



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

Appeal Number: HU/08020/2017

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

**Oral decision given following hearing
On 12 December 2017**

On 28 February 2018

Before

**THE HONOURABLE MR JUSTICE GOSS
UPPER TRIBUNAL JUDGE CRAIG**

Between

**MR MAHAD MUSE AHMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Balroop, Counsel instructed by Eden Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant who was born in May 1994 is a national of Somalia. He arrived in this country in 2002 with leave to be here and he has remained in this country lawfully ever since. Regrettably he has a very bad criminal history of which the two most recent convictions were on 15 May 2015 when he was sentenced to 24 months' imprisonment for various counts, including inflicting grievous bodily harm, affray, possessing an offensive weapon in a public place and one count of assault by beating. Following

this conviction the appellant was convicted on 23 June 2016 of a count of possessing a controlled drug Class A, crack cocaine, with intent to supply together with a count of possessing a controlled drug of Class B, cannabis or cannabis resin. For these offences the appellant was sentenced to three years' imprisonment to be served consecutively to the sentence for inflicting grievous harm. Accordingly, the total sentence which this appellant had to serve was one of five years' imprisonment but for the purposes of the immigration decision under challenge he received two sentences of between one year and four years' imprisonment. These sentences have now been served and the appellant is currently in immigration custody pending the resolution of this appeal.

2. Following the convictions the respondent made a decision to deport the appellant against which decision the appellant appealed. His appeal was heard before First-tier Tribunal Judge M A Khan sitting at Harmondsworth on 20 September 2017 but in a decision promulgated on 10 October 2017 Judge Khan dismissed the appeal. The appellant now appeals to this Tribunal against Judge Khan's decision, leave having been granted by First-tier Tribunal Judge Scott-Baker on 31 October 2017.
3. The substance of the appeal as argued before this Tribunal (although this is not made clear in the grounds of appeal which were not settled by Mr Balroop who has represented the appellant at this hearing) is that the judge failed to consider properly (or at the very least failed to give adequate reasons for his decision) whether or not the appellant satisfied the requirements set out within paragraph 399A of the Immigration Rules or (which is in substance the same) whether he satisfied the requirements set out within Section 117C(4) of the Nationality, Immigration and Asylum Act 2002, which were inserted by Section 19 of the Immigration Act 2014 with effect from July 2014 onwards. I set out first the relevant parts of the Immigration Rules as follows:

“398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

- (a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;
- (b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or
- (c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused

serious harm or they are a persistent offender who shows a particular disregard for the law,

The Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

...

399A. This paragraph applies where paragraph 398(b) or (c) applies if -

- (a) the person has been lawfully resident in the UK for most of his life; and
- (b) he is socially and culturally integrated in the UK; and
- (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported."

4. Although in his decision, Judge Khan referred to an earlier version of the Immigration Rules and then referred to the provision of 399A(a) as 399A(b) it is common ground that at least in the substance of the decision he did accept that the appellant had been lawfully resident in the UK for most of his life (although at the end of paragraph 49 he wrongly stated that "the appellant in this case had a limited leave to remain in the UK as a visitor"). It is also common ground that the deportation claim in this case was pursuant to paragraph 398(b) because the sentences of imprisonment have to be considered individually and although the cumulative total of the imprisonment which the appellant had to serve was five years, each of his sentences was between one and four years and so the provisions of paragraph 399A have effect.
5. The Rules give effect to what is now provided within the new part VA of the 2002 Act as referred to above, of which the relevant provisions are as follows:

"117A: Application of this Part

- (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts -
 - (a) breaches a person's right to respect for private and family life under Article 8, and
 - (b) as a result would be unlawful under Section 6 of the Human Rights Act 1998.
- (2) In considering the public interest question, the court or tribunal must (in particular) have regard -
 - (a) in all cases, to considerations listed in Section 117B, and
 - (b) in cases concerning deportation of foreign criminals, to the considerations listed in Section 117C.

...

117C Article 8: additional considerations in cases involving foreign criminals

- (1) The deportation of foreign criminals is in the public interest.
- (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
- (3) In the case of a foreign criminal (“C”) who has not been sentenced to a period of imprisonment of four years or more, [which as already noted, is the case here] the public interest requires C’s deportation unless Exception 1 or Exception 2 above applies.
- (4) Exception 1 applies where -
 - (a) C has been lawfully resident in the United Kingdom for most of C’s life,
 - (b) C is socially and culturally integrated in the United Kingdom, and
 - (c) there would be very significant obstacles to C’s integration into the country to which C is proposed to be deported.

6. Accordingly, and as set out by Judge Scott-Baker when giving reasons for granting permission to appeal, it was incumbent on Judge Khan to reach findings, and also arguably adequately to explain these findings as to whether or not Exception 1 as set out in the Section 117C(4) of the 2002 Act or paragraph 399A of the Immigration Rules now in force apply. The argument now advanced on behalf of the appellant is that although the judge accepted that the appellant had been lawfully resident in the United Kingdom for most of his life he made no findings with regard to whether he was socially and culturally integrated in the United Kingdom or whether there would be very significant obstacles to his integration into Somalia which was where it was proposed he would be deported.
7. On behalf of the respondent Ms Everett very fairly accepted as she was obliged to that the judge did not explicitly set out the findings which he made with regard to integration and nor did he explicitly lay out in terms what the test was with regard to integration, but she submitted nonetheless that it was clear from his decision what he had found with regard to both these requirements. With regard to whether or not the appellant was socially and culturally integrated in the United Kingdom, Ms Everett referred in particular to what was set out by the judge at paragraphs 41 and 42 of the decision. Effectively, what the judge was saying was that the appellant had not “fitted into the culture and society in the United Kingdom” because he was essentially an outlaw, in the sense that his whole life has been one of causing harm to society through his criminality and that he has made “little or no contribution... to his environment, surroundings or the society at large” in addition to causing “grief and pain to the victims of his crime”.

8. With regard to whether or not there would be very significant obstacles to his integration within Somalia, Ms Everett relies upon his findings at paragraph 43 which is that the appellant speaks the Somali language and that he has not established that there are no immediate or extended family members in Somalia. Accordingly, Ms Everett submits, even though there are not explicit findings to this effect, the judge was effectively saying that the appellant was not integrated into the UK and nor would there be very significant obstacles to his return.

Discussion

9. Although this is perhaps a finely balanced decision and the appellant's case may ultimately be difficult for him to make out, in our judgment it was incumbent upon Judge Khan to make explicit findings within his decision as to whether the appellant was socially and culturally integrated in the United Kingdom and also whether there would be very significant obstacles to his integration into Somalia on return.
10. With regard to whether or not the appellant was socially and culturally integrated within the United Kingdom, we note that at paragraph 49, the judge records that the appellant had lived in the UK since 2002 (he says as a dependent child of his sister who entered the UK as a spouse, which appears to be wrong) and continues by saying that "the appellant has been settled in the UK lawfully since his entry to this country". He then states that under Section 117B(5) "little weight is to be given to a private life when the person's immigration status is precarious". The judge suggests that the appellant's position was precarious because in this case he only "had a limited leave to remain in the UK as a visitor" which does not appear to be correct because he was in this country as a dependent child, but in any event that is as much as he actually says about integration.
11. It may be that it would have been open to the judge to make a finding such as Ms Everett contends was implicit within the decision, but as the Court of Appeal has previously made clear in its decision in *NL (Nigeria)* [2013] EWCA Civ 844 (a decision also setting aside a decision written by this judge), it is incumbent on a judge to set out properly his/her reasons for reaching a decision and maybe even especially in cases where an applicant's claim is not strong, it is essential that all parties understand precisely why this decision has been made. In our judgment, so far as the second and third of the requirements under Section 117C(4), that is Exception 1 and paragraph 399A of the Rules are concerned, it is simply not possible accurately to conclude what the judge's findings were and his reasons for making them.
12. As to the issue of whether or not there would be very significant obstacles to the appellant's integration into Somalia, although this issue was not raised within the skeleton argument before the First-tier Tribunal and was not canvassed extensively in the grounds before us either, Mr Balroop has told us that he made oral submissions with regard to whether there were

very significant obstacles and these have not been referred to within the decision.

13. In all the circumstances, and with some reluctance, because the decision “could and should have dealt with the issues properly” we find that by reason of the lack of proper reasoning as set out above we are obliged to set this decision aside. In the circumstances we conclude that none of the findings of fact can be retained and there will have to be a complete rehearing. In these circumstances the fair approach to take is to remit this appeal back to the First-tier Tribunal for rehearing by any judge other than First-tier Tribunal Judge M A Khan and we so order.

Notice of Decision

The decision of First-tier Tribunal Judge M A Khan is set aside and the appeal is remitted to the First-tier Tribunal sitting at Hatton Cross (or such other venue as considered appropriate) for hearing by any judge other than Judge M A Khan.

No anonymity direction is made.

Signed:

A handwritten signature in black ink, appearing to read 'Ken Craig', is written over a light blue rectangular background.

Upper Tribunal Judge Craig
February 2018

Date: 22