



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006272
First-tier Tribunal Nos:
HU/51000/2021
IA/05044/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 15 August 2024

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MIRJAN HASANMETAJ
(NO ANONYMITY ORDER IN FORCE)

Respondent

Representation:

For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer
For the Respondent: Mr T Bobb, Solicitor with Aylish Alexander Solicitors

Heard at Field House on 5 April 2023

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant”, against a decision of the Secretary of State refusing him leave to remain on human rights grounds. The appeal was allowed by the First-tier Tribunal. The Secretary of State was given permission to appeal the decision relying on grounds settled by Mr T Melvin, a Senior Home Office Presenting Officer. These asserts, in outline, that the application for further leave to remain was refused because the claimant had been cautioned or convicted of “numerous offences” since an appeal against a decision to deport him had been allowed in 2011. The claimant was considered “not suitable” because he was a persistent offender and his presence in the United Kingdom was not conducive to the public good because his offending had caused serious harm or he is a persistent offender who shows a particular disregard for the law.
2. The first ground contends that the judge made a material misdirection in law or failed to give adequate reasons for his findings. Next it is alleged that the judge

was perverse to conclude that the claimant had not shown little regard for the law.

3. The judge was also criticised for allowing the appeal because of the claimant's relationship with his child.
4. The judge rejected the claimant's assertion that his relationship with his child's mother amounted to a subsisting relationship that was akin to marriage and found that there were not very significant obstacles in the way of the claimant reestablishing himself in his country of nationality.
5. The judge found that the claimant's removal would have unjustifiably harsh consequences for his child but this conclusion, it was said, was based solely on the report of an independent social worker who was not fully aware of the family circumstances and therefore the judge gave the report more weight than was justified.
6. I now look carefully at the First-tier Tribunal's Decision and Reasons.
7. It begins with an outline of the claimant's history. He was born in 1987 and is a national of Kosovo. He entered the United Kingdom in 2001 as a 14-year-old child. He claimed asylum unsuccessfully but was given leave to remain until January 2005. In February 2005 he applied to extend his leave but the application was refused on 15 March 2011. The claimant has committed criminal offences and it is against this background that the Secretary of State decided to deport the claimant but that decision was appealed successfully and the claimant was given subsequent leave to remain until September 2014 extended until June 2018.
8. Shortly before the expiry of his leave in June 2018 he applied for further leave on private and family life grounds leading to a refusal on 30 March 2021 which was the decision subject to the appeal to the First-tier Tribunal.
9. The judge considered the claimant's criminal record since the decision to allow his appeal against deportation.
10. On 27 October 2014 for an offence of battery he was sent to prison for 112 days. On 1 November 2016 he was convicted of possession of class B drugs. On 3 May 2018 he was convicted of possession of class B and class A drugs. On 23 December 2019 he was convicted of possession of class B drugs. Additionally he was cautioned for possession of class B drugs. That appears to have been on 22 June 2012.
11. The judge then set out the relevant part of the refusal letter which was in the following terms:

"This has all taken place since the Immigration Judge stated you were a 'reformed character' or that you had 'demonstrated a change' at your appeal hearing on 02 June 2011. Although you were granted leave on 15 June 2015 for 30 months, as you claimed the same circumstances as when the Immigration Judge allowed your appeal, although you had at this point been convicted further of Battery. It does suggest that you are a persistent offender that has total disregard for the UK laws. It is clear your presence in the UK is not conducive to public good, and so it is undesirable to allow you to remain in the UK. You therefore fall for refusal under SLTR.1.5. and S-LTR.1.6. of Appendix FM of the Immigration Rules."
12. The judge noted then that the claimant and his alleged partner, the victim of the offence, sought to minimise the battery. Indeed, the claimant, apparently,

denied physically assaulting her. It was described as a one-off incident connected to the frustration of insecurity of his immigration status.

13. It was the claimant's case that he had been using drugs but it had always been in his own house after police searches that led to no prosecutions for matters other than possessing controlled drugs.
14. The judge reminded himself of the decision in **Chege ("is a persistent offender") [2016] UKUT 00187 (IAC)**. I noted that the claimant said the Secretary of State had not made a proper consideration of whether he had shown particular disregard for the law. I set out the below all of paragraph 12 of the Decision and Reasons because it is important on the crucial issue in the appeal. The judge said:

"I am mindful that the four drug offences occurred over a period of seven years and all refer to Class B drugs other than on one occasion where a Class A drug was also involved. I have no evidence of the nature of the offences other than the [claimant's] own statements and therefore I accept these relate to offences that took place in his own home. The [claimant] says that he no longer uses drugs, mindful of the impact upon his daughter and on his current employment. I consider that the battery offence is a far more serious conviction and although the [claimant] and his partner say no physical violence was involved there is no documentary evidence from the criminal proceedings to support this and the sentence of 112 days seems a lengthy one for what the [claimant] apparently describes as an oral argument. I therefore treat his statements with some caution. That said, the [claimant's] partner is supporting him in this appeal and gave oral evidence and supported his account and therefore it does appear to be a one off matter. I consider that the [claimant's] case is a borderline one as he has repeat convictions of a similar kind of offence and so seems to have shown little [regard?] for the laws governing illegal drug usage. That said, they are the lesser end of the criminal scale and on balance I consider that the test that the [claimant] is a persistent offender is not met".

15. The judge then considered the claimant's private and family life.
16. The judge then rejected evidence that the claimant lived with his purported partner and accepted that the claimant could not be a parent for the purposes of the Rules.
17. However, the judge was impressed with the independent social worker's report and particularly the insights it gave to the claimant's relationship with his daughter who I identify as "T". The judge noted that the independent social worker's report was based on acceptance that the claimant and his purported partner did live together which, as indicated above, is contrary to the judge's findings but even allowing for that the judge gave considerable weight to the report. At paragraph 26 the judge noted:

"The report states that T was interviewed on her own on the 27th June 2021, with her parents being interviewed on the same day. Information was also obtained from T's school. It is clear from the report that the social worker was of the view that the [claimant] and his partner lived together at the same address, there is no mention of the [claimant] having a separate address. I put it to both the [claimant] and his partner in clarification whether the social worker had been made aware of the living arrangements. The [claimant] thought he might have but could not be sure, his partner,

Miss Hawker said he was told clearly that the [claimant] had a separate accommodation but for practical purposes he lived with her and T”.

18. The judge went on in paragraph 27:

“The apparent fact that the social worker was not fully aware of the family circumstances gives rise to a certain level of caution in accepting the report in its entirety however the report is helpful in the information gained first hand from the [claimant’s] daughter who told the social worker that the father takes considerable interest and has a large role in her life and he is the one who mostly supported her with her school work. T appears to be doing well at school and she is grateful to her father for the help he gives and around the house for example making a walk-in wardrobe. The report sets out the potential impact of the [claimant] being required to leave the UK on T and the likely negative emotional damage it could cause. It would be unlikely that the [claimant’s] daughter would seek to move to Kosovo with her father given she knows nothing about the country, would have no language skills, her friends and family would remain in the UK and she is currently working towards her GCSEs”.
19. The judge then found that the report was helpful despite the social worker possibly not being fully aware of the family circumstances and accepted the evidence of the harm that may be caused to the claimant’s daughter if he was required to leave. It is the judge’s view that the harm met the unjustifiably harsh consequences set out in GEN.3.2. and also mindful of the need to have regard to the best interests of the child.
20. There is uncertainty in the papers about the sentence for robbery and driving whilst disqualified and dangerous driving which triggered the initial decision to deport the claimant. According to the solicitors’ letter dated 7 June 2018 he was sentenced to “40 months and six months’ imprisonment, respectively”. Unhelpfully this has not indicated the sentences were to be consecutive or concurrent. When the First-tier Tribunal was seized of the appeal against the deportation order it was dealt with on the basis that he was sentenced to 46 months’ imprisonment. I think the reference to 49 in the Secretary of State’s papers must be a mistake. Clearly different considerations apply if a person has been sent to prison for more than four years and they do not appear to have been raised here.
21. Mr Lindsay argued that the judge simply should not have concluded that the claimant was not a persistent offender.
22. I raised points with Mr Lindsay because there are aspects of this appeal that puzzle me. This is not a deportation based appeal. It is a refusal of human rights. It is not clear to me that Part 5A of the Nationality, Immigration and Asylum Act 2002 is relevant with regard to the claimant being a foreign criminal. The claimant has been sent to prison for at least a year but Section 117C(7) provides that the provisions of Section 117C are only to be taken into account where the “Tribunal is considering a decision to deport a foreign criminal” and the Tribunal is not. The Tribunal is considering a human rights claim. There has been no attempt to revive any plans to deport the claimant. This is important because for the purposes of Part 5A the claimant is a foreign criminal by reason of his conviction and sentenced to twelve months’ imprisonment. This remains the case regardless of whether the claimant is now a persistent offender.
23. Nevertheless I must look at the grounds which challenge the decision and they challenge the finding that the claimant was not a persistent offender and I see no

justification for that. The test is, no doubt deliberately, imprecise and it is I suspect that it is almost inevitable that a test of this kind will, sometimes, produce examples where a case could be decided rationally and properly in different ways. The judge certainly directed himself correctly. I am not persuaded that it is necessarily right for these purposes to have any regard to the nature of the offending rather than the persistence but there are considerable gaps between the offences. I have no doubt that to a person of good character the idea of this number of convictions in such a short space of time would clearly indicate the person was a persistent offender. However, to someone hardened and cynical by exposure to criminal courts and aware of just how often some people are convicted the claimant's record, although thoroughly discreditable, might not seem all that bad. I cannot accept that the judge was not entitled to conclude that the claimant is not a persistent offender. The judge was aware that it was a narrow point and he resolved it in the way that he did.

24. I cannot agree with Mr Lindsay's criticism that the judge erred by considering only whether the claimant was a persistent offender rather than if also showed "particular disregard for the law." The requirement of S-LTR.1.5. is that a person is a "persistent offender who shows a particular disregard for the law". The words "shows a particular disregard for the law" clearly (if somewhat improbably) limits the Rule to a particular kind of persistent offender; it does not create another way of being a persistent offender.
25. Mr Lindsay referred me to the decision of the Court of Appeal in **R (on the application of Mahmood) [2020] EWCA 717 (Civ)** which was identified imprecisely in the grounds. He particularly drew attention to the judgment of Simon LJ. With great respect to the judgment of the Court of Appeal Simon L was clearly approving a decision on its particular facts rather than seeking to impose a detailed definition. It is also a feature of the judgment that the case considered by the Court of Appeal that, on the relevant facts, there was need to keep out of trouble for a significant period of time. This was formulation from Hamblen LJ in **Binbuga v SSHD [2019] EWCA Civ 551** but in the instant case the most recent conviction was in 2019. The judge heard the appeal in June 2022. That is not a huge gap but it is a significant one.
26. I have reflected on this and it is firmly my view that although the point could have been decided differently the judge was entitled to conclude that the claimant was not a persistent offender.
27. In any event, the decision was made for the sake of the child and I find no justification for criticising the findings there. The judge was entirely aware of the difference between his understanding of the family circumstances and the social worker's. The judge based his findings on the damage that would follow to the child mainly on what the child had said in a private conversation with the social worker where observations were made about the involvement of the child and the father in the life of the child. Again, this is a permissible decision.
28. I have had regard to the claimant's Rule 24 notice and the skeleton argument prepared for the Upper Tribunal as well as the submissions made. Put simply, I find for the claimant. The judge directed himself correctly and reached a permissible conclusion that the claimant was not a persistent offender and the judge based his decision to allow the appeal on the harm to the child which conclusion was supported mainly from the evidence of the independent social worker who had talked to the child.
29. It is my judgment that there is no misdirection and that the explanation is adequate and intelligible.

30. It follows therefore that I dismiss the Secretary of State's appeal.

Notice of Decision

31. The Secretary of State's appeal is dismissed.

Jonathan Perkins
Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 August 2024