



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004157

First-tier Tribunal Nos: HU/51103/2020
IA/02667/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 25 September 2023

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ZC

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms A Ahmed, Home Office Presenting Officer
For the Respondent: Mr A Stedman, Counsel instructed by SMA Solicitors

Heard at Field House on 10 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and family members are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant and family members. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. I shall refer to the Respondent as the Appellant as she was before the First-tier Tribunal. The First-tier Tribunal anonymized the Appellant. There is no reason for me to interfere with this, properly applying the Upper Tribunal's Immigration and

Asylum Chamber Anonymity Guidance (guidance note 2022 No 2). I have weighed the competing interests of the Appellant and her rights against the need for open justice and find that the former outweighs the latter.

2. The Appellant is a citizen of Serbia. Her date of birth is 15 September 1965.
3. The Appellant is a foreign criminal and the SSHD made an deportation order against her on 13 July 2017. The Appellant claims that deportation will breach her rights under Article 8. The SSHD rejected this in a decision of 4 December 2020. The Appellant appealed against this decision. The Appellant's appeal came before Judge Morgan on 11 May 2022. Judge Morgan allowed the Appellant's appeal under Article 8. The SSHD was granted permission on 22 November 2022 by UTJ Blundell to appeal against the decision of Judge Morgan.

The Appellant's criminality

4. On 15 December 2015 the Appellant was convicted of offences relating to the possession of false identity documents, control of identity documents and making false representations to make a gain for herself or another or to cause loss to others or to expose others to risk. On 19 January 2016 she was sentenced to a total of twelve months' imprisonment and ordered to pay compensation of £6,626 and costs of £2,000.
5. The details of the offences committed by the Appellant were set out by the sentencing judge as follows:-

"... On 15th December last year you entered guilty pleas to five counts on the indictment and also admitted a further summary only matter. All of the charges arise from a sequence of events that followed your arrival in this country in 2006.

... In 2006 you sought and obtained a visa to enter this country for a limited period which expired in December 2006. At that point you chose not to return to Serbia but to remain in this country.

... I'm told that you took a positive decision at that stage not to apply for asylum on the basis of your previous experiences in Serbia for fear that it might be turned down. Instead we know that by 2008 you had made application (sic) for work using a false name. That was [ET(?)] and in support of those applications, you produced a Latvian passport to which you were not entitled. You had obtained a national insurance number in that name.

A Latvian national, of course, was entitled to work in this country and by that deception, you were able to obtain work with Sky Chef with whom you seemed to have remained for some six years ...

... The next key date is 4th September 2014 and this covers count 4 when, having ceased work apparently on health grounds due to an injury you received and depression, you made application (sic) to the Department of Work and Pension (sic) for employment support allowance again using the name Elena Trovanova. That was a perfectly calculated deception of the Department of Work and Pension, resulted in payments to you to which you were not entitled in a total sum of £4,526.

The next date beyond that was December 2014, counts 2 and 5 when you made applications for housing benefit and council tax benefit, producing bank statements in the name of [ET] and piggybacking on your Department of Work and Pensions claim in order to receive those benefits to which again you were not entitled and knew perfectly well you were not entitled; that was a further £2,100. A total therefore of £6,626 obtained from the authorities.

The final date is 11th September 2015 when an immigration visit to a place where you were then living, led to your discovery. When first spoken to, you gave yet another false name and alleged that you were Polish.

When the authorities located the passport in the name of [ET], you did not at that stage, attempt to claim that you were [ET] but instead gave your true name.

You subsequently made substantial admissions and entered guilty pleas at what I shall assess to be the earliest opportunity ...

... You were one who, having arrived here legally, elected to stay on deliberately under a false name and then to pursue fraudulent benefit claims under that name.

... Your situation of course is rather more serious because you obtained state benefits by using that false identification ...

... I am satisfied that taking into account the number of applications and the fact that you were doing so using false documentation which you had equipped yourself with, that this is something on the cusp of between medium and high culpability and I shall sentence accordingly.

... These offences are beyond doubt so serious that they can only be dealt with by a custodial sentence.

... However, I am satisfied that the number and persistence of these offences means that there is no possible alternative to an immediate sentence of custody. ... The sentence for the summary matter will be four months making a total of 12 months ...

I had expected when I commenced this case to make a positive recommendation that you should be deported at the earliest opportunity. However ... I will leave it entirely to the immigration authorities to determine whether you should be permitted to remain in this country ..."

The Appellant's Immigration History

6. The Appellant came to the UK on 7 June 2006 having been granted a six month visitor's visa. The visa was valid until 7 December 2006. She first came to the attention of the immigration services on 11 September 2015 when she was apprehended by Immigration Officers and served with papers as an overstayer. She made an application on 15 September 2015 for leave to remain (LTR) on Article 8 ECHR grounds on the basis of her relationship with a British citizen partner. The application was refused by the SSHD on 22 March 2016. The Appellant agreed to an emergency travel document on 2 October 2015. On 6

October 2015 she made an application on protection grounds. On 15 December 2015 she was convicted of the offences detailed above. On 19 January 2016 she applied for LTR. On 8 February 2016 she was served with a liability to deportation notice. She responded to this on 6 March 2016 and submitted representations as to why she should not be deported. On 15 March 2016 she was interviewed in respect of her asylum claim. On 13 June 2016 her asylum claim was refused. The Appellant appealed against this decision.

7. On 13 July 2017 a deportation order was signed and served on the Appellant at the same time as a decision to refuse her application for LTR. The Appellant appealed against this decision. There was a combined hearing on 5 June 2017. The First-tier Tribunal dismissed the Appellant's appeal on protection grounds and under Article 8 ECHR on 5 June 2017. Permission to appeal was refused by the First-tier Tribunal and the Upper Tribunal. The Appellant became appeal rights exhausted on 9 October 2017.
8. The Appellant made a series of further submissions and an application for judicial review was lodged challenging the decision of the SSHD to refuse to treat further submissions as a fresh claim. However, the parties signed a consent order, the SSHD having conceded the Applicant's application for judicial review on 22 October 2020. The result of this was a further decision of 2 December 2020 refusing the Appellant's application under Article 3 and Article 8 ECHR. The further submissions included a psychiatric report from Dr Robin Lawrence dated 18 December 2017.

The hearing before the First-tier Tribunal

9. The parties were represented at the hearing. There was before the judge a psychiatric report prepared by Dr Latifi. The judge set out the law at [8]-[15] of the decision. The judge directed himself at [13] that those who have not been sentenced to a term of four years or more, Exceptions 1 and 2 (with reference to s.117C(4) and (5) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act")), "offer a shortcut to the proportionality assessment outcome for those individuals who meet their conditions". The judge directed himself that if a person meets the conditions then the appeal must be allowed under Article 8, even in the absence of "very exceptional circumstances".
10. The judge made findings at [16]-[26] which I summarise as follows:-
 - (i) The Appellant has established a private and family life in the UK and deportation would interfere with this.
 - (ii) Deportation of the Appellant "brought article 8 into issue and the issue was one of proportionality to be assessed in the context of Sections 117A-D NIAA".
 - (iii) The starting point has to be consideration of the offence and the strong public interest in removing foreign citizens convicted of serious offences.
 - (iv) The central question was whether the effect of the Appellant's deportation on her partner would be unduly harsh either because it would be unduly harsh for her partner to relocate with her to Serbia or alternatively because it would be unduly harsh for the Appellant's partner to remain in the United Kingdom without the Appellant.

- (v) The principles in Devaseelan v SSHD [2002] UKIAT 00702 apply, however nearly five years had passed since the First-tier Tribunal decision and the psychiatric evidence, in particular the report of Dr Latifi was not before the First-tier Tribunal.
- (vi) The judge found no issue with Dr Latifi's qualifications or experience.
- (vii) The report of Dr Latifi is detailed and makes reference to the Appellant's medical reports which were before Dr Latifi who concluded that the Appellant is suffering from major severe depression and PTSD. In the doctor's opinion if the Appellant is returned to Serbia her physical and mental health will deteriorate rapidly. The judge noted at [22] that the Appellant had stated (to the doctor) that she would rather die in the UK than be sent back to Serbia. Dr Latifi concluded that there is a real risk that the Appellant will act on these suicidal thoughts if she is deported to Serbia and/or separated from her partner.
- (viii) The judge said at [23] that he had "little difficulty in finding that the effect of the appellant's deportation on her husband would be unduly harsh because of the likely serious psychiatric impact that deportation would have, whether or not her British partner accompanied her to Serbia".
- (ix) The judge said at [24] that he noted the "other factors relied upon by the appellant" including the Appellant's partner's prostate cancer having returned and that he had lost six family members to Covid including his brother.

11. The judge stated as follows at [24]:

"Whilst I accept that this background would make impact (sic) of the deportation of the appellant on the British partner even harsher, in my judgement it is the impact on the appellant's psychiatric health that is the critical factor enabling and justifying the conclusion that the effect of the deportation of the appellant on the British partner would be unduly harsh".

12. The judge said at [25] "In summary I find that the effect of the appellant's deportation on the appellant's partner would be unduly harsh". At [26] the judge stated:-

"If I had been unable to make the finding above I would nevertheless have found on the particular circumstances of this case that the appellant has shown *very compelling circumstances over and above those described in the exceptions* for the reasons outlined above. Whilst the offence committed by the appellant is very serious the factors above justify a finding that the deportation of the appellant would be disproportionate".

13. The judge went on to allow the appeal on human rights grounds.

The grounds of appeal

14. It is unclear from the judge's reasoning why the Appellant's mental health problems would result in an unduly harsh impact on her partner in the event that she is deported to Serbia either with or without him. The grounds of appeal rely on Buci (Part 5A: "partner") [2020] UKUT 00087 to support that it must be shown

both that it would be unduly harsh for the alleged partner to leave the United Kingdom (“the go scenario”) and that it would be unduly harsh for him/her to remain, without the physical presence of the foreign criminal (“the stay scenario”).

15. The First-tier Tribunal reaches the unduly harsh conclusion without pointing to evidence which supports the conclusion. The overall conclusion of “very compelling circumstances over and above” in the context of s.117C(6) is vitiated by the same errors. And in any event the judge failed to give adequate reasons why the deportation of the Appellant would result in a disproportionate breach of Article 8.

The law

Section 117C of the 2002 Act

18. Article 8: additional considerations in cases involving foreign criminals
- (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.
 - (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.

Submissions

16. I heard oral submissions from the parties concerning whether or not the judge erred in law, and if so whether the error is material and further submissions in the event that the Tribunal was obliged to re-make the decision.

17. Ms Ahmed relied on the grounds of appeal. The thrust of the grounds and Ms Ahmed's submissions was that the decision is inadequately reasoned. In response to this Mr Stedman submitted that there was extensive evidence before the First-tier Tribunal (see [6] of the decision) for the judge to lawfully conclude that the effect of deportation would be unduly harsh on the Appellant's partner. He accepted that what the judge should have said was that the impact of the Appellant's psychiatric health on her partner would be unduly harsh in the event of deportation. In any event if the judge erred it is not material because the judge considered the alternative position at [26], namely that there are very compelling circumstances in the context of s.117C(6).

Conclusions

18. It is necessary that a determination discloses clearly the reasons for the Tribunal's decision (MK (duty to give reasons) Pakistan [2013] UKUT 641) and that inferences as to insufficiency of reasons will not readily be drawn: South Buckinghamshire District Council v Porter (No 2) [2004] UKHL 33. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. While reasons can be brief they should be clearly understood by the losing party. It is not appropriate for the court to infer or speculate why the judge reached the conclusions that he did. It is not necessary to deal expressly with every point, but a judge should say enough to show that care has been taken and that the evidence as a whole has been properly considered: Simetra Global Assets Ltd v Ikon Finance Ltd & Ors at [46], per Males LJ.
19. The judge set out the central question at [19] with reference to the representatives' submissions and the "stay scenario" and the "go scenario". There is no doubt that the judge was mindful of the test to be applied and properly directed himself. The thrust of the judge's decision related the Appellant's mental health. However, it is not difficult to understand how deterioration in the Appellant's mental health would have an adverse impact her partner. To understand the judge's decision it is important to understand the evidence before the First-tier Tribunal.
20. The Home Office indicated at the hearing before the First-tier Tribunal that there was no intention to cross-examine the Appellant or her partner, M. They did not give live evidence. They submitted witness statements in support of the Appellant's appeal. The Appellant's evidence in a nutshell referred to her various physical and mental problems and that M is the only one who can comfort her when she is having an "episode". She also said that she feels suicidal at times and it helps for her to be around M and that his presence is a protective factor against self-harm. The Appellant's evidence was that without M's support she could never get through the day. M's evidence describes the Appellant's mental health as extremely fragile and that he has been supporting her through the ordeal. M suffers from a long term heart condition and the Appellant is very supportive. He has been diagnosed with prostate cancer and undergoing treatment. The Appellant does not have any family or ties in Serbia. It would be impossible for him to move there, he does not speak the language and he is unfamiliar with the culture. He is undergoing treatment in the UK for cancer. It would be dangerous for the Appellant to be deported to Serbia because she has suicidal thoughts and panic attacks. She would be left completely isolated. His

support keeps her going. The evidence was not challenged by the SSHD. The judge accepted the evidence in its entirety.

21. The critical evidence before the First-tier Tribunal was that of independent psychiatrist Dr Latifi who assessed the Appellant on 18 September 2021 and produced a report on 3 October 2021. He had before him a number of documents including the decision of the SSHD. He set out the Appellant's account of being kidnapped and repeatedly gang-raped for two months in the former Yugoslavia. He took a history from her of nightmares and flashbacks which was supported by M. She stated that she had been kidnapped from a small road and kept in a small room for two months. She told him that she cannot go back to the place where she had been sexually assaulted. In relation to the Appellant's mental health Dr Latifi concluded that she "has an established diagnosis of post-traumatic stress disorder (PTSD), severe depression and anxiety". Dr Latif noted that she is known to her local mental health services and that she had been taking antidepressants for many years. She was seen by the community mental health team in February 2020 and they recommended switching her medication Citalopram to a second-line treatment. She has received a short course of psychological intervention for PTSD while she was in prison. Dr Latifi noted that it is documented by different professionals that her PTSD and depression are caused by her kidnap and gang-rape in the former Yugoslavia (Serbia). Dr Latif noted that previous contacts with the mental health services are well documented.
22. Dr Latifi's opinion and recommendations are at page 10 of the report. His conclusions can be summarised:-
 - (1) Basing his opinion on the evidence of the Appellant's physical, mental and emotional symptoms and the scrutiny of her medical records, she has been diagnosed with PTSD and depression by other healthcare professionals who saw her prior to her examination by Dr Latifi.
 - (2) She disclosed a convincing account of experiencing multiple significantly traumatising events in Serbia.
 - (3) Her symptoms fulfil the criteria for post-traumatic stress disorder under the ICD-10 classification of Mental and Behavioural Disorder.
 - (4) The prominent features of the Appellant's PTSD are:-
 - i. She has dreams and nightmares of the trauma and is excessively aroused.
 - ii. Flashback experiences of the trauma.
 - iii. Any reminder brings back feelings about it.
 - iv. Difficulty sleeping.
 - v. She tries to avoid any reminder.
 - vi. Difficulty concentrating.

vii. She has psychological reactions to these memories.

23. At page 12 of the report Dr Latifi states as follows:-

“[The Appellant] also presents with panic attacks and anxiety symptoms, the triggers for her panic attacks and other anxiety symptoms are the thought of separation from her partner [M] and being sent back to Serbia. She also described that attendance to fortnightly signing in Croydon was one of the main triggers. Other triggers include seeing police officers, the sound of siren or if there is any other reminder of what happened to her in Serbia. Her GP prescribed her Propranolol 40mg to take when required for panic attacks”.

24. The First-tier Tribunal also had before it a report prepared by Dr Lawrence dated 18 December 2017. He cited from notes written by Dr Emily Tert, a prison doctor who diagnosed the Appellant with PTSD. In those notes they included the Appellant’s history as she told it relating to her kidnap. It is not necessary for me to set out in detail what was said about the incident in 1996 when she was kidnapped by men wearing masks. However, she gave a detailed account of multiple rapes committed on her by many men, regular beatings and humiliation by, for example, men urinating in her mouth. She was kept captive for a month and a half. She was picked up by the Red Cross. She was abducted again in 2004 by a number of men who again raped her. She was kept captive this time for ten days. She came to the UK in 2006 to escape.

25. The judge’s decision must be considered in the context of the evidence that was before him and which was unchallenged by the SSHD and accepted by the judge. The reference to the Appellant’s medical condition deteriorating on return to Serbia is based on the evidence of Dr Latifi. The judge said that it was the impact on the Appellant’s psychiatric health which was the critical factor enabling and justifying the conclusion that the effect of deportation on her partner would be unduly harsh. On reading the medical evidence (which is not set out in any detail by the judge or cross-referenced in his findings) it is easy to see how the judge reached this conclusion. The evidence of Dr Latifi discloses that whilst his primary focus was on the impact of separation on the Appellant, he also referred to the Appellant’s return to Serbia and the impact of this on her bearing in mind her experiences there which had led to a diagnosis of PTSD.

26. The medical evidence supported significant deterioration on of the Appellant’s mental health on return to Serbia. That is understood when considering the Appellant’s traumatic experiences which explained why she came to the United Kingdom. Given the medical evidence before the judge it is impossible to compartmentalise the impact of deportation on the Appellant and the impact on her partner in the way the SSHD suggests. It is entirely rational to conclude that a person’s ill health would impact on their partner. Dr Latif did not just comment on separation (“ the go scenario”) but his report also focused on return to Serbia (“the go scenario”) and the impact that this would have on the Appellant as a result of the history of multiple rapes, kidnap and beatings. The judge properly considered the impact of this on the Appellant’s partner whether he went with her to Serbia where he would no doubt try to help the Appellant or whether he stayed in the United Kingdom where it would be very difficult to help her. The trigger for deterioration of the Appellant’s mental was not only separation so that it would be an answer to say that her partner could return with her to Serbia, it was the return to Serbia. The judge was entitled to consider that the impact of

deterioration of the Appellant's mental health in either scenario would be unduly harsh on M. This is what the judge found at [23].

27. The decision could have been better reasoned with reference to the medical evidence. However, this is not a case where I find myself speculating about what the judge's reasons. The unchallenged evidence is unequivocal in terms of the impact of return to Serbia on the Appellant's mental health in the light of her experiences there. The judge accepted the evidence and was entitled to consider that the impact on M following deportation would be unduly harsh whether he stayed in the United Kingdom or returned with her to Serbia.
28. There is no error of law that is material to the outcome in this case. The judge considered both the stay and go scenario. The decision is adequately reasoned in the context of the unchallenged evidence. The judge was entitled to allow the appeal on the basis that s.117C(5) of the 2002 Act applies. There is no need for me to engage with the s.117C (6) point.

Notice of Decision

29. The SSHD application is dismissed.
30. The decision of the judge to allow the Appellant's appeal is maintained.

Joanna McWilliam

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 September 2023