



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

Appeal Number: DA/00445/2018

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 4 July 2019**

**Decision & Reasons Promulgated  
On 14 August 2019**

**Before**

**MR C M G OCKELTON, VICE PRESIDENT  
UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

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

Appellant

**and**

**CG  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr Govan, Senior Home Office Presenting Officer.

For the Respondent: Mr Criggie, of Latta & Co Solicitors.

**DETERMINATION AND REASONS**

1. This is the Secretary of State's appeal against the decision of Judge Agnew sent out on 11 October 2018. The respondent, whom we shall call "the claimant", is a national of France. She has been resident in the United Kingdom for twenty years or more. She appealed to the First-tier Tribunal against the decision of the respondent on 15 June 2018 to make a deportation order against her. That decision was taken following the appellant's conviction of criminal offences and her sentence to a term of imprisonment.

2. Given the claimant's nationality, the decision to deport her has to comply with Regulation 27 of the Immigration (European Economic Area) Regulations, 2016. It was found by the judge, and is not contested by the respondent, that the claimant had acquired a permanent right of residence in the United Kingdom, and therefore has the middle (para (3)) level of protection given by that regulation. Accordingly, the Secretary of State needed to show that the decision was taken on "serious grounds of public policy and public security". In addition, and as the judge recognised, the decision would need to comply with paras (5), (6) and (8) of that Regulation, which are as follows:

- "(5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also be taken in accordance with the following principles -
- (a) the decision must comply with the principle of proportionality;
  - (b) the decision must be based exclusively on the personal conduct of the person concerned;
  - (c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;
  - (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
  - (e) a person's previous criminal convictions do not in themselves justify the decision;
  - (f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.
- (6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person ('P') who is resident in the United Kingdom, the decision maker must take account of considerations such as the age, state of health, family and economic situation of P, P's length of residence in the United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin.
- ...
- (8) A court or tribunal considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in Schedule 1 (considerations of public

policy, public security and the fundamental interests of society etc).”

3. The claimant’s offences were serious. In order to curry favour with a man she had met on the internet, she performed sexual assaults on her 6-year old son, whilst photographing the acts. The photographs were discovered by her young daughter. On her plea of guilty she was sentenced to 45 months in prison, and other orders, to which we shall refer in due course, were made.
4. In submissions before the judge, the Presenting Officer emphasised the seriousness of the offences and indicated that there was no evidence that the risk of her reoffending had been lowered. She had no family contacts in the United Kingdom and there was nothing to show that it would be disproportionate to remove her. Mr Criggie, appearing before the judge on the claimant’s behalf drew attention to reports including pre-sentence reports and an email dated 23 May 2018 from a Criminal Justice Social Worker at Midlothian Council.
5. In her judgment Judge Agnew cites a number of sentences from those reports. One Criminal Justice Social Worker’s assessment was that the claimant posed a risk to children. Another referred to the constraints which will be imposed upon her when she is released from prison. A third said that the claimant was motivated to avoid offending in future. The judge’s conclusions were as follows:
  - “30. I accept the evidence that there will be an array of support and monitoring of the appellant upon release from detention and she will continue with counselling. This will be most important if she is to re-establish herself in the community, find employment and rebuild her life. I find that these are the priorities of the appellant given her long term aim that her children will wish to regain personal contact with her, other than the present minimal contact, and in the hope that the Social Services will allow them to do so. The agencies are also designed to monitor the appellant in order to protect the public so that whilst I find this is not necessary as there is an extremely low risk of re-offending, it is important for her and the public that this monitoring is in place for a period.
  31. I find that the appellant’s conduct does not represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society as of today. There are not serious grounds of public policy or security which justify the removal of the appellant despite her having permanent residence in the UK.”
6. The judge accordingly allowed the appeal. The grounds of the Secretary of State’s appeal are that the judge failed to give adequate reasons for her finding that there was a low risk of reoffending; in particular, the judge had failed to take into account the sentencing remarks of Lady Carmichael and had not appreciated the full impact of the social work reports. Mr Govan expanded orally on those grounds before us. The claimant, by Mr Criggie,

asserts that the judge's sentencing remarks were already old at the time of the hearing; that one of the social workers said that the claimant was more likely to be a victim than a perpetrator of abuse in the future, and that it would be unlikely that in the future she would abuse her own children. He submitted that the grounds of appeal amount merely to disagreement to the judge's lawful conclusions on the evidence.

7. In passing sentence Lady Carmichael said this:

"You were prepared to abuse a child in order to promote a relationship which improved your own self-esteem. While that is no doubt reflective of vulnerability on your part, it seems to me to indicate an ongoing risk of offending unless the underlying problem is tackled. The criminal justice social worker contemplates protection for the public being provided by a robust post-release plan and certain licence conditions. There is no suggestion that an extended period of supervision would be required."

8. The combined effect of the offence and the sentence is that the claimant is subject to the notification requirements of the Sexual Offences Act 2003 for an indefinite period. The proposed conditions of any licence following her release from detention are as follows:

"That the claimant undertake offence focused work as directed by the supervising officer;

that the claimant does not approach, speak or communicate in any way, either directly or indirectly with her children without prior approval of the supervising officer;

that the claimant does not approach, speak or communicate in any way, either directly or indirectly with a child under the age of 17, without prior approval of the supervising officer;

that the claimant does not undertake employment, training or voluntary work without prior approval of the supervising officer;

that the claimant resides only in housing approved by the supervising officer;

that the claimant does not enter any areas where children habitually resort without prior approval of the supervising officer;

that the claimant shall not have any means to access any internet enabled device without prior approval of the supervising officer. (This will include not installing deletion software to any internet enabled devices);

that the claimant will allow police and social workers to inspect any electronic equipment or mobile phones used by her."

9. Mr Criggie acknowledged that there was no basis for challenging the appropriateness or need for any of those restrictions. The Criminal Justice Social Work Report prepared before her sentence, immediately before the sentence quoted by Mr Criggie and by the judge, reads as follows:

“This analysis does not excuse the claimant from culpability for her behaviour or the responsibility that she had to put the needs of her children before her own. However, it does mean that she is unlikely to repeat this behaviour without the motivation and guidance of a more focussed sexual offender. Still, at present she presents as someone with very low self-esteem and who is desperate for attention/affection. She therefore appears to remain vulnerable to manipulation by others and until this changes, the risk of future abuse cannot be completely ruled out.”

10. In his conclusion, the writer says this:

“[The Claimant] reports being enamoured by the attention received from the co-accused. She reports to having no sexual interest in pre-pubescent children and to only performing sex acts on the victim to keep her co-accused interested in her. At interview she offered limited insight into why she chose to pursue a relationship with co-accused which was dependent on sexually harmful behaviour offering only that she was medicated at the time and this impacted on her thought process. It would appear that [the claimant] has the capacity to be influenced by an indulgent partner, at the expense of her and, in this event, her son.”

11. On 23 May 2018 a social worker working for Midlothian Children and Family Centre, after reviewing the claimant’s case, reported the assessment that she posed a risk to children and that Social Work [the relevant division of the Local Authority] would have grave concerns if direct contact were to be re-introduced; that communication also refers to the conditions following her release and indicates that they are unaware of any impact that the claimant’s removal would have on her family circumstances. The material adduced before the judge includes a short report from the Head of Psychology and Programmes at the prison where the claimant is detained. That report describes how the claimant’s self-esteem was raised by meeting the man on line and that at the time the report was issued the claimant was still displaying thinking which “indicates a belief in self-sacrifice”. The author of the report says that she has “maintained motivation to avoid offending the future” and has begun working on her negative view of herself.

12. Two factors shine out from this material, neither of which can be discounted by the evident hopes of some of those who have worked with the claimant. The first is that at the time of the offending she was a person who was prepared to commit very serious offences in order to please a person with whom she was chatting on line. The reason for her being so prepared may be lack of self-esteem. The reason for the offences was that that was what her co-locutor wanted. It may well be right that she has no inherent desire to commit sexual offences; the evidence is clearly that she would have done whatever she was required to do. Nothing in the evidence we have seen shows any real progress away from such an attitude of dependence on the view of others and anxiety to

please them. The “ongoing risk of offending unless the underlying problem is tackled” to which Lady Carmichael referred is still current.

13. The second factor is that when the claimant is released there will be a considerable number of measures to prevent her offending against children again or offending via the internet again. As we have said, Mr Criggie did not suggest that those measures were in appropriate. The purpose of those measures is to protect the public, and they are necessary because the claimant has shown that she poses a danger to the public.
14. In that context we are, with respect, wholly unable to see how it could be said that “there is an extremely low risk of reoffending”, or that “the claimant’s conduct does not represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society”. It is perfectly clear that the claimant’s character is such that she poses a risk; and the measures which will be imposed upon her after her release are a demonstration of the existence of that risk.
15. In our judgment Judge Agnew erred by not taking into account the evidence as a whole, and not appreciating the facts relating to the claimant’s present condition as distinct from the hopes of those working with her. Her determination cannot stand. We set it aside and substitute a determination dismissing the claimant’s appeal against the decision to deport her.

C. M. G. OCKELTON  
VICE PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER  
Date: 7 August 2019

## **DIRECTION**

Pursuant to rule 14(1)(b) we direct that no person shall publish or disclose any matter likely to lead members of the public to identify the appellant or the members of her family.