



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

Appeal Number: IA/49108/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18 December 2017**

**Decision & Reasons
Promulgated
On 12 January 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**FABRICE MESONGOLO
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Bramble, Senior Home Office Presenting Officer

For the Respondent: Ms Chapman, instructed by Elder Rahimi Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, Fabrice Mesongolo, was born on 20 January 1984 and is a male citizen of the Democratic Republic of Congo (DRC). He appealed to the First-tier Tribunal (Judge J H H Cooper) against the decision of the Secretary of State to deport him to DRC. The First-tier Tribunal in a decision which is dated 26 August 2017, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The parties agree that the appellant was subject to the provisions of Section 117C of the Nationality, Immigration and Asylum Act 2002 (as amended):

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, 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, and

(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(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 considerations in subsections (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.

3. The appeal before the First-tier Tribunal turned on the question of whether there existed "very significant obstacles to the appellant's integration into DRC". In addition, the Secretary of State challenges the judge's finding in respect of paragraph 399A(b) of HC 395 (as amended) which concerns the appellant's integration in the United Kingdom. As regards integration into DRC, the Secretary of State asserts that the judge failed to pay proper attention to the possibility of the appellant receiving financial assistance under the Facilitated Returns Scheme and from family members in the United Kingdom. It was accepted by the Secretary of State that the appellant is a person of low IQ but that he did not face very significant obstacles dissimilar from others of a low IQ returning to DRC. As regards cultural and social integration in the United Kingdom, the Secretary of State argues that the judge has paid too great attention to the length of residence of the appellant in the United Kingdom (see *Bossade* (Section

117A-D - interrelationship with Rules) [2015] UKUT 415 (IAC)). Further, the Secretary of State asserts that the judge erred at [87] by finding that the appellant's deportation would "amount to a disproportionate interference with Article 8 rights not only of the appellant but also of his partner ... and his mother and siblings". Exception 1, as it appears in Section 117C(4), does not concern the human rights of partners or other family members and by making reference to those rights, the judge had departed from the confines of the statute and had erred in law. The judge had also made no specific finding in respect of exception 2 to the effect that there would be an unduly harsh outcome for the appellant's partner if she remained in the United Kingdom without the appellant.

4. In his oral submissions, Mr Bramble challenged the judge's reliance upon expert evidence provided by Dr Kodi. Dr Kodi had dealt with difficulties which the appellant might encounter upon return to DRC as a returning foreign offender. Mr Bramble referred to Dr Kodi's report at [7], where the expert had stated that the appellant did not "have any work experience or skills". That observation was at odds with the finding of the judge at [62] that the appellant has, with the encouragement and support of others, "set up his own fitness training/personal training business".
5. I shall deal with that oral submission first. I do not find that the judge was wrong to rely upon the expert evidence for the reason submitted by Mr Bramble. As Ms Chapman pointed out, the expert had recorded in his report that the appellant had experience as a bodybuilder [1] and worked as a personal trainer [6]. The expert was, therefore, aware of the appellant's business activities, if they may be described as such. In my opinion, Dr Kodi's report may be read with the understanding that, whilst the expert was aware that the appellant had found work as a personal trainer, he did not possess work experience or skills such as would be of any use to him in DRC. I do not consider that Dr Kodi's expert evidence is in any way diminished by inconsistency, as Mr Bramble submits, and I find that Judge Cooper was entitled to attach weight to the report.
6. Secondly, as regards the alleged error at [87], I find that the judge may have lapsed into a technical error by taking regard to factors which lay outside the consideration of Section 117C but I find that any errors are not sufficiently serious to undermine the decision as a whole. I do not consider the judge's remarks at [87] form part of the *ratio* of the decision. In essence, the judge has simply remarked that the appellant's removal would adversely affect the lives of others in addition to the appellant. That observation was open to him on the evidence even if it may not properly have played any role in his analysis of the Section 117C factors.
7. Otherwise, the grounds of appeal challenge the judge's decision on the basis that he has failed to show that the appellant has crossed the high threshold of proving "very significant obstacles" to integration in DRC. Whilst I am aware that giving a large number of reasons for a decision does not make that decision right in law, the fact remains, as Ms Chapman pointed out, that the judge has given a very detailed series of reasons for

finding that very significant obstacles do exist. Those reasons (ten in all) are set out in Ms Chapman's Rule 24 statement at [4.2]. I do not consider any of the reasons given by the judge to be either irrational or perverse. As Ms Chapman also points out in her Rule 24 statement, "an elevated threshold as applicable in the determination of the facts in the light of the threshold requires an evaluative assessment by the Tribunal". Given that it was for the Tribunal to evaluate the evidence and give clear and cogent reasons and, in light of the fact that there is no submission by the Secretary of State that, on the particular facts, the decision itself was perverse, I have struggled to find any errors in the reasons provided by Judge Cooper which might vitiate his decision. The judge has carefully analysed the evidence and has given clear reasons for concluding that very significant obstacles do exist. Another Tribunal, faced with the same facts, may have come to a different conclusion but that is not the point. Contrary to what is stated in the Secretary of State's grounds, none of the reasons given by the judge can be properly described as slight whilst, taken as a whole, the reasons plainly go beyond establishing that this appellant would face only mere hardship or inconvenience upon return to his country of nationality. In the circumstances, I have concluded that I should not interfere with the findings of the First-tier Tribunal and the Secretary of State's appeal is dismissed.

Notice of Decision

8. This appeal is dismissed.
9. No anonymity direction is made.

Signed

Date 3 January 2018

Upper Tribunal Judge Lane