



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

Appeal Number: HU/16849/2018 (P)

THE IMMIGRATION ACTS

**Decided under rule 34
On 7th August 2020**

**Decision & Reasons Promulgated
On 13th August 2020**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**VG
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. Directions were issued by Upper Tribunal Judge Lindsley on 6 May 2020 indicating the provisional view, in light of the need to take precautions against the spread of Covid-19 and the overriding objective, that this case was suitable to determine whether there was an error of law in the First-tier Tribunal's decision and if so, whether that decision should be set aside, without a hearing.
2. The Appellant conditionally opposes the determination of these issues on the papers if the Upper Tribunal do not agree that the Respondent has effectively not opposed the grounds of appeal. Reference is made to a number of cases about procedural fairness but no specific submissions are made as to why this particular appeal requires, as a matter of fairness or in the interests of justice, an oral hearing to determine the issues of

whether there is an error of law and if so, whether the decision should be set aside.

3. The Respondent has made no submissions as to whether the error of law stage of this appeal could or should be determined on the papers, such that there has been no objection by her in proceeding with the provisional view of Judge Lindsley.
4. In my view, this is a case in which it is suitable for the issues of whether the First-tier Tribunal's decision materially erred in law and if so, whether the decision should be set aside, to be determined on the papers on the basis of the written submissions made. This is in light of the unprecedented circumstances surrounding Covid-19 and the need to take precautions to prevent the spread of the disease; is in accordance with the overriding objective for the Upper Tribunal to deal with cases fairly and justly in rule 2(1), (2) and (4) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and in circumstances where on the facts; there are comprehensive written submissions from both parties covering all of the relevant issues. This decision has therefore been made under rule 34.
5. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Barton promulgated on 10 December 2019, in which the Appellant's appeal against the decision to refuse his human rights claim in the context of deportation dated 14 August 2018 was dismissed.
6. The Appellant is a national of Albania, born on 12 December 1985, who last entered the United Kingdom in October 2011 with entry clearance as the spouse of a British Citizen, further to which he was granted indefinite leave to remain on 11 November 2013. The Appellant's application for naturalisation was refused on 7 October 2015 on the basis that he had previously entered the country illegally in 2007.
7. On 2 February 2018, the Appellant was convicted of one count of conspiring to conceal, disguise, convert, transfer or remove criminal property for which he was sentenced to 12 months' imprisonment. Further to this, the Respondent issued the Appellant with a decision to make a deportation order on 7 March 2018 and following consideration of submissions made by the Appellant; refused his human rights claim on 14 August 2018. The Appellant's submissions were on the basis of family life with his partner, an Albanian national with limited leave to remain in the United Kingdom as a refugee.
8. The Respondent refused the application the basis that the Appellant did not meet either of the exceptions to deportation on the basis that the Appellant's partner was not a qualifying partner (not being a British Citizen or settled in the United Kingdom) and that it would not be unduly harsh for her to remain in the United Kingdom if the Appellant were to be deported; and the Appellant did not meet the private life exception as he had not been lawfully resident in the United Kingdom for the majority of his life and would not face very significant obstacles to his reintegration in

Albania. Finally, there were no very compelling circumstances to outweigh the public interest in deportation.

9. Judge Barton dismissed the appeal in a decision promulgated on 10 December 2019 on all grounds. In summary, the First-tier Tribunal found that the Appellant could not meet either of the exceptions to deportation and in particular that the Appellant's deportation would not be unduly harsh on his partner and there were no very compelling circumstances to outweigh his deportation.

The appeal

10. The Appellant appeals on four grounds as follows. First, that the First-tier Tribunal failed to give adequate reasons for its findings that the Appellant's deportation would not be unduly harsh on his partner; setting out the competing factors but without any explanation of why the conclusion was reached or what weight was given to the different factors. Secondly, that the First-tier Tribunal failed to consider the likely effects of deportation on the facts of this case; referring to the option of a long-distance relationship and the Appellant and his partner meeting or residing together in a third country; but without any specific reference to the particular facts of this appeal and the practical realities of whether the relationship could be maintained by these means or not. Thirdly, that the First-tier Tribunal failed to consider material evidence or give it appropriate weight in assessing the public interest in deportation. In particular, when considering whether there were very compelling circumstances, there was no consideration that the Appellant was committed in 2015, nearly four and a half years before the deportation appeal hearing and that he was only in custody for six months; that there was delay considered by the sentencing Judge and that this offence was at the lower end of the seriousness scale with a sentence of 12 months' imprisonment and following which the Appellant has not reoffended, has rehabilitated and is in full-time employment. Fourthly, that the First-tier Tribunal failed to deal with the Appellant's integration and private life in the United Kingdom in accordance with CI (Nigeria) v Secretary of State for the Home Department [2019] EWCA Civ 2027; failing to assess social and cultural integration at the time of the appeal hearing rather than during his criminal activities and failed to take into account that the Appellant had indefinite leave to remain in the United Kingdom, had a history of employment and study (before and after his imprisonment) and was in a permanent relationship.
11. In the further written submissions filed pursuant to the directions sent on 6 May 2020, the Appellant relied on the written grounds of appeal and added the following. In relation to the first ground of appeal, the Appellant submits that setting out the legal framework is not sufficient in circumstances where there is no adequate explanation of how the facts are assessed, weighed and applied against competing factors and in this case, the First-tier Tribunal had simply rehearsed the facts but not evaluated them.

12. In relation to the third ground of appeal, the Appellant submits that the First-tier Tribunal has failed to analyse the weight to be attached to the public interest in this particular case given that the public interest in deportation is only minimally fixed and with some degree of flexibility. The First-tier Tribunal failed to consider the matters relevant to the weight to be attached to the public interest, such as the length of the Appellant's sentence.
13. The Respondent filed written submissions on 5 June 2020 opposing the Appellant's appeal on the basis that the First-tier Tribunal properly directed itself as to the primary issue of whether it would be unduly harsh on the Appellant's partner to remain in the United Kingdom without the Appellant. It is submitted on behalf of the Respondent that the grounds of appeal are no more than disagreement with the findings made.
14. In relation to the second exception to deportation, the Respondent submits that the First-tier Tribunal's decision is adequately reasoned and results from the correct consideration of extant case law; set out together with reference to the Appellant's partner's circumstances and medical evidence. The seriousness of the Appellant's offending is not relevant to the question of whether the Appellant meets the requirements of the second exception.
15. As to whether there were very compelling circumstances to outweigh the public interest in deportation, the Respondent submits that the First-tier Tribunal took into account all relevant matters, including the Appellant's partner's medical issues and it was open to the First-tier Tribunal to conclude that there were no very compelling circumstances in this case.
16. In reply to the Respondent's submissions, the Appellant submitted that the grounds of appeal were effectively unopposed by the Respondent in that there was no direct challenge to them and submissions only on exception 2 in section 117C of the Nationality, Immigration and Asylum Act 2002, whereas the Appellant's submissions focused on the decision that there were no very compelling circumstances to outweigh the public interest in deportation.

Findings and reasons

17. The First-tier Tribunal's decision follows the usual structure of setting out the facts, the legal framework and then findings and conclusion. The decision has a lengthy section on the law from paragraphs 38 to 49 and also in paragraphs 60 to 68 within the section headed 'findings'. In terms of the findings of fact actually made, these are contained in paragraph 52 (matters which were common ground upon which there was no dispute between the parties; paragraphs 55 to 57 as to the Appellant's conviction and circumstances since release from custody (in terms of compliance with the terms of his licence and employment); and then in paragraphs 69 onwards. However, in relation to the findings about the Appellant's partner and his relationship with her, the decision is in the main a summary of the largely undisputed evidence, including by reference other

documents (paragraphs 69 to 73 and 75 to 76) without any actual findings or evaluation of that evidence by the First-tier Tribunal.

18. In paragraph 74 of the decision, the First-tier Tribunal set out what are described as 'balancing against' factors; being the Appellant's partner's medical treatment, education, employment, social circle in the United Kingdom and options for the relationship to continue after deportation. Again, there is no specific assessment or evaluation of these factors and they are stated more as a recitation of uncontested facts.
19. In relation to the second exception to deportation, the First-tier Tribunal's only actual findings and conclusion are in paragraphs 81 and 82 of the decision as follows:

"81. I now turn to Exception 2. The Respondent accepted that the Appellant has a genuine and subsisting relationship with his partner. The Respondent did not accept that the Appellant's partner is a qualifying partner. I find that the Appellant's partner is not a qualifying partner. She is not a British citizen and she is not settled in the UK within the meaning of the Immigration Act 1971. She has leave to remain as a refugee until 2020.

82. I find that the effect of the Appellant's deportation on his partner does not meet the requirements of being "unduly harsh". The decision of the Supreme Court in KO (Nigeria) and the decision of the Court of Appeal in KF (Nigeria) makes it clear that the "unduly harsh" requirement involves an additional factor or factors that take the case outside the expected consequences of deportation on a partner. It is inevitable that deportation of a foreign criminal will have a real and potentially damaging effect on the partner of the deportee. On the basis of the evidence in this appeal I find that the Appellant cannot meet the requirements of Exception 2 in s.117C and paragraph 399 of the Rules."

20. Whilst it is no longer in dispute that the Appellant can not meet exception 2 because of his partner's immigration status; in circumstances where she is a recognised refugee from the country to which the Appellant is to be deported, it is still relevant to consider whether the impact of his deportation would be unduly harsh on her when considering overall if there are very compelling circumstances to outweigh deportation.
21. As can be seen from paragraph 82 of the decision above, there is no explanation or reasoning at all by the First-tier Tribunal as to why the effect of the Appellant's deportation would not be unduly harsh on his partner and there is no reference at all to the specific evidence relevant to this issue upon which the decision is based. It is, from this paragraph and from reading the decision as a whole, impossible for the Appellant to understand why the First-tier Tribunal has reached this decision. This is particularly so in circumstances where there is unchallenged evidence of the Appellant's partner's previous trauma and ongoing mental health problems directly related to the possibility of deportation which are not

self-evidently comparable to the usual adverse impact on a partner such that no reasons are required to explain why this does not go beyond the usual degree of harshness expected.

22. Further, although not expressly within the first ground of appeal, it is noted that the First-tier Tribunal has not made a specific finding as to whether it would be unduly harsh for the Appellant's partner to relocate to Albania with him. In circumstances where despite the Respondent having accepted that she is refugee from Albania, it was submitted that it would not be unduly harsh for her to return to a country where there is an accepted real risk of persecution; the issue should have been resolved and it is potentially relevant in the overall consideration of the appeal. For these reasons and those set out above, I find an error of law on the first ground of appeal that the First-tier Tribunal has failed to give adequate reasons for the findings made.
23. The second ground of appeal is that the First-tier Tribunal has failed to consider the likely effects of deportation of the Appellant and in particular whether their relationship could be maintained after deportation. As above, there is no finding either way as to whether the Appellant's partner could relocate to Albania or whether it would be unduly harsh for her to do so; and also no resolution of the different positions between the parties as to whether there could be a long-distance relationship or one in a third country. The Respondent had clearly submitted that there could be, the Appellant's evidence was that they could continue to meet in Kosovo and the Appellant's partner's evidence was that there was not an alternative workable option to maintain the relationship at all. Although often, these standard possibilities may have no clear or weighty relevance to a case, on the facts of this appeal, it was a matter on which I find that there should have been a finding of fact and one which would be relevant to the impact of the Appellant's deportation on his partner and whether it would be unduly harsh. The impact on a person could be worse if deportation would end the relationship completely compared to a lesser impact if it could be maintained elsewhere or through regular visits and contact. Although alone this may not have been a material error of law; I find that there is an error of law on the second ground of appeal on the particular facts of this case.
24. The third ground of appeal is that the First-tier Tribunal failed to properly assess the public interest in deportation when considering whether there were very compelling circumstances to outweigh it. In paragraph 84 of the decision, the First-tier Tribunal states that deportation of foreign criminals is in the public interest; not only to prevent further offences being committed by the Appellant but also a matter of marking the seriousness with which crime is treated and as a deterrent to other foreign nationals from committing crime. The First-tier Tribunal does not however go on to consider the seriousness of the Appellant's offence, length of sentence or likelihood of reoffending. Although it is correct as a starting point that there is a public interest in deportation of foreign criminals, the First-tier Tribunal has not expressly considered section 117C(2) of the

Nationality, Immigration and Asylum Act 2002 that the more serious the offence, the greater the public interest, nor has it assessed on the facts of this case the strength of the public interest; which is not fixed.

25. Further, the First-tier Tribunal then go on to simply state that in this case it is clear that the public interest outweighs the effect on the Appellant and his partner, relying again on the earlier, unreasoned finding that deportation would not be unduly harsh on her. There is no balancing of any competing factors, no explanation and no reasons for this conclusion which is not self-evidently clear when reading the decision as a whole. As in the first ground of appeal, it is simply impossible for the Appellant to understand the conclusion in the absence of any reasons or in fact proper findings on matters to be balanced. I therefore also find an error of law on the third ground of appeal.
26. The final ground of appeal is that the First-tier Tribunal has failed to properly consider the Appellant's integration and private life in the United Kingdom, simply finding that at the time of his offending, he was not socially and culturally integrated due to his criminal activity and discounted the Appellant's employment, qualifications and tax paid because of this and because there was no evidence of clubs, societies or places of study.
27. In paragraph 78 of the decision the First-tier Tribunal relies on the case of Binbuga v Secretary of State for the Home Department [2019] EWCA Civ 551 as to criminal associations and the Appellant's lack of acceptance of the core values, customs, social behaviours and rule of law in the United Kingdom. However, this is not a case where the Appellant's only claimed integration is with criminal associates; but one in which he had been in the United Kingdom lawfully for over eight years at the date of hearing, with uncontested evidence of qualifications, employment and relationships here; together with a relatively short period of imprisonment after which he continued his relationship and obtained full-time employment. It is wholly unexplained why on the facts this did not amount to social and cultural integration, even taking into account the criminal offending. Of itself, and in circumstances where the clear focus of the appeal was on the Appellant's relationship with his partner, that is not necessarily a material error of law, but it is a further error of law on which the findings can not stand.
28. For the reasons set out above, I find errors of law on all grounds of appeal set out by the Appellant; which are material to the outcome of the appeal and as such it is necessary to set aside the decision. Due to the nature of the errors and lack of findings and reasons for the decision; it is not possible to preserve any findings of fact from the decision of the First-tier Tribunal and it is appropriate to remit the appeal to the First-tier Tribunal for a de novo hearing.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remit the appeal to the First-tier Tribunal (Taylor House hearing centre) to be heard by any Judge except First-tier Tribunal Judge Barton.

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 G Jackson

Date 7th August 2020

Upper Tribunal Judge Jackson