had been spent in custody. It was not accepted that he was not in contact with his father, who according to Home Office records had visited the appellant on at least two occasions, in December 2010 and January 2011. The appellant’s criminal record was noted, and his deportation was considered with reference to the decision of the Court of Human Rights in Maslov. It was noted that the appeal determination in 2006 said that his family made frequent trips to Egypt to see family members as well as the fact of his father being in Egypt.

32. There was reference to the medical issues including a previous consideration in a decision letter of 25 March 2010. It was not considered that the United Kingdom was bound by any duty of care towards him in respect of his health problems, and his case did not engage the test set out in D v United Kingdom or N v United Kingdom, and the fact that similar medical treatment might not be available in Egypt was not regarded as a significant factor. It was noted that the medication currently prescribed to him, according to the medical report submitted, was available in Egypt either in the same format or in one of the many generic variants commonly found in nations with lower incomes. Although any treatment available in Egypt might not be of the standard as of that provided by the National Health Service there was nothing to show that it would engage Articles 2, 3 or 8 of the ECHR.

33. In essence Ms Ward’s argument is that section 117C of the 2002 Act, as amended, applies, on the basis, she argues, that the appellant falls within Exception 1 in section 117C(4), the criteria for which are that:

“(a) the appellant has been lawfully resident in the United Kingdom for most of his life:

(b) the appellant has socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to his integration into the country to which it is proposed that he be deported.”

34. The effect of section 117C is that the public interest requires the deportation of the appellant as a foreign criminal who has not been sentenced to a period of imprisonment of four years or more unless Exception 1 (or Exception 2, which is not relevant in this case) applies. However the particular difficulty with this argument is with respect to section 117C(4)(a) which requires him to have been lawfully resident in the United Kingdom for most of his life. As Ms Ward accepts in her skeleton, the effect of the deportation order made in November 2006 was to curtail the leave to remain which the appellant was granted, initially as a dependant of his parents on 14 June 1999, and on the basis of the grant of indefinite leave to remain on 21 March 2003. I note Ms Ward’s argument that it was, as she put it, outside his control that he was detained and whereas he could not be said to be here lawfully he was not here unlawfully. However he cannot properly be said to have been lawfully resident in the United Kingdom for most of his life given that he has only been lawfully resident here between June 1999 and 2006. He has now been in the United Kingdom for some fifteen and a half years (nearly thirteen years at the date of decision) and he is now aged 28 (25 at date of decision). The three criteria set out in exception 1 are all required to be made out, and in my judgment the appellant falls at the first hurdle in this regard.
35. Ms Ward has argued that weight should be attached to what was said by the Court of Appeal in MJ (Angola) referring at paragraph 40 to the need for there to be very serious reasons to justify the deportation of the appellant in that case, bearing in mind that he had lawfully entered the United Kingdom when he was 12 years of age, had spent his adolescence and the whole of his adult life in the United Kingdom and much of his offending having been committed when he was under the age of 21.
36. In this regard it is relevant to note what was said by Sales LJ in AJ (Angola) [2014] EWCA Civ 1636, as endorsed subsequently by the Court of Appeal in MA (Somalia) [2015] EWCA Civ 48. There it was said at paragraph 25(iii) that where the Tribunal in the case of AJ (Gambia) (one of the appellants in AJ (Angola)) said that there needed to be very serious reasons to justify expulsion, it had treated that as a freestanding matter of assessment rather than integrating it within the framework of the new Rules and asking itself whether there were very compelling reasons to outweigh the public interest in deportation. MJ has to be seen in that light.
37. As regards the issue of whether there are very compelling circumstances in this case, these were essentially summarised by Ms Ward in her submissions referring to the age of the appellant when he came to the United Kingdom, his age when he committed the most serious offence, the amount of time he has been in the United Kingdom, the need for family

support to enable him to benefit from treatment, the need for the treatment itself, his inability to fend for himself on return and the need to ensure he does not become a danger to himself or others and the likelihood of a relapse should be come under the influence of others.

38. I should say that in this regard that I accept in its entirety the evidence of Dr Mehrotra and the other medical evidence that has been put in. I also note the background evidence concerning the difficulties the appellant would experience on return to Egypt in terms of such matters as his vulnerability, the need for support from his family in accessing and taking medication and lack of the same level of medical and other support that he would have there, albeit bearing in mind that it does appear that the necessary medication would be available to him. On the other side of the line is of course the very serious offence of which he was convicted and for which he was sentenced to three and a half years in prison, and the more recent offence of possession of a firearm and ammunition, as well as the criminal damage offence. I bear in mind also the point made by Ms Ward that the appellant does not pose a risk of harm to the community given that he will remain hospitalised until such time as it is decided that he is safe to go into the community and then would be subject to significant conditions. There are significant obstacles to the appellant's integration into Egypt, but I am not persuaded that they would be very significant, and nor do I accept that the circumstances that he would face on return, problematic for him though they would undoubtedly be, are such as to meet the very high threshold of very compelling circumstances. His appeal under Article 8 is therefore dismissed.

Notice of Decision

39. The appeal under Article 8 is dismissed.

No anonymity direction is made.

Signed

Date **9 February 2015**

Upper Tribunal Judge Allen

No fee is paid or payable and therefore there can be no fee award.

Signed

Date **9 February 2015**

Upper Tribunal Judge Allen