



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004894
First-tier Tribunal No:
HU/00881/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 17 July 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MOHAMMED MUBEEN AGHA ASLAM
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Thompson, a Senior Home Office Presenting Officer.
For the Respondent: Mr Jamil, a Solicitor-Advocate with Arndale Solicitors Ltd

Heard at Phoenix House (Bradford) on 21 June 2024

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Cox ('the Judge'), promulgated on 4 September 2023, in which he allowed Mr Aslam's appeal on human rights grounds, relied upon as an exception to the order for his deportation from the United Kingdom.
2. Mr Aslam was born in Kenya on 1 August 1967 and was issued with a Kenyan passport. Having been granted a settlement visa to accompany his mother to the UK he arrived on 31 March 1980 and was granted Indefinite Leave to Enter on arrival. The Judge notes he was 12 years of age at the date of entry and that he has remained in the UK since.
3. The Judge notes the Appellant's criminal history including that on 13 October 1988 at the Central Criminal Court, he was convicted of four counts of abducting a woman by force, three counts of rape, theft from a person, one count of conspiracy to rape, one count of indecent assault upon a female person and one count of robbery. Mr Aslam was sentenced to 19 years imprisonment which was reduced to 17 years on appeal.

4. On 28 August 1997 Mr Aslam married Mrs Mubeen, a British citizen, with whom he has two children born on 14 June 1998 and 10 October 2002.
5. The decision to make the deportation order is recorded as having been made on 25 September 2016. Mr Aslam's appeal against the decision failed and he became appeal rights exhausted in November 2018.
6. The Judge notes in January 2000 Mr Aslam received a conditional discharge for possessing cannabis, in June 2003 he was convicted for failing to notify a change of name/address to the police as requested by the sex offender register, and that in August 2015 he was cautioned for common assault.
7. The Judge notes on 26 July 2019 the Windrush Team of the Home Office advised Mr Aslam that they had established his right to remain in the UK under 'Windrush' to show there was no time limit on his stay in the UK.
8. The Judge's findings are set out from [38].
9. The Judge refers to the finding in a previous determination that Mr Aslam has a genuine and subsisting relationship with his wife and a genuine subsisting parental relationship with his daughter and that the Secretary of State has not sought to go behind the earlier judge's finding that Mr Aslam had been lawfully resident in the UK for most of his life and is socially and culturally integrated in the UK.
10. At [43] the Judge writes "*Further, the Presenting Officer did not suggest that the Appellant's family could live in Pakistan*".
11. The Judge deals with the issue of Mr Aslam's nationality from [44]. The Judge noted that some of the findings of the earlier judge in relation to nationality were based on an incorrect understanding of the facts upon which no further reliance was being placed.
12. The Judge notes the Secretary of State's position was that Mr Aslam does not currently have any nationality but that the Secretary of State did not accept that he had demonstrated he is stateless.
13. At [48 - 49] the Judge writes:
 48. On the totality of the evidence, the Appellant has not satisfied me that he is stateless. The judge explicitly noted that the Appellant had not provided any documentary evidence to corroborate his claim that he had approached the Pakistan authorities and had been advised that he was not entitled to Pakistan citizenship. In these circumstances, it was open to the judge to proceed on the basis that the Appellant was entitled to Pakistan citizenship and the Appellant has not provided any cogent or credible evidence, that would lead me to depart from that finding.
 49. Accordingly, I am proceeding on the basis that the Appellant is entitled to Pakistan nationality.
14. In relation to the Windrush letter, the Judge finds that all that correspondence did was confirm the status that Mr Aslam already had and did not give rise to a legitimate expectation that the deportation was not proceeding [50].
15. The Judge then considers the issue of delay, and having looked at the case in the round he was not satisfied that the further delay, by itself, took Mr Aslam's case much further [52].
16. The Judge recognises the key issue was whether there are very compelling circumstances.
17. The Judge considers whether it is unduly harsh for Mr Aslam to be deported to Pakistan whilst his family remain in the UK from [57].
18. At [71] the Judge writes:
 71. Overall, I have found this very difficult to decide. The couple have been in a long and loving relationship. The separation will make it very difficult for both of them.

However, the Appellant has not satisfied me that his wife's circumstances will be severe or bleak. The children will be able to provide her with emotional support, and, in these circumstances, I am not satisfied that it will be 'unduly harsh' for her to remain in the UK, if the Appellant is deported to Pakistan.

19. It was therefore found that Exception 2 of section 117 C of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') did not apply in respect of Mr Aslam's relationship with his wife.

20. As Mr Aslam's daughter is an adult he could not rely on Exception 2 in that respect.

21. The Judge goes on to look at whether there are very significant obstacles to Mr Aslam's integration into Pakistan from [74]. The Judge sets out his findings at [85 - 86] in the following terms:

85. In my view, the issues are finely balanced. Overall I am satisfied that the Appellant's circumstances in the immediate and short term are likely to prove insurmountable. He has no understanding of life in Pakistan and communication is likely to be difficult. The lack of meaningful financial support will compound his difficulties, and he is only likely to be able to access temporary accommodation. In my judgement this is likely to give rise to significant difficulties in him operating on a day to day basis. Further, the Appellant is likely to find the separation from his family very difficult. In my view, he is likely to become withdrawn and isolated and this will further compound his difficulties in establishing within a reasonable time the variety of human relationships that give substance to a person's private life.

86. On the totality of the evidence I am satisfied that there are likely to be insurmountable obstacles to the Appellant integrating into life in Pakistan. As such I am satisfied that exception 1 applies. I pause to note that this is at odds with the judge's finding, but, I am satisfied that the difference in the evidence is that the Appellant has never been to Pakistan and will have no understanding of how to participate in Pakistan society.

22. The Judge directs himself at [87] that even though he had found that Exception 1 applies, given the serious nature of Mr Aslam's offending, he was required to consider whether there are very compelling circumstances that go beyond the exceptions. That is correct.

23. In discussing this the Judge refers to the delay which he finds significantly reduces the public interest in Mr Aslam's deportation, specifically noting it took nearly 26 years to initiate deportation proceedings. The Judge refers to the nature of the ties Mr Aslam has with the UK.

24. At [104 - 111] the Judge writes:

104. Overall, I am satisfied that the delay is a compelling circumstance, but, I am unsure whether the delay in itself is a very compelling circumstance, given the very serious nature of the Appellant's offence.

105. However, ultimately I have decided that there are further factors that tip the appeal in the Appellant's favour. Firstly, I am satisfied that the Appellant applied for British nationality in 1999. I have noted above the judge's note of the contents of that letter, and, I am satisfied that a reasonable inference to draw from the observation that the Appellant cannot apply for British nationality before 2023 is that, at that time the Respondent was aware of the Appellant's convictions. In my judgement, if, as the Respondent is now asserting, the offences were so serious that the Appellant must be removed (despite having resided lawfully in the UK for a further 23 years), then why did the Respondent not pursue the Appellant's removal, when the Appellant applied to be naturalised. I have found that the letter does not give rise to a legitimate expectation that the Appellant would not be deported. Nevertheless, in my judgement, the Respondent's decision to pursue deportation proceedings nearly 15 years later appears harsh and arbitrary and is contrary to the public interest in exercising effective immigration control.

106. The additional tipping factor is the effect of the Respondent's (erroneous) decision to initially pursue the Appellant's deportation to Kenya. Given the length of time taken to pursue his deportation, the Appellant was entitled to expect the Secretary of State to have carefully considered and reviewed his circumstances before commencing deportation proceedings. The Respondent has not explained how the letter was missed. Frankly I do not understand why the information provided by the Kenyan HC was not highlighted and readily apparent, upon even a cursory reading of the Appellant's file and background. Overall, I have found the Respondent's handling of this case very troubling.
107. Accordingly, not only was there an extraordinary egregious delay on the part of the Respondent, the Respondent also mishandled the Appellant's case, in respect of a key factor. For over five years, the Appellant has been under the mistaken impression that he was going to be deported to Kenya, and, he only discovered in May 2022, that the Home Office now intended to deport him to Pakistan. I have no doubt that the stress arising from these set of circumstances has adversely impacted on all those close to the Appellant.
108. On balance, I am satisfied that, for the reasons set out above, there are very compelling circumstances over and above the matters set out in the exceptions.
109. I am satisfied that the Respondent's decisions amount to an unnecessary and disproportionate interference with the Appellant and his family's rights to enjoy respect for their article 8 rights. The offences were very serious and would normally be sufficient, in themselves to justify the Appellant's deportation, as the public interest in the removal of a person who had committed such offences would be extremely weighty. However, I am satisfied that given the egregious delay and mishandling of the Appellant's case, the public interest in his removal is significantly reduced to the extent that it carries very little weight. Especially, as the Respondent clearly had an opportunity to pursue his removal in 1999. This coupled with the Appellant's very strong ties to the UK, which include, but are not limited to his longstanding genuine and subsisting relationship with his wife and his very close relationship with his daughter (I have found that it would be unduly harsh on the daughter, if she were separated from him). A further factor in the Appellant's favour is that I am satisfied that there would be insurmountable obstacles to the Appellant's integration into Pakistan.
110. On balance, I am satisfied that the Appellant and his family's rights outweigh the Respondent's legitimate aims of protecting the economic well-being of the country and for the prevention of disorder or crime.
111. Accordingly, I am satisfied that the decision is incompatible with the Appellant's human rights. I allow the appeal.
25. The Secretary of State sought permission to appeal. In the Grounds it was noted that on 28 March 2016 Mr Aslam made a time Limit application to transfer his indefinite leave on to a biometric residence permit which resulted in referral to the Criminal Casework Directorate on 19 August 2016, at which point it came to light that he had previously been released from prison at the end of his custodial sentence with no deportation consideration having been given. As a result, on 1 October 2016, a deportation decision was issued dated 25 September 2016.
26. Ground 1 asserts the Judge misdirected himself in law on a material matter namely the effect of delay in the Secretary of State instituting deportation proceedings against the Appellant.
27. Ground 2 asserts the Judge failed to properly apply the Devaseelan principles.
28. Ground 3 the Judge erred in finding there was no explanation for the delay in instituting deportation proceedings as the explanation was provided in the decision letter of 6 May 2022.
29. Ground 4 asserts the Judge in finding Mr Aslam had made a naturalisation application in 1999 failed to give any, or adequate, reasons or in the alternative double counted delays diminishing the public interest in deportation. It was submitted by the Presenting Officer that no such application had been made.

30. Ground 5 asserts the Judge erred in treating the effect of deportation on Mr Aslam's daughter as contributing towards "very compelling circumstances" which is said to be inconsistent with the Judge's findings at [73].
31. Ground 6 asserts the Judge erred in treating "insurmountable obstacles" to Mr Aslam's integration into Pakistan as contributing towards "very compelling circumstances".
32. Permission to appeal was granted by another judge of the First-tier Tribunal on 6 October 2023, the operative part of the grant being in the following terms:

2. The grounds argue that the Judge erred in finding that there were compelling circumstances over and above those in the private and family life exceptions. The Appellant's deportation had been previously overlooked and when dealt with his subsequent appeal was dismissed. It is argued that the Judge misdirected himself on the issue of the Respondent's delay, RLP (Jamica) [2017] UKUT 330 (IAC), it is also argued the Judge misapplied Devaseelan, overlooked the explanation for the delay, erred in assessing the public interest, regarding the Appellant's daughter and conflated insurmountable obstacles and very compelling circumstances.
3. The delay point was in issue in the appeal before Judge Moxon and should have been Judge Cox's starting point, many of the points that arose had been addressed. In RLP the effect of delay in very serious criminal offending was held to be unlikely to assist an Appellant. There is no doubt that the Appellant's offending was very serious, 17 years imprisonment is a good indication of that. All the grounds may be argued.
4. The grounds disclose arguable errors of law and permission to appeal is granted.

33. The appeal is opposed by the Appellant. In his skeleton argument filed with the Tribunal on 19 June 2024 Mr Jamil writes:

There are 6 grounds submitted by the Respondent in his application for permission to appeal FTTJ Cox's determination.

Ground 1: the FTTJ misdirected himself in law on a material matter, namely the effect of delay in the Respondent's instituting deportation proceedings against the Appellant.

1. It will be argued that FTTJ considered the principle established in RLP. In paragraph 53 of his determination, he described the delay as "extraordinary egregious dimensions," the same description the panel of judges provided in 2018 when this appeal first came before this court (see also paragraphs 51 - 52).
2. The case of RLP is distinguished from the present case - the factual background of the present case vs the facts in RLP means this is not a case of Tribunal procedural error but an unexplained delay which is squarely at the Respondent's doorstep (see cases like EB Kosovo; Akaeke and Shala).
3. The FTTJ set out the statutory framework and legal principle in paragraphs 28 - 33 of his determination—the FTTJ properly guided himself by the law.
4. The FTTJ reminded himself of the latest authority of SSHD v BK (Afghanistan) [2019] EWCA Civ. 1358 [40] under the heading "Assessment of the evidence and findings" - he therefore directed his mind to the relevant principle.
5. The issue of delay was properly considered throughout the FTTJ's determination in paragraphs 94 - 102 and 106 - 107. These assessments are clearly open to the FTTJ in his determination and are correct in law.

Ground 2: the FTTJ failed to apply properly Devaseelan principles

6. In paragraph 40 of the determination, the FTTJ confirmed that “the principle set out in Devasselan [2002] UKIAT 00702 apply.”

7. The FTTJ referred to FTTJ Moxon’s determination and quoted the relevant paragraphs in paragraphs 25 – 27 of his determination.

8. The FTTJ further examined FTTJ Moxon's decision in paragraphs 91, 101, and 106. The fact that FTTJ Cox disagrees with Moxon's findings does not mean he failed to apply Devaseelan principles properly.

9. We submit that FTTJ gave adequate reasons in paragraphs 46, 53, 56, 59, 70, 78 – 80, 81 – 86, and 88 – 109. It cannot be successfully argued that he failed to apply Devaseelan principles properly.

Ground 3: the FTTJ erred in finding that there was no explanation for the Respondent’s delay in instituting deportation proceedings

10. The question here is whether it is acceptable to say the 26-year delay was “due to administrative error and oversight” as an explanation in this case.

11. We submit that the explanation provided in the Respondent’s ground under this heading has been described “as a public disgrace” by the Supreme Court, and the court should apply the same description to the delay experienced in this case (see Lord Bingham in *EB Kosovo (FC) v Secretary of State for the Home Department* [2008] UKHL 41 [para 14 & 16] and *SSHD v Titilayo Elizabeth Akaeke* [2005] EWCA Civ. 947 [para 25]).

Ground 4: in finding that the Appellant made a naturalisation application in 1999, the FTTJ failed to give any (or adequate) reasons; or, in the alternative, the FTTJ “double-counted” delay as diminishing the public interest in deportation

12. The FTTJ conducted a balancing exercise in paragraph 105 of his determination, noted the Judge’s note [FTTJ Moxon], and asked a legal question the Respondent failed to answer. In any event, it will be argued that the FTTJ was open to such a decision in his findings.

13. The application for naturalisation, which was refused in 1999, and thereafter, no deportation proceedings were initiated until after 3 years of that decision, is clearly immaterial in this case.

14. It cannot be argued that the application for citizenship in 1999 is the foundation of FTTJ’s determination, but extraordinary unexplained delay, harshness of the Respondent’s decision, significant obstacles and exceptional circumstances of the case are crucial and important factors which FTTJ corrected had in mind and apply the law as it is today.

Ground 5: the FTTJ erred in treating the effect of deportation on the Appellant’s daughter as contributing towards “very compelling circumstances.”

15. It will be argued that to understand the contents of paragraph 109, the reader ought to read the whole paragraph to understand the rationale behind the FTTJ’s finding, not solely on the comment in bracket quoted by the Respondent in his grounds under this heading. The FTTJ gave a very sound reason and justifiable in our submission.

16. It will be argued that paragraph 109 is not “inconsistent” with paragraph 73, as the latter is purely findings of facts heard by FTTJ while the former was an overall legal assessment opened to the FTTJ.

Ground 6: the FTTJ erred in treating “insurmountable obstacles” to the Appellant’s integration in Pakistan as contributing towards “very compelling circumstances.”

17. It will be argued that the Respondent’s submission under this heading amounts to merely a disagreement with the FTTJ’s application of evidence and does not constitute an error of law.

18. It is troubling that the Respondent failed to understand or accept the FTTJ’s finding of facts regarding the Appellant’s knowledge of Pakistan – a country where he has never been and currently holds no passport or national identity card. The basis of the Appellant being treated as a Pakistani national was due to his late father’s nationality, ignoring the fact that his mother was a British national before the Appellant’s birth (this point seems never to have been adjudicated upon in this case).

19. It is more troubling that for over 3 years, the Respondent pursued deportation of this Appellant to a country where he does not hold its nationality [36 & 46], and the FTTJ was correct to find that removing him to Pakistan would be unduly harsh as there are insurmountable obstacles coupled with 26 years delay and taking all the circumstance in this case into account, it is very compelling that deportation cannot be justified or at least can no longer be justified.

20. We find it hard to follow the Respondent’s submission in paragraph 32 of his ground of application, but nevertheless submit that the FTTJ was correct in his interpretation of “insurmountable obstacles to integration.” Conclusion: It is our submission that the FTTJ’s findings are sound in law – there are no recognisable errors of law in the findings of FTTJ Cox.

Discussion and analysis

34. In relation to the issue of delay, the Secretary State in Ground 1 relies upon the decision of the Upper Tribunal in RLP (BAH revisited - expeditious justice) to Jamaica [2017] UKUT 330 (IAC), the headnote of which reads:

- (i) The decision of the Upper Tribunal in BAH (EO – Turkey – Liability to Deport) [2012] UKUT 00196 (IAC) belongs to the legal framework prevailing at the time when it was made: it has long been overtaken by the significant statutory and policy developments and reforms effected by the Immigration Act 2014 and the corresponding amendments of the Immigration Rules, coupled with YM (Uganda) [2014] EWCA Civ 1292 at [36] - [39].
- (ii) In cases where the public interest favouring deportation of an immigrant is potent and pressing, even egregious and unjustified delay on the part of the Secretary of State in the underlying decision making process is unlikely to tip the balance in the immigrant’s favour in the proportionality exercise under Article 8(2) ECHR.

35. The chronology of the current case reflects a situation that existed previously when numerous foreign national prisoners were released from prison without deportation proceedings having been instituted as a result of administrative issues.

36. An article on the BBC News channel dated Monday, 9 October 2006 set out the sequence of events. It notes in February 1999 over 1,023 foreign prisoners were

released without being considered for deportation. The article highlighted a number of points of concern including what was described by HM Inspector of Prisons annual report in 2003 as an “institutional blind spot” for foreign nationals within the prison service and a dilatory attitude from the Immigration Service “which unless pressed, is not monitoring those liable to deportation and making arrangements for this to take place as soon as sentence has expired”.

37. The issue of delay was discussed in Mr Aslam’s first appeal before the Upper Tribunal, *Mohammad Mubeen Agha Aslam v Secretary of State for the Home Department HU/00494/2017*, heard by the Honourable Mr Justice McCloskey, then President of the Upper Tribunal, sitting at Field House in London on 13 September 2017, who found material legal error in the decision of the First-tier Tribunal which dismissed the appeal and remitted the same to be reheard de novo. In relation to the arguments relating to delay it is written:

11. I say finally that there is no dispute in this appeal about the governing legal principles. Thus while there has been some emphasis on the part of the Secretary of State in the submissions of Mr Wilding on the correct approach in law to the question of delay that is rather beside the point for the reasons which I have endeavoured to explain. In the abstract, protracted delay on the part of the Secretary of State in initiating deportation or removal action can in principle outweigh the potent public interest in deportation. For the reasons explained by the Court of Appeal in the case *MN-T (Columbia)* and in particular at paragraphs 41 and 42, with the adjustment to be inserted in wake of the decision of the Supreme Court in the case of *Hesham Ali* that is not in dispute. The capacity of delay of a protracted nature on the part of the Secretary of State to outweigh this potent public interest is enhanced and strengthened where it is accompanied by other counterbalancing factors. Again that is an uncontroversial proposition. There is a further uncontentious principle namely that every case is unavoidably fact sensitive. Thus factual comparisons between the instant case and other decided cases will normally entail a relatively arid exercise. Ultimately the question for the Tribunal properly directing itself will be whether the Appellant's criminality, which is of an undeniably grave nature, should be determinative in a properly structured and conducted proportionality balancing exercise. It is the defects in structure which have given rise to my conclusion that the two grounds of appeal in this case are made out.
12. In reconsidering the appeal the FtT will be alert to the explanation proffered on behalf of the Secretary of State for this extraordinary period of delay. This is found in paragraph 37 of the decision letter. I confine myself to the observation that it is rather bare and unparticularised and is unlikely to qualify as an adequate or acceptable explanation.

38. That delay in decision-making can be relevant in an Article 8 proportionality assessment in removal cases is well known following publication of the decision of *EB (Kosovo) v Secretary of State that the Home Department* [2008] UKHL 41 where, at [14 - 16], the three key principles in relation to the impact of delay are to be found, in the following terms:

- i. Developing closer personal and social ties and establish deeper roots in the community.
- ii. A sense of impermanence fading as “months passed without a decision to remove being made, and months become years, and year succeeds year ... this result depends on no legal doctrine that on an understanding of how, in some cases, minds may work and it may affect the proportionality of removal.”
- iii. Reducing the weight otherwise to be accorded to the requirements of firm and fair immigration control, if the delay is shown to be the result

of a dysfunctional system which yields unpredictable, inconsistent and unfair outcomes.

39. In MN-T (Columbia) the Appellant had been convicted of supplying a kilogram of cocaine and sentenced to 8 years imprisonment. There was a five-year delay between her release from prison in 2003 and the Secretary of State taking a deportation decision in 2008. MN-T lost her appeal against a deportation decision in 2009 but no further action was taken by the Secretary of State to deport her. MN-T applied for leave in 2012 which was refused and her appeal against that decision allowed by both the First-tier Tribunal and Upper Tribunal. The Secretary of State appeal to the Court of Appeal.

40. In giving the lead judgement Jackson LJ held at [35]:

“I agree that rehabilitation alone would not suffice to justify the Upper Tribunal’s decision in this case. If it had not been for the long delay by the Secretary of State in taking action to deport, in my view there would be no question of saying that “very compelling circumstances over and above those described in Exceptions 1 a 2” outweighed the high public interest in deportation. But that lengthy delay makes a critical difference. That lengthy delay is an exceptional circumstance. It is allergic to the claimant substantially strengthening her family and private life here. Also, it has led to her rehabilitation and to her demonstrating the fact of her rehabilitation by her industrious life over the last 13 years.

41. In [41] Jackson LJ identified three reasons for the public interest in the deportation of foreign criminals being:

- i. Once deported the criminal will cease offending in the UK;
- ii. deterrence of others; and
- iii. the expression of public concern at the crime.

42. At [42]:

“If the Secretary of State delays deportation for many years, that lessens the weight of these considerations. As to (1), if during a lengthy period the criminal becomes rehabilitated and shows himself to have become a law-abiding citizen, he poses less of a risk or threat to the public. As to (2), the deterrent effect of the policy is weakened if the Secretary of State does not act promptly. Indeed lengthy delays, as here, may, in conjunction with other factors, prevent deportation at all. As to (3) it hardly expresses society’s revulsion at the criminality of the offender’s conduct if the Secretary of State delays for many years before proceeding to deport.”

43. A later decision of the Court of Appeal of Secretary of State for the Home Department v SU [2017] EWCA Civ 1069 appeared to approve Jackson LJ’s decision at [41 - 42] and [61] of that judgement in which it is written:

“The passage on which Mr Yeo relied was at [41] - [42] in which Jackson LJ added comments, not forming part of the reasoning in his judgement, that way as a Secretary of State delays deportation for many years, it lessens the weight of some reasons for the high public interest in the deportation of foreign criminals. The risk of reoffending had been much reduced during the delay. The deterrent effect on offending was we can give prompt action to deport is not taken. The expression of society’s revulsion at the offender’s criminal conduct is blunted. These observations are of course well-made, but they were not made in the context of a person who had unlawfully re-entered the country in breach of a deportation order and they clearly do not obviate the need for the decision-making tribunal to apply the relevant provisions and legal principles.”

44. The Upper Tribunal in RLP make no reference to either of the above Court of Appeal cases which gives rise on the face of it to some tension between MN-T (Columbia) and RLP and how delay affects the proportionality assessment.
45. In his submissions Mr Thompson claimed that Judge Cox had erred in relation to the weight to give to the impact upon delay and in finding that in light of that the weight to be given to the public interest in Mr Aslam's deportation was diminished.
46. When it was put to Mr Thompson that a reading of the determination clearly shows this was a matter that was considered by Judge Cox very carefully, it was submitted that even if he had looked up the issue Judge Cox had not looked at the same properly.
47. I do not find it made out that Judge Cox did not consider this issue with the required degree of anxious scrutiny. There is nothing to which I have been referred that established such a claim. What constitutes an inordinate or egregious delay must depend upon the facts in any particular case.
48. In this case Judge Cox clearly considered the chronology and his assessment of the period of delay has not been successfully challenged before me. It is also not the case of Judge Cox findings that the delay alone was sufficient to reduce the public interest in Mr Aslam's deportation. Judge Cox did what he was required to do, namely to consider delay in conjunction with other factors such as rehabilitation and the strengthening of the family or private life relied upon. Judge Cox examines the extent of both and how they relate to the period of delay in the matter that was being considered before him. That is the correct approach.
49. It is also a material fact that it cannot be said that Mr Aslam is any way responsible for the delay. This was an issue clearly looked at by Judge Cox when he refers to the chronology. It cannot be disputed that responsibility for the delay must lie solely at the feet of the Secretary of State or Home Office officials whose fault it was found to be, which is a sustainable conclusion.
50. The challenge by Mr Thompson to the manner in which the Judge considered and weighed up the three aspects of deportation, namely prevention of offending, deterrence, and expression of public concern for the crime, does not establish material legal error.
51. The Judge took into account the fact Mr Aslam had not reoffended for a substantial number of years as recorded in the determination. That was clear evidence that he was not a risk to the public and that there was a very low risk of his reoffending. Rehabilitation can factor into determining the very compelling circumstances test which has not been shown to be a finding outside the range of those available to the Judge on the facts and circumstances of this case. There was no evidence that Mr Alam had reoffended or to show he could be viewed as a repeat offender.
52. Judge Cox considered the issue of rehabilitation was made out which is relevant as it appears to have been a matter that arose as a result of the passage of time and delay by the Secretary of State.
53. The Court of Appeal further considered rehabilitation and delay in HA (Iraq) v Secretary of State for the Home Department [2020] EWCA Civ 1176 @ [141] which states:
 141. What those authorities seem to me to establish is that the fact that a potential deportee has shown positive evidence of rehabilitation, and thus of a reduced risk of reoffending, cannot be excluded from the overall proportionality exercise. The authorities say so, and it must be right in principle in view of the holistic nature of that exercise. Where a tribunal is able to make an assessment that the foreign criminal is unlikely to re-offend, that is a factor which can carry some weight in the

balance when considering very compelling circumstances. The weight which it will bear will vary from case to case, but it will rarely be of great weight bearing in mind that, as Moore-Bick LJ says in *Danso*, the public interest in the deportation of criminals is not based only on the need to protect the public from further offending by the foreign criminal in question but also on wider policy considerations of deterrence and public concern. I would add that tribunals will properly be cautious about their ability to make findings on the risk of re-offending, and will usually be unable to do so with any confidence based on no more than the undertaking of prison courses or mere assertions of reform by the offender or the absence of subsequent offending for what will typically be a relatively short period.

54. Judge Cox noted the Secretary State's case before the First-tier Tribunal was that the public interest in favour of deportation was potent and pressing, giving in particular the very serious sexual offences committed by Mr Aslam. The submission at [17] of Ground 1 that in considering the effect of delay the Judge failed to take account of RLP does not establish material legal error.
55. Judges of the First-tier Tribunal are deemed to understand and apply the law unless it is shown otherwise. This is relevant even if they do not specifically mention it in a decision. In this case, for the reasons set out above, RPL is not a case that it is determinative of this issue. The Judge properly analysed all the relevant factors that arose as a result of the delay and makes a finding that is within the range reasonably open to the Judge in relation to the impact of delay upon the public interest.
56. I accept that rehabilitation is only one of the three public interests in deportation. I also accept, having read the determination, that there is no merit in the submission the Judge assessed the three aspects and found equal weight should be given to them. The weight to be given to the prevention of reoffending, deterrence, and expression of public concern for crime are variable depending upon the particular facts of an appeal. In some cases, it may be appropriate that the three elements are given equal weight. In a case such as this where the Secretary of State's delay and lack of any evidence of reoffending or a propensity to reoffend is established on the evidence, the prevention of reoffending leg will only warrant little weight being placed upon it. In a case where the Secretary of State's failure to take action within appropriate time is unwarranted on the facts, the expression of the public concern for the crime may warrant reduced weight being placed upon it, compared to how it would be if deportation had been commenced within a reasonable period of time.
57. What constitutes a reasonable period of time is of course the fact specific question. If it had been the case that as a result of the failure to deal with foreign criminal offenders promptly upon release Mr Aslam was released without being deported, for the reasons set out in the BBC article referred above, but action was taken as soon as the Secretary of State was aware of the omission, the Judge may have been able to find that deportation action had been commenced within a reasonable period of time. The Judge notes, however, a chain of events which clearly shows the Secretary of State was made aware of Mr Aslam's situation and release but did nothing about it. The Judge's finding that deportation proceedings had not been commenced within a reasonable period of time, warranting reduce weight being given to the expression of public concern for the crime, is a finding within the range of those reasonably open to the Judge on the evidence.
58. I accepted that in relation to an offence such as that for which Mr Aslam was convicted there is a very strong public interest in others being deterred from thinking they could get away with such crimes. The Judge, however, took this aspect into account and it is not made out the Judge's findings in relation to the

weight to be given to this element are outside the range of those reasonably open to the Judge on the evidence.

59. I find no material legal error made out in relation to Ground 1.
60. Ground 2 asserts a misapplication of the Devaseelan principle. The Judge was clearly aware of an earlier determination by First-tier Tribunal Judge Moxon. Although Judge Cox found that further delay since Judge Moxon's decision did not take Mr Aslam's case much further, that did not reduce the weight Judge Cox was entitled to give to the delay as a whole.
61. Judge Moxon did not accept that very compelling circumstances over and above those identified in Exception 1 (private life) and Exception 2 (family life) outweighed the public interest in Mr Islam's deportation. Ground 2 asserts that as Judge Cox found further delay did not take Mr Aslam's case much further he failed to give adequate reasons for departing from the previous judge's finding, especially on the issue of the delay in instituting deportation proceedings.
62. Ground 2 does not establish material legal error. Judge Cox cannot be said to have failed to apply the Devaseelan principle properly and the fact he made a decision which was different to that of judge Moxon does not mean he did so. One point material to the finding of Judge Cox is that he notes that judge Moxon considered the basis of Mr Aslam's appeal on a completely different basis from how he was required to do. Judge Cox refers to Judge Moxon's decision from [25] and sets out quotes from that determination in that paragraph.
63. Judge Cox sets out the reasons for Judge Moxon's findings at [26]. It cannot be said that Judge Cox failed to consider the early determination with the required degree of anxious scrutiny.
64. It is settled law that an earlier determination is not binding upon a judge considering a later appeal if fairness, ordinarily based upon fresh evidence, requires a different decision to be made. Judge Cox refers to the fresh evidence between [34] - [37] of the decision under challenge.
65. Judge Cox refers to the Devaseelan principal at [40]. At [46] Judge Cox records the Secretary of State conceding that some of Judge Moxon's findings, specifically those about Mr Aslam's country of nationality were based upon an incorrect understanding of the facts, as a result of which no reliance was placed upon those in the case before Judge Cox.
66. The assessment of whether very compelling circumstances existed on the merits of the case had to be assessed on the basis of the evidence before the Judge at the time. The grant seeking permission to appeal refers to two paragraphs of judge Moxon's decision at [49] and [51] and accepts it was clearly referred to by Judge Cox at [26].
67. At [51] Judge Moxon wrote:
 51. I accept that the delay has resulted in the Appellant believing that he could remain in the United Kingdom and he has acted accordingly which is included obtain qualifications and a not unimpressive work history and developing family life with his wife and children. This was material factor to be considered. I do not however accept the arguments that he was given cause to believe that an application for naturalisation would succeed in 2022 a letter he has reduced clearly asserts the contrary.
68. Judge Cox's decision is not different from that on this particular point. The ground suggesting otherwise distorts the actual findings made by Judge Cox. Judge Cox, in his final decision, was considering all aspects of the appeal holistically not focusing solely upon the 2022 application.
69. It is not made out Judge Cox has materially erred in law in the application to Devaseelan principle.

70. Ground 3 asserts the Judge erred in finding there was no explanation for delay in instituting deportation proceedings. I have referred above to this issue and find that as an explanation was provided in the refusal letter Judge Cox has erred in law in claiming that no explanation existed. What Judge Cox was entitled to find is that although [17] - [18] of the refusal letter of 6 May 2022 indicated that the delay had occurred due to administrative error and oversight, there was no satisfactory explanation for that oversight. That remains the case.
71. I find any error made by Judge Cox in relation to this issue not to be material to the decision under challenge in any event, as the Secretary of State has not established that it is.
72. Ground 4 asserts the Judge failed to give adequate reasons or double counted delay as diminishing the public interest in deportation. It was noted that the Home Office Presenting Officer did not accept Mr Aslam's claim that he applied to the Respondent in 1999 for naturalisation as a British citizen whereas at [105] Judge Cox accepted that such an application had been made. There is no merit in the claim Judge Cox failed to give adequate reasons for that finding as it is clearly based upon Judge Cox's acceptance of the credibility of Mr Aslam's evidence in relation to this issue. Mr Thompson repeated the Secretary of State's position in his submissions.
73. The duty of a judge is to consider the evidence that is being given as a whole, to decide what weight should be given to the evidence individually and cumulatively, apply those findings to the law, and come to a sustainable conclusion supported by adequate reasons. It is not made out Judge Cox erred in relation to the 1999 application. Although the Secretary of State asserts the error is material as that application was one of the two factors which in Judge Cox's view led to the appeal being allowed in Mr Aslam's favour, Judge Cox's acceptance that the application had been made has not been shown to be wrong in fact or law.
74. I find no merit in the challenge Judge Cox failed to give adequate reasons for the finding as his reasons are clear, namely that he accepted Mr Aslam's evidence on this point. It is not a finding outside the range of those available to Judge Cox and in light of it being accepted the application had been made in 1999 and that Secretary of State was aware of Mr Aslam's presence and the fact he was not subject to a deportation order, Judge Cox's conclusions as to the impact of delay, discussed above, are not infected by double counting or an inappropriate consideration of the weight to be given to this element.
75. I also find there is merit in Mr Jamil's Rule 24 reply in relation to this ground.
76. Ground 5 asserts Judge Cox erred in treating the effect of deportation on the appellant's daughter as contributing towards very compelling circumstances.
77. It is settled law that it is important a determination is read as a whole. This ground extracts one statement from [109] whereas the paragraph read as a whole sets out the rationale for Judge Cox's finding. It is not a finding based solely upon the sentence referred to at [9] of the grounds seeking permission to appeal.
78. At [73] of the decision under challenge Judge Cox writes:
73. In relation to the Appellant's daughter, I am satisfied that if she had to remain in the UK, if the Appellant is deported then this is likely to have a profound effect on her. I found her description of her relationship with her father compelling and am satisfied his absence would leave a very large hole in her life. However, as she is now an adult the Appellant cannot rely on exception 2.
79. At [109], which the grounds assert contains the contradiction, the Judge writes:

109. I am satisfied that the Respondent's decisions amount to an unnecessary and disproportionate interference with the Appellant and his family's rights to enjoy respect for their article 8 rights. The offences were very serious and would normally be sufficient, in themselves to justify the Appellant's deportation, as the public interest in the removal of a person who had committed such offences would be extremely weighty. However, I am satisfied that given the egregious delay and mishandling of the Appellant's case, the public interest in his removal is significantly reduced to the extent that it carries very little weight. Especially, as the Respondent clearly had an opportunity to pursue his removal in 1999. This coupled with the Appellant's very strong ties to the UK, which include, but are not limited to his longstanding genuine and subsisting relationship with his wife and his very close relationship with his daughter (I have found that it would be unduly harsh on the daughter, if she were separated from him). A further factor in the Appellant's favour is that I am satisfied that there would be insurmountable obstacles to the Appellant's integration into Pakistan.
80. I do not find the alleged consistency made out. At [73] Judge Cox was assessing the merits of a particular point within the overall assessment. Judge Cox makes a clear finding which is correct. At [109] are the threads of his thinking based upon the assessment of those individual elements. This is what the Judge was required to do. No legal error material to the decision to allow the appeal is made on this basis of this challenge either.
81. Ground 6 asserts the Judge erred in treating insurmountable obstacles to the Appellant's integration into Pakistan as contributing towards very compelling circumstances. The grounds assert the Judge at [109] erred in consideration of the last of the three conjunctive requirements are Exception 1.
82. Exception 1 to the 2002 Act applies where -
- (a) C has been lawfully resident in the UK for most of C's life,
 - (b) C is socially and culturally integrated in United Kingdom, and
 - (c) there would be very significant obstacles to C's integration into the country which C is proposed to be deported.
83. In relation to Mr Alams connection with home state, it was found by Judge Cox that this is Pakistan. A reading of the determination as a whole shows, even if the author of the grounds believes elements of the specific wording used by the Judge warrant this challenge, the Judge was considering whether there were very significant obstacles to Mr Aslam's integration into Pakistan, which is the required test. I find [32] of the grounds seeking permission to appeal is an exercise in semantics rather than properly considering what the Judge actually did as a whole.
84. Judge Cox expresses on a number of occasions throughout the determination that he found this a particularly troubling and difficult case. It is for that reason Judge Cox appears to have taken great care in assessing the merits of the case, especially if the appeal was to be allowed.
85. I do not find the Secretary of State has established that in finding very compelling circumstances over and above those described in Exception 1 and Section 2 outweigh the public interest Judge Cox has materially erred in law.
86. Whilst this decision may be objectionable to the vast majority of the public, quite understandably, and whilst some judges may not have made this decision, that is not the test. Based upon the findings made by Judge Cox it cannot be said that his conclusions are outside the range of those reasonably open to him or are rationally objectionable. The simple fact is that if the Secretary of State believed Mr Aslam's deportation was relevant for the prevention of reoffending, deterrence, or the expression of public concern for crime, the deportation

proceedings should have been commenced earlier. Had they done so, it is highly unlikely that Judge Cox would have found as he did in this appeal.

Notice of Decision

87. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 July 2024