IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004961
First-tier Tribunal No: HU/04912/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 6 April 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

HAMZA FAROOQ
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Moksud, Solicitor, IIAS Solicitors
For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 10 February 2023

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Andrew Davies ('the Judge'), promulgated on 24 August 2022, in which the Judge dismissed the appellant's appeal against the refusal of his application for leave to remain on human rights grounds made in support of his reliance upon an exception to his deportation from the United Kingdom.
2. The Judge records that the appellant was convicted in November 2020 and sentenced to a period of three years imprisonment.
3. In addition to the documentary evidence the Judge had the benefit of seeing and hearing oral evidence being given by the appellant and his witnesses. The Judge set out his findings of fact from [26] of the decision under challenge.
4. The Judge referred to the appellant's offending history which culminated in his conviction at Manchester Crown Court on one account of possession with intent to supply a Class A controlled drug, cocaine, and one count of possession of a Class A controlled drug, cocaine, for which he was sentenced to 3 years imprisonment.
5. The Judge accepted the appellant arrived in the UK legally on 11 October 2003 with his mother and three sisters as dependents of their father who was a work

permit holder. The appellant was granted indefinite leave as a dependent of his father on 7 October 2010 [29].

6. The Judge's finding at [31] that the appellant is a foreign criminal, as he is a national of Pakistan who has a history of offending in the UK, is a sustainable finding.
7. The Judge refers to the appellant being educated in the UK, qualifications obtained, and evidence of his employment. The Judge accepts the appellant spent much of his childhood in the UK [34] and as a result he would have developed a "powerful private life claim".
8. The Judge commences consideration of the appellant's social and cultural integration into the UK from [35]. The Judge notes the Secretary of State accepts that the appellant was integrated to a degree but not wholly because of his offending. The Judge accepts a degree of integration referring to the fact the appellant is fluent in English, has attended school and college, has worked, and that he has ties with his family in the UK. The Judge goes on, however, to consider whether there are any countervailing factors from [36] noting that the appellant's offending is not consistent with social integration. The Judge considers the appellant's explanation for his offending, which he blames on mental health problems, but rejects this argument by reference to the medical evidence [39 – 40].
9. At [42] the Judge finds "*As of the date of the hearing, on the basis of my findings above about the Appellant's criminal offending, I do not find that he is fully socially and culturally integrated into the UK. There is a degree of integration from his education and work activities. However, the Appellant had deliberately set out on a path of drug dealing".*
10. The Judge refers to the Sentencing Remarks and the fact that the appellant was convicted of drug dealing in 2016 and again in 2020 and that despite being given a suspended sentence in 2016 made no effort to change his way of life, which resulted in the three year period of imprisonment when he was caught.
11. The Judge also considered the mental health issues, including the evidence provided in support, noting the appellant is being treated with prescribed antipsychotic medication which he was taking. The Judge noted the appellant claimed he was no longer taking illicit drugs and did not use alcohol. The Judge was satisfied the appellant's mental health was treated by medication and it was not so serious that returning him to Pakistan will lead to a breach his rights under Article 3 ECHR [56].
12. The Judge considered prospects of reintegration into Pakistan from [57] noting the need for a broad evaluative judgement as to whether the appellant will be enough of an insider to understand how life in the country to which he will be removed is carried on, and that he will have a reasonable opportunity to be accepted there and to be able to operate on a day-to-day basis. The Judge notes the existence of relatives in Pakistan, and it was noted by the Judge at [59 – 61] that the appellant's family have retained close ties with their family in Pakistan [62].
13. The Judge found that some of the evidence concerning the appellant's schooling in Pakistan, from the appellant's father, was "evasive" and that when considering the matter holistically, and bearing in mind the relevant legal test, that the appellant had not established very significant obstacles to his integration and that the appellant could not meet Exception 1 of the Immigration Rules. There was no dispute he could not meet the requirements of Exception 2.
14. Thereafter the Judge went on to consider section 117C(3) Nationality, Immigration Asylum Act 2002/paragraph 398 (c) Immigration Rules, which required consideration of whether there are sufficiently compelling

circumstances over and above those described in Exceptions 1 and 2. The Judge records the appellant's advocate did not address this issue in any depth in his submissions, [74], preferring instead to focus on the argument that there were very significant obstacles due to the mental health problems and claiming the appellant was fully integrated into the UK. The applicant had argued that removal will be unduly harsh for other family members. The Judge sets out the assessment of this element from [77 – 82], resulting in the appeal being dismissed, as the Judge did not find that the public interest was outweighed on the facts.

15. The appellant sought permission to appeal arguing the Judge erred in law when holding the appellant was not socially and culturally integrated into the UK, defining cultural integration narrowly and differently, applied a very high standard of proof, erred in the assessment that there were no very significant obstacles the appellant's integration into Pakistan, and arguing this matter had not been adequately considered. The grounds also argue the Judge erred in considering the issue of sufficiently compelling circumstances, submitting as there are sufficiently compelling circumstances the Judge erred when finding in the alternative.

16. Permission to appeal was granted by another judge of the First-tier Tribunal on 22 September 2022, the operative part of the grant being in the following terms:

> 3. I note the Judge accepted at [35] that the Appellant had demonstrated a degree of social and cultural integration in the UK, because he spoke English fluently, had attended schools and college, had worked, and has ties with his family in this country. Nevertheless, the Judge found at [36] that "social integration is not consistent with offending behaviour".
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> 4. In effect, the Judge thereby found that section 117C(4) was not engaged in the Appellant's favour on account of his criminality, notwithstanding that said section applies solely to foreign criminals. Correspondingly, if a foreign criminal is incapable of engaging section 117(4)(b) solely on account of their criminality, then said section would be rendered otiose.
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> 5. By the same token, I am mindful that in CI (Nigeria) v SSHD [2019] EWCA Civ 2027, the Court of Appeal held at [62] that "It is hard to see how criminal offending and imprisonment could ordinarily, by themselves and unless associated with the breakdown of relationships, destroy the social and cultural integration of someone whose entire social identity has been formed in the UK".
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> 6. Given the Judge accepted the Appellant has lived in the UK for some 18 years as at the date of decision, since early childhood [1] and continues to have some family support in this country [53], it is arguable the Judge's finding that the Appellant has failed to demonstrate social and cultural integration in the UK [48] is incompatible with the ratio of CI (Nigeria.)

17. The Secretary of State opposes the appeal for the reasons set out in a Rule 24 response dated 6 October 2022, the relevant part of which is in the following terms:

> 2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.

3. The determination shows that the judge carefully considered the issue of the appellant's integration in the United Kingdom. They noted the factors in favour of the appellant but took into account that the appellant's offending had particularly damaging affect on society and that the offence had been repeated. The Secretary of State considers that these were legitimate factors to consider and that the conclusions of the First Tier Tribunal were sound. Furthermore the findings of the judge that there are not very significant obstacles to the appellant's reintegration are also properly reasoned and therefore any error in the consideration of the appellant's integration would not be material.

4 The respondent invites the Tribunal to uphold the decision of the First Tier Tribunal.

Discussion

18. The appeal involves a foreign criminal and so the relevant statutory provision when considering article 8 ECHR proportionality assessment is to be found in section 117C of the Nationality, Immigration and Asylum Act 2002. That section reads:

> 117C Article 8: additional considerations in cases involving foreign criminals
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> (1) The deportation of foreign criminals is in the public interest.
>
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
>
> (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
>
> (4) Exception 1 applies where—
>
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
>
> (b) C is socially and culturally integrated in the United Kingdom, and
>
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
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> (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
>
> (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
>
> (7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

19. Section 117C(4) mirrors Exception 1 considered by the Judge by reference to the Immigration Rules. There are three elements to this exception the first being that the foreign criminal has been lawfully resident in the United Kingdom for most of his or her life, which in this appeal is not disputed, that the foreign criminal is socially and culturally integrated into the United Kingdom, and that there will be very significant obstacles to the foreign criminals integration into

the country to which it is proposed they are to be deported which, in this appeal, is Pakistan.

20. The appellant challenges the Judge's finding that he is not socially integrated into society in the UK predominantly by reference to his criminality. If someone integrates into a social group such as society they behave in such a way that they become part of the group or are accepted into it. Whilst it is accepted that social integration is a multifaceted concept it does include the law and the expectation a person who is a member of the society in question will adhere to the norms of behaviour which, in terms of prohibitions set out in law, is not to break the law.

21. The Judge makes specific reference to the extent of the appellant's offending which is set out in the following paragraphs of the determination:

> 26. The Appellant was convicted in February 2016 at Manchester Crown Court of possession with intent to supply class B controlled drugs (cannabis) and was given a 3 months concurrent sentence to a young offenders' institution suspended for 18 months. He was also convicted of possession with intent to supply class A controlled drugs (cocaine) and was given a concurrent sentence to a YOI of 12 months suspended for 18 months. The Appellant was also given a concurrent sentence of 12 months, suspended for 18 months, for possession with intent to supply class A controlled drugs (MDMA). He was given a 12 months concurrent sentence. This was suspended for 18 months.
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> 27. In June 2016 the Appellant was convicted of using a vehicle while uninsured and fined. He was also convicted of a licence offence. He was convicted of possession of a class B controlled drug (cannabis/cannabis resin) and fined. He was disqualified from driving for 6 months.
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> 28. On 5 November 2020 at Manchester Crown Court the Appellant was convicted of one count of possession with intent to supply a class A controlled drug, cocaine,, cocaine. He was sentenced 3 years imprisonment.

22. The Judge therefore finds that it is not just a one-off act of possession or supply for which the appellant was convicted but a pattern of repeated behaviour of possession with intent to supply, breaches of suspended sentences, and an escalation in the seriousness of his offending, which are the relevant facts.

23. The grant of permission to appeal refers the decision of the Court of Appeal in CI(Nigeria) v Secretary of State for the Home Department [2019] EWCA Civ 2027, and specifically to [62] of that decision in which the Court state:

> 62. Clearly, however, the impact of offending and imprisonment upon a person's integration in this country will depend not only on the nature and frequency of the offending, the length of time over which it takes place and the length of time spent in prison, but also on whether and how deeply the individual was socially and culturally integrated in the UK to begin with. In that regard, a person who has lived all or almost all his life in the UK, has been educated here, speaks no language other than (British) English and has no familiarity with any other society or culture will start with much deeper roots in this country than someone who has moved here at a later age. It is hard to see how criminal offending and imprisonment could ordinarily, by themselves and unless associated with the breakdown of relationships, destroy the social and cultural

integration of someone whose entire social identity has been formed in the UK. No doubt it is for this reason that the current guidance ("Criminality: Article 8 ECHR cases") that Home Office staff are required to use in deciding whether the deportation of a foreign criminal would breach article 8 advises that:

> "If the person has been resident in the UK from a very early age it is unlikely that offending alone would mean a person is not socially and culturally integrated."

24. The Court of Appeal makes specific reference at [62] to the profile of an individual being considered at this particular stage of the judgement. It is important to note the reference in the second sentence of that paragraph where the Court clearly refer to a person who has lived all or almost all their life in the UK, has been educated here, speaks no language other than English, and has no familiarity with any other society or culture, and so has much deeper roots. The Judge finds that even though the appellant has lived almost all his life in the UK and been educated here he speaks the relevant languages and has sufficient connections.
25. Mr McVeety also referred to [74 – 75] of CI (Nigeria) in which the Court fine:

74. I think it important to note that the finding that AM was not socially and culturally integrated in the UK, and the decision of the Court of Appeal that this finding was one that it was open to the tribunal to make, were not based on AM's criminal offending and time spent in prison alone. A critical part of the reasoning was that, following a period of many years in which he had effectively dropped out of society and persistently offended, the appellant had no social or other ties at all in the UK.

Errors of approach

75. I am sure that the Upper Tribunal judge was right to say that social and cultural integration in the UK can be broken by criminal offending and imprisonment and that this is a fact-sensitive question. However, he gave no reasons for his conclusion that this was the effect of CI's offending and imprisonment in the present case. I appreciate that where a judgment is made on the basis of an overall evaluation of the circumstances of a case, the conclusion arrived at is not capable of logical demonstration and there is a limit to the reasoning that can be given to justify it. But in order to discharge the duty to give adequate reasons for its decision, a tribunal should at least identify the main facts and circumstances which have led to the conclusion and give some indication, where it is not self-evident, of what the significance of these facts is considered to be.
26. It is inherent in the evaluative exercise involved in such a fact sensitive decision that there is a range of reasonable conclusions which a Tribunal might reach. The decision of the Judge was within the range of reasonable conclusions open to it on the evidence and findings made.
27. Even if the Judge had erred in law when considering the appellants criminality was sufficient to break his social and cultural integration into the UK, that would not of its own be sufficient. As noted in section 117C each of the three criteria in Exception 1 have to be satisfied for an individual to show that their personal circumstances outweigh the public interest in their deportation. Even if the appellant was found to be lawfully resident in the United Kingdom for most of his life, was socially and culturally integrated into UK, he would still have to show there will be very significant obstacles to his integration into Pakistan.

28. The grounds of appeal challenging the Judge's findings in relation to this aspect are very specific. They plead:

> Arguably, he erred in law when he held that he would not in Pakistan. The Judge referred to a paragraph in the case of *Kamara.* The fact is accepted by the Judge which favours the appellant surely support him and he would not be able to integrate into a country, where he was only a child when he lived there. There is no possibility of reintegration in a country where he was never integrated before when he was a child. He would be marked with a stigma as a convicted drug addict and under no circumstances would be an insider in that society in third world country which is at the cusp of being declared a failed state. He would never be an insider in terms of understanding how life in society in that country is carried on and paid capacity to participate in it, so as to have a reasonable opportunity to be accepted there [*Kamara].*
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> The Judge did not consider the grounds reality.

29. As Mr McVeety submitted, the grounds do not address the crux of the test in relation to the question of whether there are very significant obstacles to integration focusing solely upon the question of integration. The Judge considered the nature of the assistance available to the appellant through family and friends, visits between the families in Pakistan and in the UK, and lack of evidence the appellant would not be able to obtain the necessary help to deal with his mental health issues which in the UK is by prescribed medication.
30. The difficulty for the appellant is that it is not made out the Judge did not consider all of the evidence holistically with the required degree of anxious scrutiny. I find no merit in the claim the Judge applied an incorrect burden or standard of proof. The foundation of the challenge in this ground and the Judge's findings in relation to very significant obstacles is the claim the appellant has no family in Pakistan and a medical condition, but the Judge made findings within the range of those available to the Judge dealing with these issues.
31. The issue of insurmountable obstacles is not properly addressed in the grounds which do not establish that the same exist. Even though Mr Moksud in his reply stated there was evidence before the Judge of mental health issues that evidence was adequately considered by the Judge.
32. The grounds are, in effect, disagreement with the Judge's findings and an expression of the appellant's desire for more favourable findings to enable him to remain in the United Kingdom. They also disagree with the weight the Judge placed on the evidence in arriving at the conclusion set out in the determination.
33. Even if it could be argued the Judge erred in relation to the question of integration, based upon CI (Nigeria) and lack of reasoning, I do not find the appellant has established such error is material as the findings by the Judge in relation to the third element of Exception 1, and thereafter consideration of whether there are very significant obstacles over and above the exceptions, have not been shown to be findings outside the range of those reasonably available to the Judge on the evidence.
34. The key finding of the Judge is that the Secretary of State had established that the public interest outweighed any issues relied upon by the appellant, such that deportation is proportionate. That has not been shown to be a finding infected by material legal error. Accordingly I find that the determination shall stand.

Notice of Decision

35. There is no legal error material to the decision of the First-tier Tribunal. The Judge's decision shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 February 2023