



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

Appeal Number: HU/18553/2018

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice
Centre
On 2 August 2019**

Decision & Reasons Promulgated

On 9 August 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

**YC
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmed

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 12 November 1978 and is a male citizen of China. He appealed to the First-tier Tribunal against a decision by the Secretary of State to refuse his human rights claim having decided to deport him as a foreign criminal on 28 August 2018. The First-tier Tribunal, in a decision promulgated on 16 April 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. The grounds of appeal are relatively narrow. In essence, the appellant argues that the judge has given an unclear reasons for his decision which

are, in part, apparently contradictory. At [54], the judge noted that Exceptions 1 and 2 of section 117C of the 2002 Act 'seemed to exclude further consideration of the public interest.' At [60], however, the judge wrote that, 'first, I attach significant weight to the public interest in deportation.' Again, at [63], the judge wrote that, 'what amounts to 'unduly harsh' upon a qualifying individual must be weighed against the public interest taking into account the circumstances of the offence, aggravating factors etc in deporting the individual.' The appellant argues that the approach adopted by the judge was incorrect particular in the light of *KO (Nigeria)* 2018 UKSC 53, which the judge discusses at [64-66]. It was important that the losing party, the appellant, should properly understand the reasons why he lost and he complains that he cannot do so on any reading of the decision of the First-tier Tribunal.

3. There is some merit in the appellant's submissions. I find the judge's reasoning confused in places. However, it is important, when deciding whether there exists any error so serious as to justify setting aside the decision, to read the decision as a whole having particular regard to the factual matrix as found by the judge.
4. The judge plainly understood the ratio of *KO (Nigeria)*; he reminded himself that he must 'assess the best interests of the children without taking account of the appellant's criminal activity or indeed any past adverse immigration history of their parents.' The judge found [51] that it would be unduly harsh to expect five British children of the appellant to leave the United Kingdom to live in China. The only remaining question was whether it would be unduly harsh for the children to remain in the United Kingdom whilst the appellant was deported to China. The judge looked in some detail at the relationship of the appellant to the children. He was satisfied that a strong relationship existed between the children and the appellant noting that the appellant takes the children to school and looks after them whilst his partner works in order to support the family [56]. Having said that, there is very little other evidence before the judge which could conceivably take this case into the realms of 'undue harshness.' Mr McVeety, who appeared for the Secretary of State before the Upper Tribunal, relied on the recent decision in *PG (Jamaica)* [2019] EWCA Civ 1213. At [38-39] the Court of Appeal stated:

"38. The decision in *KO (Nigeria)* requires this court to adopt an approach which differs from that taken by Judge Griffith and Judge Finch. In the circumstances of this appeal, I do not think it necessary to refer to decisions predating *KO (Nigeria)*, because it is no longer appropriate, when considering section 117C(5) of the 2002 Act, to balance the severity of the consequences for SAT and the children of PG's deportation against the seriousness of his offending. The issue is whether there was evidence on which it was properly open to Judge Griffith to find that deportation of PG would result for SAT and/or the children in a degree of harshness going beyond what would necessarily be involved for any partner or child of a foreign criminal facing deportation.

39. Formulating the issue in that way, there is in my view only one answer to the question. I recognise of course the human realities of the situation, and I do not doubt that SAT and the three children will suffer great distress if PG is deported. Nor do I doubt that their lives will in a number of ways be made more difficult than they are at present. But those, sadly, are the likely consequences of the deportation of any foreign criminal who has a genuine and subsisting relationship with a partner and/or children in this country. I accept Mr Lewis's submission that if PG is deported, the effect on SAT and/or their three children will not go beyond the degree of harshness which is necessarily involved for the partner or child of a foreign criminal who is deported. That is so, notwithstanding that the passage of time has provided an opportunity for the family ties between PG, SAT and their three children to become stronger than they were at an earlier stage. Although no detail was provided to this court of the circumstances of what I have referred to as the knife incident, there seems no reason to doubt that it was both a comfort and an advantage for SAT and the children, in particular R, that PG was available to intervene when his son was a victim of crime. I agree, however, with Mr Lewis's submission that the knife incident, serious though it may have been, cannot of itself elevate this case above the norm. Many parents of teenage children are confronted with difficulties and upsetting events of one sort or another, and have to face one or more of their children going through "a difficult period" for one reason or another, and the fact that a parent who is a foreign criminal will no longer be in a position to assist in such circumstances cannot of itself mean that the effects of his deportation are unduly harsh for his partner and/or children. Nor can the difficulties which SAT will inevitably face, increased as they are by her laudable ongoing efforts to further her education and so to improve her earning capacity, elevate the case above the commonplace so far as the effects of PG's deportation on her are concerned. In this regard, I think it significant that Judge Griffith at paragraph 67 of her judgment referred to the "emotional and behavioural fallout" with which SAT would have to deal: a phrase which, to my mind, accurately summarises the effect on SAT of PG's deportation, but at the same time reflects its commonplace nature."

5. There is simply insufficient evidence in the present appeal capable of showing that the effect upon the children of the appellant's deportation, although very likely to cause them most considerable distress, would be unduly harsh. Such distress as they are likely to suffer is the inevitable consequence of criminal offending leading to deportation. I find that, even if the judge's reasoning is sometimes unclear, the outcome of this appeal, on the particular facts, was not in doubt. The grounds of appeal conclude by asserting that the appeal should be reheard so that 'the assessment should be made correctly in law' [13]. The problem for the appellant is that, however the assessment is made, the outcome will be the same. I do not find, therefore, that I should interfere with the First-tier Tribunal conclusion.

Notice of Decision

This appeal is dismissed.

Signed

Date 2 AUGUST 2019

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.