



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

Appeal Number: HU/01616/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 16 January 2020**

**Decision & Reasons
Promulgated
On 21 February 2020**

Before

**THE HONOURABLE LORD UIST
UPPER TRIBUNAL JUDGE CANAVAN**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**KK
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Clarke, Home Office Presenting Officer

For the Respondent: Mr Aitken, Counsel

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Shamash (“the judge”) dated 28 October 2019 allowing KK’s appeal against deportation on human rights grounds. The first ground of appeal is that the judge made a material misdirection in law when considering KK’s social and cultural integration in the UK, and, in particular, that she was wrong in law at para 79 of her decision to rely on the ratio of *Akinyemi v Secretary of State for the Home Department* [2017] EWCA Civ 36. The second ground of appeal is that the judge materially

erred in law when seeking to distinguish *Binbuga (Turkey) v Secretary of State for the Home Department* [2019] EWCA Civ 51 at para 78 of her decision on the different facts of the case. It is submitted that the Court of Appeal's findings at para [58] of *Binbuga* are applicable to the facts of the present case despite KK's residence in the UK since birth. It is asserted that, in light of KK's 40 convictions for 130 offences covering every year of his life since the age of 15 and his high risk of reoffending, the judge was bound to find that he was not socially and culturally integrated in the UK. The third ground of appeal is that the judge failed to provide adequate reasons for her finding at paras 50 (xi) and (xii) and 82 that due to his physical problems KK was dependent on his family and required their help to complete his basic needs so that he would face very significant obstacles to integration in Tanzania and her finding at para 50(xiv) that the treatment available to him in the UK would not be available to him in Tanzania. At para 50(xi)-(xii) she found that due to his physical problems KK was dependent on his family and required their help to complete his basic needs. That was a material consideration in her finding that he would face very significant obstacles in Tanzania. In looking at the medical evidence the judge did not exercise anxious scrutiny in considering all the evidence about his medical problems. The medical evidence noted by her from paras 50-53 made no reference to his acquiring assistance or a carer to carry out his daily tasks and no inference to that effect could be drawn. The oral evidence should not have been accepted uncritically since his mobility issues stemming from 2012 did not prevent him committing further offences, including driving offences. Had she had due regard to the objective evidence and his offending behaviour she would have reached a different conclusion on the issue of very significant obstacles. It followed that her finding on KK's family life with his siblings was inadequately reasoned and could not stand. She also made a material error of law when finding at para 50(xiv) that medical treatment available to KK in the UK would not be available to him in Tanzania. Although the health care system in Tanzania may have shortcomings, the judge had failed to provide sufficient reasons why his limited treatment in the UK would not be available to him in Tanzania.

2. The judge made the following findings of fact at para 50 of her decision (in which we substitute "KK" for "the appellant") on her assessment of the oral and written evidence:
 - (i) KK was born in the UK. He has lived in the UK legally his whole life. He has had ILR since 2003.
 - (ii) KK's entire family are British citizens.
 - (iii) KK does not have family members on whom he can rely in Tanzania. There is no one who would help him to integrate. He has no relationship with his father. Any relationship which he may have retained with his mother is compromised by the feud with his father. He therefore has no connection with Tanzania.

- (iv) KK is a foreign national within the meaning of section 32 of the UKBA and ss117D of the NIAA.
- (v) KK is a persistent offender. He has 40 convictions for 130 offences. His first conviction was for theft on 11 January 2000. Since then he has amassed 14 convictions for theft, 2 offences against the person, 1 robbery (as a juvenile), a non-domestic burglary (as a juvenile), 2 offences of criminal damage, 5 public order offences (sections 4 and 5 of the Public Order Act), 26 offences relating to the police, courts and prisons, 17 drug offences (all possession), 3 offences of possession of a bladed instrument, numerous offences relating to driving (from 1 dangerous driving to aggravated vehicle taking, TDA, driving with no insurance, driving while disqualified, driving with a defective tyre, exceeding the speed limit, driving whilst using a handheld mobile and failing to provide a specimen) and 5 non-recordable offences.
- (vi) He has almost always pleaded guilty. The longest sentence he has received was for the offences which triggered the deportation decision, which was 24 months imprisonment. These were serious offences within the meaning of the Act. Since then he has been sentenced to 18 months imprisonment for dangerous driving and other offences.
- (vii) KK has never had a driving licence. He has shown a blatant disregard for the law and for other road users and is lucky that no one has been hurt whilst he has been behind the wheel of a car. His most recent driving offences are an indication of this.
- (viii) There is a high risk of non-violent re-offending within two years and a medium risk of violent re-offending.
- (ix) KK expressed remorse at the hearing and an intention to desist from further criminality. He has some insight into his offending behaviour but I nevertheless find that there is a real risk that he will re-offend. I make this finding in light of his most recent conviction of 18 May 2018.
- (x) KK worked whilst in custody and has completed a number of courses to better equip him to avoid re-offending. He is usually on an enhanced regime as a result of good behaviour. I find that it is his intention to stay out of trouble.
- (xi) KK suffers from multiple debilitating conditions. He has mobility issues as a result of an injury to his spine, which have caused left leg paralysis, continence issues and a seeping ulcer. He requires regular monitoring and assistance to perform everyday tasks. The nature of his physical condition is that he is almost always in pain and needs regular monitoring from specialist services and a hygienic environment to avoid further deterioration in his health. He is

required to self-catheterise on occasions and has compromised bowel function.

- (xii) KK is wheelchair dependent although he can use crutches some of the time. He needs help showering, dressing and with mobility. The evidence is that he is not able to care for himself and requires the help and support of family and his carer.
- (xiii) As a result of his physical disabilities KK suffers from Low mood, suicidal ideation and symptoms of PTSD. He has required the intervention of his local community mental health team in the past.
- (xiv) The treatment available to KK in the UK would not be available in Tanzania.
- (xv) KK is in a subsisting relationship. His partner would not be able to care for him in Tanzania.

3. At para 28 of *Akinyemi* Underhill LJ stated:

“As regards section 117B(2) and (3), Judge Kekic noted that although of course the appellant spoke English the evidence of his integration into society was, having regard to his history of offending, mixed; and that he had never been financially independent. I am bound to say that I am not sure whether sub-sections (2) and (3) are in truth directed to a situation of the present kind, where the person in question has lived in the UK since birth and is in one sense fully integrated into society, however anti-social their behaviour. But the question is not of importance for the purpose of the issues before us.”

At para 79 of her decision the judge stated:

“In short, I have balanced KK’s convictions against the complex picture of a man brought up in the UK with considerable disabilities. The central fact for me was that he was born in the UK and I rely on the ratio in *Akinyemi* in this regard. KK has no connections with any other country and I have decided on this basis that, notwithstanding his appalling record, he falls within the exception.”

- 4. The Secretary of State submits in the first ground of appeal that the judge’s finding on this matter is inherently unsafe and requires to be set aside. In response counsel for KK submits that, while the observations of Underhill LJ in *Akinyemi* were *obiter* since the court was not required to determine the issue, the judge’s conclusion at para 79 is one that was properly open to her and disclosed no error of law. She had noted at paras 71 and 72 of her decision that KK was born in the UK and that since February 1995 he had been entitled to apply for registration as a British citizen under section 1(4) of the British Nationality Act 1981. At para 78 she had noted that KK had been brought up and educated in the UK and knew no other culture, that all of his relatives and friends were in the UK and that he received from the NHS treatment to which he was entitled.

Her overall conclusion that he was socially and culturally integrated was one properly open to her on the evidence, particularly where she had had full regard to the extent of his offending history.

5. In our judgment the submission of counsel for KK on the first ground of appeal is correct and must be sustained. The judge was terminologically incorrect to refer “the ratio in *Akinyemi*” when what she was referring to consisted of the *obiter* comments of Underhill LJ at para 28. What he said there was not part of the reasoning for the decision and therefore cannot properly be termed “the ratio”. Nevertheless, she was correct to pay heed to those comments and to take them into account when reaching her decision, which is what we consider she did. It is plain from the structure of section 117C(4) of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) that what it has principally in mind is someone who has come to the United Kingdom from another country. The wording is sufficiently wide to cover someone who has lived all his life in the United Kingdom, but it is clearly a relevant factor to be taken into account that the person has never known any social life or culture other than the one in which he has been brought up since birth, namely, that of the United Kingdom. We are satisfied that was all that the judge did in this case. She did not treat what Underhill LJ said at para 28 of *Akinyemi* as a rule of law that section 117C(4) of the 2002 Act did not apply to someone who had been born and lived his whole life in the United Kingdom. Accordingly, we reject the first ground of appeal taken by the Secretary of State.
6. So far as the second ground of appeal is concerned, this is based on what the judge said at para 78, which is as follows:

“Essentially KK was brought up in the UK. He was educated in the UK. He knows no other culture or society. He receives treatment on the NHS to which he always been entitled. All of his friends and his relatives are in the UK. KK can be distinguished from the appellant in *Binbuga* in the sense that the appellant in *Binbuga* did not arrive in the UK until he was 9 years old, was a gang member and had ties to Turkey.”

Hamblen LJ stated at para 58 in *Binbuga*:

“Social and cultural integration in the UK connotes integration as a law-abiding citizen. That is why it connotes that breaking the law may involve discontinuity in integration.”

Tirabi v Secretary of State for the Home Department [2018] UKUT 199 (IAC) involved an appellant who had arrived in the UK at the age of 9. The Upper Tribunal held that committing crimes did not of itself mean that a person was not socially and culturally integrated. It stated at para 15:

“The second issue is whether he is ‘socially and culturally integrated into the United Kingdom’. As we have said, the judge decided this point against the appellant because of his offence, which, when coupled with

the assessment that he continued to pose a danger to the community, she decided demonstrated his lack of integration. Mrs O'Brien conceded that the judge was wrong about that, and we think that she was right to do so. Bearing in mind again that these factors are being taken into account always in the context of the deportation of a person who has committed an offence, it is inconceivable that it could have been intended that, in any general sense, the commission of an offence would demonstrate a lack of integration. The appellant has been here since he was a child, he has been educated here, he has friends and relatives here, he has lived on his own in Glasgow after his relatives moved to London. We have little hesitation in concluding that he has socially and culturally integrated into the United Kingdom."

7. It was submitted on behalf of the Secretary of State that, in light of KK's offending history, the judge was bound to find that he was not socially and culturally integrated in the UK and that para 58 of *Binbuga* applied to him irrespective of the fact that he had lived in the UK since birth. In response it was submitted on behalf of KK that the judge's conclusions at paras 73-79 of her decision disclosed no material error of law, and, further, that it could not reasonably be said that the judge was bound to conclude that he was not socially and culturally integrated in the UK. It was clear that the judge had fully considered the extent of his offending history (paras 9, 509(v)-(ix) and 77) and described it as appalling (para 77). She had directed herself (at para 73) to the Secretary of State's Modernised Guidance on Criminality: Article 8 ECHR Cases dated 13 May 2019. At page 33 of that document it was stated that criminal offending alone does not necessarily mean a person is not socially and culturally integrated into the UK and also that if the person has been resident in the UK from a very early age it is unlikely that the offending alone would mean a person is not socially and culturally integrated. She further directed herself in accordance with para 15 of *Tirabi* and paras 75 and 76 of *Bossade (s117A-D interrelationship with the Rules)* [2015] UKUT 415 (IAC). Her evaluation of the evidence at paras 77-79 of her decision was made in accordance with the relevant authorities. Her overall conclusion that KK was socially and culturally integrated in the UK was one that was properly open to her on the evidence, particularly where she had had full regard to his offending history.
8. In our judgment there is no merit in the second ground of appeal. The judge did not make any material error of law in following what was said in *Binbuga*. The submission on behalf of KK is correct and must be sustained. On no view can it be said that she was blind to his extensive offending history: she was well aware of it and took it fully into account in reaching her decision. It does not follow automatically from the fact that someone has an offending history that he is not socially and culturally integrated in the UK. The issue was, as was pointed out at para 15 in *Tirabi*, being considered in the context of deportation of someone with an offending history. The judge considered all the relevant evidence

on the point and came to the conclusion that KK was socially and culturally integrated in the UK. That was a conclusion which was open to her on the evidence.

9. So far as the third ground of appeal is concerned, it was submitted on behalf of the Secretary of State that the judge failed properly to consider the medical evidence which made no mention of KK's need for a carer to carry out daily tasks and that she erred in uncritically accepting the oral evidence on this point as his mobility problems, which stemmed from 2012, had not prevented him committing further offences, including driving offences. When First-tier Tribunal Judge Murray granted permission to appeal he stated that it was arguable that the judge's findings at para 50(xi) to (xiv) were inadequately reasoned and not supported by the evidence. It was submitted on behalf of KK that the judge's findings on this point are, when her determination is read as a whole, adequately reasoned and supported by the evidence. Reference was made to the findings at para 50(xi) to (xiv). The judge at para 33 of her decision had set out a detailed analysis of the medical evidence provided in KK's bundle. At para 30 she stated as follows:

"The medical evidence included the hospital records from KK's admission to hospital following the shooting in September 2012. The notes include references to multiple gunshot pellets within the lumbar spinal canal and presacral region [AB58]. There was a report from KK's GP outlining the current position and explaining that KK continues to suffer from side effects of the injury, including chronic back pain, neurological and sexual symptoms, mobility and continence issues, with persistent foot ulcers for which he has been referred to plastic surgery [AB42-44]."

Further, at para 33 she referred to the letter from his GP, Dr Chetty, dated 26 June 2019 in which he stated that KK's medical issues were chronic in nature, that he expected an exacerbation of them and that there was a need to monitor pain and pain control. When the judge's analysis at paras 30-33 were considered, her finding at para 50(xi) was supported by adequate reasoning. Her finding at para 50(xii) was open to her on both the oral and documentary evidence. The documentary medical evidence from his GP and other sources, which adequately documented the nature of the medical concerns, was fully considered by the judge. Although that material did not make express reference to the requirement for a carer, the judge recorded at para 35 of her decision that KK had been provided with a carer only since his release from prison in 2019. This was therefore a recent development which post-dated his criminal offending. The evidence from the Department of Work and Pensions confirmed that he had been assessed as eligible for personal independence payment both in respect of the daily living part (at the standard rate) and mobility part (at the enhanced rate). In the assessment of his needs he scored 3 out of 8 for assistance in getting in and out of a bath or shower, 2 out of 8 for needing an aid or appliance to manage his toilet needs or incontinence, 2 out of 8 for needing to use an

aid or appliance to dress and undress and 12 out of 12 for moving around, being able to stand and move more than one metre but no more than 20 metres either aided or unaided. This evidence, when considered in the round with the oral evidence summarised by the judge at paras 34-46 of her decision supported KK's claim that he required the assistance of a carer to help him with certain daily tasks. Her decision disclosed that she applied anxious scrutiny to all of the documentary and oral evidence placed before her and that her finding at para 50(xii) was properly open to her. Her finding at para 50(xiii) that, as a result of his physical disabilities, KK suffered from low mood, suicidal ideation and symptoms of PTSD and has required the intervention of the local community mental health team in the past was based upon medical evidence, in particular the letter from Dr Chetty dated 16 November 2018, in which he stated at para 5:

"Mr KK was noted to mobilise with crutches in a recent clinical letter and experiences recurring pain, erectile dysfunction, requires intermittent self catheterisation and has compromised bowel function. He has also shown some symptoms of depression, low mood, suicidal ideation and anxiety and was noted to have some elements of PTSD on a psychiatric assessment."

Her finding at para 50(xiii) was therefore based upon evidence that was before her.

10. In relation to the contention in the third ground of appeal that the judge erred in her finding that the treatment required by KK would not be available to him in Tanzania, she noted at para 50 of her determination that the evidence from the World Health organisation was that Tanzania was a country faced with a number of challenges, including significant shortages of medical personnel. She also relied upon the evidence of KK's brother that there is a lack of wheelchair access in Tanzania and that all of KK's support network were in the UK. At para 82 of her decision she provided adequate reasons to demonstrate the very significant obstacles that KK would be likely to encounter on his return to Tanzania. Her brief reference to the availability of medical treatment in Tanzania did not amount to an error of law.
11. In relation to the contention by the Secretary of State that the judge's findings about KK's family life with his siblings were inadequately reasoned and so could not stand, it was submitted for KK that, when her decision was read as a whole, her findings in that regard were properly open to her on the evidence. At para 70 she correctly referred to the decision of the Court of Appeal in *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31 and concluded that his relationship with his adult siblings was greater than the ordinary ties between adult siblings. That finding had to be considered in the broad context of her decision as a whole, particularly in light of her summary of

the oral evidence at para 44-46, detailing the close nature of his relationship with his siblings.

12. In our judgment the third ground of appeal is also without merit, essentially for the reasons set out in the submission for KK narrated above. We are satisfied that the judge had a proper evidential basis for the findings challenged by the Secretary of State and that she was entitled to make those findings. It follows that there was no error of law in the making of those findings.

Notice of Decision

The decision of the First-tier Tribunal does not contain any material error of law.

The appeal by the Secretary of State to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal shall stand.

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.

Signed: Lord Uist

Date: 18 February 2020

Lord Uist sitting as an Upper Tribunal Judge.