



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/11027/2016

THE IMMIGRATION ACTS

Heard at Field House
On 23 January 2018

Decision & Reasons Promulgated
On 01 June 2018

Before

**THE HONOURABLE MRS JUSTICE ELISABETH LAING DBE
UPPER TRIBUNAL JUDGE ALLEN**

Between

MR K D N T
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Victor-Mazelli instructed by Morgan Hall Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of the First-tier Tribunal, Judge Bird, who in a decision promulgated on 1 June 2017 allowed the appeal of the appellant KDNT against a decision of the Secretary of State of 18 April 2016 refusing to revoke a deportation order and refusing his Article 8 claim.
2. The brief immigration history is as follows. He came to the United Kingdom aged 1½ in March 1997 as a dependant of his mother. She was unsuccessful in her asylum claim but was subsequently granted indefinite leave to remain and the appellant himself was

granted indefinite leave to remain on 13 August 2009. The deportation was made in respect of conviction of the appellant at the Snaresbrook Crown Court on 29 June 2015 causing grievous bodily harm with intent to do grievous bodily harm and he was sentenced to five years in prison in a young offenders institution on 10 September 2015. One can see from the judge's sentencing remarks that he had convictions for robbery in 2011, affray 2013, battery in 2014; in all a total of seven convictions for twelve offences. The judge had all this evidence. She also had evidence of the domestic circumstances of the appellant. His mother had married a British national on 19 January 2011, he was an alcoholic and the appellant and his mother were subjected to domestic violence soon after his mother's marriage. So he grew up in difficult circumstances, and the marriage subsequently came to an end when the stepfather left the family home in 2009/2010. The judge heard evidence from the appellant, from his mother and from his sister and then went on to set out her decision in reasons firstly setting out the law and then the conclusion she came to on the law. Her conclusion was that the appeal fell to be allowed and this decision was challenged by the Secretary of State.

3. Initially the application for permission to appeal was refused in the First-tier but the same grounds were reiterated with further grounds to the Upper Tribunal and permission was granted by Judge McGeachy subsequently on 31 October 2017. Those grounds took exception to the judge's conclusion on very significant obstacles and very compelling circumstances which is shorthand really for the relevant provisions under both the Immigration Rules and Section 117C of the Nationality, Immigration and Asylum Act 2002 and all these provisions are set out in the judgment. Judge McGeachy said when granting permission that it was arguable that the judge erred in finding that there were very compelling circumstances which would merit the appellant remaining in Britain. It was arguable that she ignored the ways in which the appellant's mother could assist his integration into Colombian society, let alone her acceptance of the assertion that the appellant had never been allowed to learn Spanish, despite the fact that his mother came to Britain with him from Colombia.
4. We have had submissions today from Mr Melvin on behalf of the appellant, the Secretary of State and Ms Victor-Mazelli on behalf of the respondent as these were before us. I shall refer hereafter to the appellant as he was before the judge and the Secretary of State as the respondent.
5. As matters have developed before us concentration has been in particular on two elements of the judge's decision. The first of those which we raised in the course of argument is the question whether the judge properly addressed Exception 1 as set out in Section 117C(4). It might help if I briefly read out the relevant parts of this said provision. Sub-Section (1) of 117C says as follows: deportation of foreign criminals is in the public interest. Sub-Section (2) – the more serious the offence committed by the foreign criminal, the greater is the public interest in deportation of the criminal. Sub-Section (3) in the case of a foreign criminal ('C') who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 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;
- (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

Sub-Section (5) deals with Exception 2 which is not relevant here. (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years the public interest requires deportation unless there are very compelling circumstances over and above those described in Exceptions 1 and 2. (7) The consideration in sub-Sections (1) to (6) are to be taken into account where a court or Tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

6. So the arguments before us are first could the judge have properly found Exception 1 applied in that there would be very significant obstacles to the appellant's integration into Colombia and the fact that over and above that, since he was a foreign criminal who has been sentenced to a period of imprisonment of at least four years, that the public interest must be shown to require deportation unless there are very compelling circumstances over and above those that are currently in the Exception.
7. So in shorthand the judge would have had to find first those very significant obstacles to integration into Colombia and that beyond that whether there were the most compelling circumstances which overrode the public interest in deportation. Turning to the first, the question of very significant obstacles to reintegration in Colombia the judge set out her decision and reasons at paragraph 26 onwards summarising the claim at paragraph 27 and then setting out the various provisions in legislation, in the Immigration Rules and then coming up to paragraph 34 where she set out further details of his history, sets out the index offence in which he had been charged and then went on to say address Section 117C. She referred to the fact that it was argued by the appellant that there were very significant obstacles in reintegrating into Colombia, quoted from the relevant provisions in this regard and it is clear therefore that she identified the need to make findings both on very significant obstacles and very compelling circumstances. She then went on from paragraph 43 onwards to look at the psychologist's report and said something about that, the appellant's mother's evidence and his circumstances and the problems he had with his step-father, and the fact that the appeal was adjourned to obtain a psychological assessment and what was said in that report about the appellant, that fact that he was getting close to his mother and his step-sister and the implications for him from that and then summarised the conclusions of the clinical psychologist. But nowhere do we find a conclusion by the judge on the question of whether there would be very significant obstacles with integration into Colombia. The judge did no more than set out the evidence that the appellant gave but in setting out the evidence is one thing and coming to conclusions on it as the judge was clearly required to do are very much two different matters and we see nowhere here any conclusions by the judge as to whether there were in fact no significant obstacles to the appellant's integration in Colombia.

8. The second issue relates to the question of seriousness and we turn back to Section 117C(2). The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal. So this very much ties in with the degree of seriousness with the public interest more to do with the appellant's integration in Colombia and in this regard we really see no more than the judge's brief summary at paragraph 4 of her decision when setting out the immigration history. He committed various offences with a particularly serious one being in 2015 when he was convicted and sentenced to five years' imprisonment in a young offenders institution and then at paragraph 35 which describes him being charged with an offence of wounding with intent contrary to Section 11 of the Offences Against the Person Act and with causing grievous bodily harm and a sentence of five years' imprisonment. There is another quotation from the sentencing remarks which referred to difficulties that the appellant had experienced in his life and the pre-sentence report and reminded herself at paragraph 48 of the psychologist's report. But nowhere here do we see any reference to the detail in the judge's sentencing remarks as to the nature of the circumstances of the offence. When the victim arrived at a pre-arranged meeting the appellant clearly had a baseball bat, the appellant had a knife. The victim was stabbed and tried to defend himself and was stabbed again, was hit with the baseball bat and was chased but that chase was stopped and he was able then to get medical help. The judge went into no detail on this and this is clearly relevant to this question that 117C requires to be answered the question of how serious the offence is and the public interest in deportation and we see here no more than the judge setting out what the offence was but not engaging at all with the seriousness of the offence which had to be considered in order for there to be a proper consideration of this criterion. The judge was aware that it was a serious offence though it was common ground that this was a serious offence. There was a lack of balance in the judge's decision in the need to evaluate, which was not done at all, the provisions of 117C(2) in considering the public interest and the important element of the degree of seriousness of the offence.
9. So in conclusion for both of these reasons we consider that there are material errors of law in the judge's decision in this case and our conclusion is that they are of a nature such that the decision has to be set aside and it will have to be reheard in full before a different judge at Taylor House.

Notice of Decision

The appeal is allowed to the extent that it is remitted to the First-tier Tribunal for a full rehearing.

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.

A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed

Date: 01 June 2018

Upper Tribunal Judge Allen