



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12703/2018

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice, London
On 19 August 2019

Decision & Reasons Promulgated
On 5 September 2019

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR SAMIR [L]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Molyneux, instructed by Global Immigration Solutions

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge J W H Law, dismissing his appeal against the decision of the respondent to refuse a human rights claim consequent upon a decision to deport him pursuant to Section 32(5) of the UK Borders Act 2007.
2. The appellant is a citizen of Algeria who arrived in the United Kingdom at the age of 12 in 2002. He accompanied his father who claimed asylum with the appellant as his

dependant. That application was refused as was an application made by the appellant in his own name in December 2004.

3. In May 2006 the appellant was convicted of robbery for which he received a sentence of five years and six months in prison. Although an appeal against deportation was dismissed in 2009, the decision was eventually withdrawn in February 2013 as the appellant wished to make a further decision under the UK Borders Act 2007 consequent upon the conviction of the appellant on 3 October 2011 for robbery in possession of a shotgun to which he was sentenced to an indeterminate sentence of imprisonment for public protection with a minimum term to be served before consideration of release of 90 months.
4. The appellant has never had leave to remain in the United Kingdom but he does have a son born in 2011 who lives with his mother. There is limited contact between the appellant and his son.
5. The respondent's case is that, given the appellant's sentence to a period of over four years, his deportation was conducive to the public good and in the public interest, there being no very compelling circumstances over and above those described in the Exceptions to deportation set out at paragraphs 399 and 399A of the Immigration Rules.
6. The respondent did not consider that there were very compelling circumstances in this case given a lack of evidence as to why any family and or private life could not be continued in Algeria and because he had not shown that there were significant obstacles to his integration into Algeria or that he had made any positive contribution to British society. The Secretary of State did not accept that there was any genuine and subsisting parental relationship between the appellant and his son noting that the relationship was limited to a current court ordered ad hoc telephone conversation which had stopped in 2012. It was also noted that the appellant's parents, sister, brother, niece, two nephews and a cousin were in the United Kingdom.
7. The judge heard evidence from the appellant, his mother, and his sister, finding that:
 - (i) the appellant has limited family life with his son which was necessarily restricted as they had not met since 2014 and they had been only in prison before that [33];
 - (ii) although there was a prospect of that family life being further developed if the appellant remained in the United Kingdom after release, whether that would take place depended largely on the attitude of the child's mother as the existing family court order allows direct contact between the child and the appellant only if she had agreed to it, her failure to provide her own statement to the effect that she would allow further contact in the future raised some doubt as to her seriousness;
 - (iii) there was no family life between the appellant and his mother or older sister;

- (iv) there was a lack of evidence as to whether the appellant has been well integrated into his local community, it being conceded he had not been lawfully resident in the UK for most of his life [35];
 - (v) the OASys assessment in November 2016 described him as presenting a high risk of harm to the public and community and enumerated his offences whilst in prison [36];
 - (vi) the current psychiatric report of Dr Chahl indicated the appellant has a personality disorder rather than any others which could respond to treatment and/or counselling; that therapy will on balance only have limited impact and, that there was no supporting evidence to the suggestion that this therapy would not be available in Algeria;
 - (vii) Dr Chahl believed there to be a high risk of self-harm if the appellant were deported to Algeria, noting the prison medical records indicating that there had been self-harm in the past as recently as September 2017 [38];
 - (viii) it would not be unduly harsh for the child to remain in the United Kingdom without the appellant [41] it being noted the appellant had made no attempt to resume contact with a child until after served with a notice of intention to deport in September 2016; that there were no very compelling circumstances in the case; that he was not satisfied there were any very significant obstacles to reintegration into Algeria, applying **Kamara [2016] EWCA Civ 813**; and, no reason had been put forward as to why the appellant could not live with his grandmother and be supported by her and other relatives whilst he is finding a way of establishing himself;
 - (ix) medication and treatment the appellant might receive if he remained in the United Kingdom would have a limited impact on his personality disorder which was the apparent cause of the self-harm and thus there is a risk of him continuing to self-harm if he remained in the United Kingdom [44];
 - (x) bearing in mind the strong public interest in deportation, there were no very compelling circumstances in the appellant's favour.
8. The appellant sought permission to appeal on the grounds that the judge had erred:-
- (i) In making findings that the appellant could be supported by relatives in Algeria which was contrary to the evidence of the appellant's mother; and, in speculating that the appellant's brother visits Algeria, these errors vitiating finding that the appellant would have adequate support on return in the light of his mental health difficulties or traumatic past;
 - (ii) in failing to note Dr Chahl's conclusion that if the appellant is deported back to Algeria his prognosis will be much worse which may have led to conclusion that this constitutes very compelling circumstances;
 - (iii) in failing to have regard to other material evidence when considering whether there were very compelling circumstances such that deportation would be disproportionate.

9. On 2 July 2019 Upper Tribunal Judge Grubb granted permission on grounds 1 and 2 but refused permission on ground 3.
10. I heard submissions from both representatives. In summary, Mr Molyneux's argument is that taking together both of the errors, it is arguable that the judge erred in that were the appellant without any means of support in Algeria and to be at risk of self-harm, this could amount to very compelling circumstances.
11. I accept that the judge did not have regard to and, did not explain why he did not accept the evidence of the appellant's mother that the family in Algeria were unable to support him and there was nowhere for him to stay. I accept also that the findings with respect to the appellant's brother are speculative and not grounded in evidence.
12. That, however, is not necessarily material. This is an appeal in which it was for the appellant to show that there are very compelling circumstances over and above those set out in Exceptions 1 and 2. The judge properly directed himself with respect to that at [24].
13. The case law requires a Tribunal to consider first whether either Exception 1 or Exception 2 are met in assessing whether there are, in the case of a serious offender, that is one sentence which is more than four years – see **NA (Pakistan)** at [30].
14. Turning to Exception 1, it cannot be said that the applicant has been lawfully resident in the United Kingdom for most of his life. On the contrary, for the greater amount of the time he has not been lawfully here and has spent a substantial length of time in prison. Further, it could not rationally be said that he is socially and culturally integrated into the United Kingdom given that he has not been educated here on his own evidence and has committed a significant number of serious offences which has resulted in him being sentenced to terms of imprisonment firstly for five years and six months and then to a sentence with a minimum term of 90 months which was committed whilst he was on licence and in which the sentencing judge made it clear that were it not a case in which he was imposing that “if I were passing a determinate sentence upon the [appellant]... it would be a sentence of fifteen years' imprisonment.” Over and above the relationship with his son, on no rational view of the facts as found could it be said that the appellant is socially and culturally integrated into the United Kingdom.
15. In order for Exception 1 to be met, all three of the criteria must be met cumulatively. For these reasons, even were it shown that there were very significant obstacles to his integration into Algeria, he would nonetheless be very far from showing that he met those exceptions.
16. Turning to the issue of the appellant's self-harming, the first observation is that a low suicide risk is identified. It is observed from the report at [58] that as at the date of interview the last attempt at self-harm was a year previously it being observed that
“He showed me scars on his left and right arm and also his abdomen. His abdomen was covered in scars from lacerations that he had made. The wound

seems to have healed well and were therefore not recent. He stated *sometimes he gets too much for me and I can't cope*, Mr [L] told me that his self-harm and the sight of blood gives him a sense of relief and it is sometimes a cry for help."

It is also noted that [59] he told me that he had settled relatively well in his current prison since he had become close to another prisoner who he described as his cellmate. He stated that this individual had been very supportive towards him. Mr [L] said that he hears voices inside his head and sometimes wakes up screaming. *That's why I have not self-harmed because I have someone to talk to.*"

17. Having diagnosed a mixed personality disorder with dis-social and emotionally unstable personality features Dr Chahl reached a prognosis that the personality disorder is lifelong, unlikely to be subject to significant change. It concluded that the case of deportation to Algeria and the risk of self-harm will be high but that the risk of suicide is likely to be low. He was pessimistic about psychological interventions working with the personality disorder and the prognosis it deported is as follows:

"There is little doubt if Mr [L] is deported back to Algeria his prognosis will be much worse. He is likely to struggle with yet another trauma of having to start life in a country (Algeria) where he has not spent any time as an adult. His son is a UK national and on his return to Algeria it is unlikely that Mr [L] will be allowed to return to the UK."

18. It was open to the judge to conclude that the appellant's condition is one which can cure them while there was a risk of continuing self-harm if he remained in the United Kingdom. Equally, the judge concluded that it was likely that there would be further self-harm on deportation [46] but concluded that these would not amount to very compelling circumstances. That was a finding open to him on the evidence, and for which he gave adequate and sustainable reasons.
19. It has to be appreciated that even if the circumstances were unduly harsh, and that is a high threshold that would not be enough. While the prognosis for the appellant was that his situation would be fare worse but the judge was entitled to conclude that taking that with the other findings, there would be no factors such that exception 1 or 2 were met; or that there were no very compelling circumstances.
20. Further, the factors in this case are a long way from establishing the high threshold to engage Article 3. The risk of suicide is described as low and his self-harming does not reach that level.
21. For the sake of completeness, although the grounds do not directly challenge the finding that the appellant's separation from his child would not be unduly harsh, given the limited contact with the child, the judge was manifestly entitled to conclude that this was so. Viewing the lack of contact it cannot be said that this was a case in which the relevant exception might be met.
22. In reality ground 2 is a disagreement with the judge's findings. The judge accepted that there was a risk of self-harm but nevertheless considered that this was not a very

compelling circumstance even taken into account with the others. That was clearly a finding open to the judge and for which he gave adequate and sustainable reasons.

23. Further, in MS (s.117C(6): "very compelling circumstances") Philippines [2019] UKUT 122 (IAC), the Upper Tribunal said this:

"In determining pursuant to section 117C(6) of the Nationality, Immigration and Asylum Act 2002 whether there are very compelling circumstances, over and above those described in Exceptions 1 and 2 in subsections (4) and (5), such as to outweigh the public interest in the deportation of a foreign criminal, a court or tribunal must take into account, together with any other relevant public interest considerations, the seriousness of the particular offence of which the foreign criminal was convicted; not merely whether the foreign criminal was or was not sentenced to imprisonment of more than 4 years. Nothing in KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53 demands a contrary conclusion."

24. In his sentencing remarks the judge: described the offence as "an extremely serious offence" in which the appellant and others burgled a farm and threatened the 78 year old farmer, stealing money and firearms; found that the appellant presents a significant risk of serious harm to the public; and, concluded that a sentence of imprisonment for public protection was necessary. In the circumstances, and given that the offence was committed while the appellant was on licence for an earlier offence for which he was sentenced to 5 ½ years' imprisonment, there was inevitably a strong public interest in his deportation, and the judge was clearly entitled to conclude it was not outweighed.
25. Accordingly, I am not satisfied the decision of the First-tier Tribunal involved the making of an error of law and I uphold it.

Notice of Decision

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it
2. No anonymity direction is made.

Signed

Date 27 August 2019



Upper Tribunal Judge Rintoul