



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005612
First-tier Tribunal No: HU/57309/2021
IA/16600/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 2 May 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KRISTIAN KODRA
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Presenting Officer

For the Respondent: Ms P Heidar, solicitor, AA Immigration Lawyers Ltd

Heard at Field House on 10 March 2023

DECISION AND REASONS

1. Anonymity was not ordered by the First-tier Tribunal and there has been no application for an anonymity order on this appeal.
2. The Secretary of State appeals, with the permission of Upper Tribunal Judge Pickup, against the decision of First-tier Tribunal Judge Bart-Stewart to allow Mr Kodra's appeal against the respondent's decision to refuse his human rights claim. To avoid confusion, I will refer to the parties as they were before the FtT: Mr Kodra as the appellant and the Secretary of State as the respondent.

Background

3. The appellant is an Albanian national who was born on 26 December 1997. He sought asylum unsuccessfully in 2012 but was granted limited leave to remain as an Unaccompanied Asylum-Seeking Child until 21 February 2015. An application to extend that leave was refused in April 2017 but his appeal against that decision was allowed, on Article 8 ECHR grounds, by First-tier Tribunal Judge

Pears. The respondent granted the appellant further leave to remain as a result of that decision. His leave was valid from 12 July 2019 to 8 January 2022.

4. On 31 December 2020, at Wood Green Crown Court, the appellant was convicted of offences: managing a brothel, possessing criminal property and possession of a false identity document. He was sentenced by HHJ Singh to a total of two years' imprisonment.
5. The respondent subsequently issued a deportation order against the appellant, in response to which he made a protection and human rights claim on 19 May 2020. Those claims were refused on 6 November 2021. The appellant appealed to the First-tier Tribunal.

The Appeal to the First-tier Tribunal

6. The appeal was heard by the judge, sitting at Taylor House, on 9 August 2022. The appellant was represented by Ms Heidar, as he was before me. The respondent was represented by a Presenting Officer. The judge heard oral evidence from the appellant and oral submissions from the representatives before reserving her decision.
7. In her reserved decision, at [1]-[4], the judge gave a more fulsome account of the appellant's immigration history and antecedents than has been necessary in this decision. At [6]-[9] she set out some of the detail in relation to the appellant's offending, which concerned his participation in the creation and management of a brothel in North London. The activities of the brothel included the sale of various drugs of class A. At [10]-[19], the judge summarised the respondent's decision, including her consideration of the appellant's medical condition (haemophilia) and his ties to the UK and Albania. Also at [19], the judge stated that the issues before her were limited to Article 8 ECHR. There was an account of the oral evidence and the submissions at [20]-[36].
8. At [37]-[67], the judge set out her reasons for allowing the appeal. Seemingly for the sake of completeness (it not having formed part of Ms Heidar's submissions), the judge indicated at [39] that she did not accept that the appellant would be at risk as a result of a blood feud on return to Albania. At [40]-[42], the judge considered the findings made by Judge Pears in the 2018 appeal. She noted that Judge Pears had concluded that the appellant would be able to regain contact with his family on return to Albania. At [41], the judge noted Judge Pears' conclusion that the appellant's medical condition would result in very significant obstacles to his re-integration to Albania. Judge Pears had noted the appellant's ties to the UK. He had found him to be an impressive young man. He had allowed the appeal on human rights grounds as a result: [42].
9. The judge considered the appellant's offences to cast some doubt on the findings made by Judge Pears. For reasons she gave at [43]-[46], she did not accept that the appellant could meet the private life exception to deportation in paragraph 399A of the Immigration Rules. (I note that the judge should, as a result of *CI (Nigeria) v SSHD* [2020] Imm AR 503, have focused on the statutory scheme in Part 5A of the Nationality, Immigration and Asylum Act 2002 but nothing turns on that in this appeal).
10. At [48], the judge turned to consider whether there were very compelling circumstances over and above those in the statutory exceptions which sufficed to outweigh the public interest in the appellant's deportation. She directed herself to the statutory provisions and to a number of authorities in which the proper approach had been considered: [49]-[51].

11. At [52], the judge noted that there was little evidence of close community ties to the UK and she attached little weight to his claim to have a partner in the UK. At [53]-[54], the judge noted that the seriousness of the appellant's offending increased the public interest in his deportation. She went on, at [55], to consider whether the circumstances which the appellant relied upon were sufficiently compelling to outweigh that public interest. She recalled that Judge Pears had attached significance to his medical conditions and she reviewed the more recent evidence of the appellant's severe haemophilia which, if untreated, 'can result in spontaneous bleeding into internal organs, joints and muscles'. The evidence showed that the appellant was self-infusing the necessary medication three times a week and that he received 'appropriate physiotherapy and radioactive synovectomy to limit joint damage', although he had already suffered severe joint damage. His Consultant at the Royal Free Hospital had expressed the opinion that the appellant would not have access to this treatment in Albania and that 'his joint health would rapidly deteriorate' and 'impact both his joint health and life expectancy'. At [57]-[60], the judge noted that similar evidence had been before Judge Pears, and that the author of that evidence had been 'extensively cross-examined'. Judge Pears had concluded that the appellant could not succeed on Article 3 ECHR grounds but that he was able to do so on Article 8 ECHR grounds: [61].
12. At [62]-[66], the judge reviewed the respondent's evidence about the availability of treatment in Albania. At the end of [66], she expressed the conclusion that she was not satisfied that the appellant could access treatment in Albania which would prevent extreme suffering and serious deterioration in his health and mobility 'even if he was reunited with his family'. She concluded that his life expectancy would probably be significantly shortened. The judge drew these strands together in the final paragraph of her decision:

Whilst the UK cannot be expected to treat the world, I also have regard to the fact that the appellant came to the UK as a child and has always had some form of leave. He may not be dumb, but he was vulnerable to those far more mature and experienced. The Judge must have had this in mind as there is a significant difference in the sentences imposed on the co-defendants. There is no evidence that he poses a risk to the public. He is clever and industrious young man with the potential to contribute much to society. He has a home here and support. He would be able to work. I find that the public interest does not require the appellant to be deported from the United Kingdom.

The Appeal to the Upper Tribunal

13. Permission to appeal having been refused by Judge O'Garro, the respondent renewed her application to the Upper Tribunal. There is a single ground of appeal, which is that the judge misdirected herself in law in finding that the appellant's appeal could succeed on Article 8 ECHR 'medical grounds' after failing on Article 3 ECHR grounds. Such a holding was said by the respondent to be 'contrary to the ratio of *MM (Zimbabwe)* [2012] EWCA Civ 279'. Having set out what was said by Moses LJ at [23] of *MM (Zimbabwe) v SSHD*, the respondent asserted that the same treatment for haemophilia was available in Albania, albeit at a lesser ratio per capita. She then renewed her contention that 'if this case could not succeed under article 3, it could not succeed under article 8'.
14. Judge Pickup considered the grounds to be arguable.

15. Mr Heidar filed a response to the grounds under rule 24 of the Upper Tribunal Rules. That response had not reached Mr Walker but he was content to proceed after being given some time to consider it.
16. Mr Walker chose to say nothing about the single point taken in the grounds about *MM (Zimbabwe) v SSHD*. He submitted, instead, that the judge's decision was somewhat confused in relation to the appellant's level of integration to the UK and his level of culpability for the offences. There was some conflict, he submitted, between the judge's assessment at [67] and earlier parts of the decision. He submitted that the judge had also misdirected herself as to the availability of the necessary treatment in Albania, although he did not seek to refer me to the evidence.
17. Ms Heidar responded, noting that the grounds of appeal were very narrow. There was no challenge to the previous decision of Judge Pears. There was, in truth, no lack of clarity in the judge's decision. Judge Pears had found that the appellant could not meet the test in *AM (Zimbabwe) v SSHD* [2018] EWCA Civ 64; [2018] 1 WLR 293 (the case had not reached the Supreme Court by that stage) and the judge had gone on to adopt that conclusion, in compliance with *Devaseelan* [2003] Imm AR 1. She had considered the availability of treatment for herself, at [60]-[63] and the respondent erected nothing more than a bare disagreement with her conclusions in the grounds of appeal. In answer to the main ground of appeal, about which Mr Walker had said nothing, Ms Heidar submitted that this was precisely the case envisaged by Moses LJ in *MM (Zimbabwe)*, in which a package of Article 8 ECHR considerations permitted a claimant who could not succeed under Article 3 ECHR to succeed on the qualified right. The decision was adequately reasoned and did not involve a material misdirection in law, whether of the type contended for by the respondent or at all.
18. In reply, Mr Walker noted that he had already strayed from the grounds of appeal and that he had nothing further to add.
19. I reserved my decision at the conclusion of the submissions.

Analysis

20. The single ground of appeal advanced in writing is unmeritorious. Mr Walker sensibly opted to make no submissions about it. The respondent contended in that ground that the judge had misdirected herself in law in allowing the appeal on Article 8 ECHR grounds after dismissing it on Article 3 ECHR. That was said to represent a misdirection in law because, as Moses LJ explained in *MM (Zimbabwe)*, the only case in which such a conclusion might be permissible is one in which there are also "other factors which by themselves engage Article 8."
21. As will be apparent from my summaries of the judges' decisions (that of Judge Pears and Judge Bart-Stewart), however, the judge's conclusion was squarely that there were other matters in this case which engaged Article 8 ECHR. Those matters are not difficult to discern, whether from the brief summary of the facts which I have set out above or from the judge's [67], which I have reproduced in full. The appellant had, by the time of the hearing before the judge, spent ten years here, having arrived as a child. The judge noted that he had 'a home here and support'. She plainly proceeded on the basis that there were other factors which engaged Article 8 ECHR and which sufficed, when taken in conjunction with her concerns about the appellant's health, to entitle him to succeed on an Article 8 ECHR basis. In reaching that finding, the judge came to the same conclusion as

Judge Pears, whose decision was issued at the end of 2018. I note that Judge Pears expressly directed himself to *MM (Zimbabwe)* in reaching that conclusion. There is no reason to think that Judge Bart-Stewart lost sight of those principles, and her reasoning clearly suggests that she did not. There was no misdirection in law of the type alleged by the respondent, therefore.

22. The single complaint in the grounds of appeal was that the judge misdirected herself in law by failing to follow *MM (Zimbabwe)*. There was no complaint that the non-medical factors identified by the judge were insufficient to engage Article 8(1) in its private life aspect. There was no complaint that the matters identified by the judge were not rationally capable of outweighing the strong public interest in the appellant's deportation. There was no complaint that the judge's analysis of the competing considerations was inadequately reasoned, or that she did not adopt the 'balance sheet' style of analysis recommended in the authorities.
23. Nor, as Mr Walker accepted in his final submissions before me, was there any complaint in the grounds of appeal that the judge's decision suffered from a lack of clarity in any respect. He sought to submit that there was some unresolved tension between the judge's observation that Judge Pears' confidence in the appellant was undermined by his criminality and her subsequent acceptance that the appellant had integrated into the community of the United Kingdom. Mr Walker made no application to vary the grounds of appeal to include this ground of appeal and I would have refused permission to do so in any event, since the point was not made in writing and Ms Heidar was given no notice of it. To have permitted it at this late stage would undoubtedly have caused her difficulty and would have been contrary not only to the over-riding objective but also to the well-established need for procedural propriety in such proceedings.
24. The point is in any event devoid of merit because there is neither a lack of clarity nor any tension in the judge's analysis. Having recalled Judge Pears' findings about the appellant's life in the UK, she observed that the appellant's offending cast some doubt on those findings. She nevertheless went on to make her own findings about the appellant's private life despite the doubts she harboured about the safety of Judge Pears' conclusions. The process of reasoning is quite clear, with respect, and discloses no internal tension at all, whether in respect of the appellant's level of integration or his level of culpability for the offending. In that latter respect, there is nothing in the judge's decision to suggest that she went behind the careful sentencing remarks of HHJ Singh, which she had clearly read and considered.
25. Mr Walker made some reference to the judge having misdirected herself on the evidence as regards the availability of treatment for the appellant's haemophilia in Albania. As I have recorded above, however, he did not seek to direct me to any material which undermined the judge's conclusions concerning the availability of an adequate supply of Factor 8 in Albania. That is the drug which the appellant requires regularly in order to prevent the internal bleeding from which he has previously suffered and which would cause acute suffering were it to reoccur.
26. The respondent has not established that the judge's decision involved the making of an error of law and her appeal will accordingly be dismissed.

Notice of Decision

The respondent's appeal is dismissed. The judge's decision to allow the appeal on human rights grounds (Article 8 ECHR) shall stand.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 March 2023