



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005143

First-tier Tribunal No: EA/05211/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

22nd January 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

Secretary of State for the Home Department

Appellant

and

Tsako Rentiol

(Anonymity direction not made)

Respondent

Representation:

For the Appellant: Mr Melvin, a Senior Home Office Presenting Officer.

For the Respondent: Mr Biggs, instructed by Connaught Law Solicitors.

Heard at Field House (remote via Microsoft Teams) on 15 January 2024

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Peer ('the Judge') who allowed the appeal against the decision to deport Mr Rentiol from the United Kingdom pursuant to section 3(5) and section 3(6) Immigration Act 1971.
2. Having considered the oral and documentary evidence the Judge sets out his findings of fact from [28] of the decision under challenge.
3. The Judge notes Mr Rentiol was convicted and sentenced to a period of five months imprisonment for the production of a Class B controlled drug (Cannabis).
4. The Judge considers the question of whether the offence caused serious harm before concluding at [38] that Mr Rentiol would not be regarded as having been convicted of an offence which has caused serious harm.
5. The Judge then goes on to consider the proportionality of the decision to deport before concluding that as the offence is not one that has caused serious harm, and in light of the other features considered in the proportionality exercise, the decision is not proportionate, not in accordance with section 3(5) or 3(6), and breaches Mr Rentiol's rights under the Withdrawal Agreement that any restriction on his right of entry and residence is in accordance with national legislation.

6. The Secretary of State sought permission to appeal asserting:

Ground 1 the Judge failed to give adequate weight to the seriousness of the index offence following Mr Rentiol being imprisoned for 23 weeks for production of cannabis, nor the implications of illegal drug production on society as a whole.

Ground 2 the Judge had failed to give adequate reasons when assessing the proportionality of the decision,

7. Permission to appeal was granted by another judge of the First-tier Tribunal on 31 January 2023, the operative part of the grant being in the following terms:

2. The grounds of appeal assert that the First-tier Tribunal Judge has not given adequate weight to the seriousness of the Appellant's offence following his sentence of 23 weeks for the production of a class B drug, nor the implications of illegal drug production on society and erred in the assessment of proportionality in view of the fact that the Appellant had only been in the UK since June 2019, had spent the majority of his life in Greece and had not provided any evidence to show that he could not return to Greece.

3. It is arguable that the First-tier Tribunal Judge's findings in relation to the seriousness of the offence were irrational and the Judge failed to give adequate weight to the public interest in deportation in view of the seriousness of the Appellant's offences. It is further arguable that the finding that the Appellant's private life outweighed the public interest in deportation was also was irrational/inadequately reasoned in view of the Appellant's short period of residence in the UK and his ties to Greece.

8. The application is opposed. A Rule 24 response dated 21 February 2023 had not been seen either by the Tribunal nor Mr Melvin. Fortunately Mr Biggs was able to provide a copy of this document together with authorities he sought to rely upon at the outset of the appeal. Mr Melvin raised no objection to proceeding albeit he had very little notice of the content of the documents.

9. In relation to the grounds the Rule 24 response states:

Ground 1

19. It Ground 1, the SSHD contends that FTTJ Peer had not given adequate weight to the seriousness of the appellant's index offence following his sentence of 23 weeks for the production of a class B drug – cannabis, nor the implications of illegal drug production on society as a whole. The author of the grounds cites paragraphs 38, 39 and 43 of the determination.

20. However, at paragraph 34 of the determination Judge Peer takes as his starting point the SSHD's view that the offence is one that has caused serious harm. He notes that the decision does not set out any details as to the type of harm/s said to have been caused by the index offence and/or as to the 'serious' nature of the said harm/s. He notes that there was 'very little for [him] to discern the detail and the basis for the [SSHD's] view in this case other than by way of inference and recourse to the guidance'. He notes that policy says that a person convicted of a single drug offence 'will usually' that has caused serious harm. He refers in the same paragraph to case law confirming that the nature of the offence will usually indicate the nature of the harm and that there need not be an identifiable victim. In *Mahmood, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Ors [2020] EWCA Civ 717 (05 June 2020)*, the supply of class A drugs was given as an example of an offence which may cause societal harm. Judge peer notes in this instance that the appellant was convicted of an offence of production of class B drugs and considers the relevant harm was societal harm.

21. Judge Peer then proceeded at paragraph 35 to consider the sentencing remarks, which were to the effect that Mr Rentiol's involvement was in 'a lesser role' and the production in the house was 'not particularly large scale'. He notes that the sentence in prospect before mitigation including the guilty plea was 9 months which he states 'is at the lower end of the scale for that type of offence'. Despite the sentence being one of only 23 weeks, Judge Peer nevertheless acknowledges that a sentence of less than 12 months does not exclude the possibility of an offence being one that causes serious harm.

22. At paragraph 36, he then states that he treats the appellant's evidence on the issue of seriousness with caution:

'I am to treat the appellant's evidence on the issue of seriousness with caution. The appellant did not directly give evidence on seriousness. I note the appellant maintains his innocence and is thus saying he could not have caused harm as he did not actually offend but the fact of the conviction means the offence attributed to him has occurred in law. There was evidence from probation that he had completed work on the effects of his behaviours not only on him but others around him from which it might reasonably be inferred that the appellant has some insight into the effects of drugs/drug offences. The appellant's oral evidence was that he recognised that drugs were dangerous so he did not seek to downplay the effect of a conviction and the possibility of harm caused related to drugs per se'.

23. At paragraph 37 Judge Peer then notes that '[the] mega potential for harm is an irrelevant factor' and notes the SSHD's submission before him that the offence was *potentially* very damaging to people from all walks of life in the society. He concludes, rightly, that there needs to be some evidence that the offence has caused serious harm even if it is acknowledged that it falls within a category of offences which contributes to a serious/widespread problem.

24 Taking account of all the evidence available to him, he concludes at paragraph 38 of the determination that Mr Rentiol was not to be regarded as having been convicted of an offence which had caused serious harm. This was a finding and arguably open to the FTTJ of the evidence available to him. The SSHD may not like or agree with the FTTJ conclusion, but that does not mean that the FTTJ has strayed into making a material error of law.

25. In relation to the SSHD's contention that Mr Rentiol's good character is 'somewhat tarnished by his reluctance to admit his involvement in his index offence was serious and given his denial there is potential for him to reoffend again', the author of the ground acknowledges that the FTTJ was not prepared to go behind the conviction and was sceptical as to Mr Rentiol's maintained lack of any involvement. This has no meaningful bearing on the FTTJ's ultimate assessment that the offence itself was not one that had caused serious harm.

26. Ground 1 contends that FTTJ Peer made a material misdirection of law and failed to give adequate reasons for findings on a material matter, however neither assertion can arguably be sustained in relation to the FTTJ's assessment of seriousness. The FTTJ has concluded a thorough analysis of the SHHD's assertion that the offence is one that has caused serious harm, but ultimately finds against the SSHD in this regard. The FTTJ has provided clear and cogent reasons for this finding. The SSHD's grounds of challenge amount to little more than disagreement and an attempt to relitigate the points previously argued by her.

27. Although the grounds do not explicitly argue irrationality, this is in essence the challenge levelled against the findings of Judge Peer in relation to seriousness. It is trite law that making out an allegation of irrationality is a high threshold. The SSHD's challenge in this regard falls far short of that threshold.

Ground 2

28. At paragraph 6 of the Grounds the SSHD asserts, 'At [49] the FTTJ has found that the decision to deport is a disproportionate interference of the appellant's private life under article 8 (1) of the ECHR'. This is a material misstatement of the FTTJ's findings. Judge Peer found only that article 8 (1) was *engaged* in respect of the appellant who had built up a private life living and working in the UK even though he had been here for a relatively short period of time. The FTTJ then states, quite rightly, that any interference with those rights must be proportionate, necessary and justified under article 8 (2) in order for the decision [to] be lawful under section 6 of the Human Rights Act 1998.

29. The FTTJ acknowledges that the appellant had only been in the UK for a relatively short period of time at paragraph 49 and 51 of the determination. However, he correctly notes that Mr Rentiol entered the UK as a Greek National, pursuant to his EU Treaty rights and at the date of decision and appeal held pre-settled status under the EUSS. Having concluded that the index offence was not one that has caused serious harm, Judge Peer was entitled to conclude that the decision under appeal was disproportionate and not in accordance with section 3(5) or 3(6) of the Immigration Act 1971 and breached Mr Rentiol 's rights under the Withdrawal Agreement.

30. The SSHD has identified no material error of law in the decision of Jude Peer. The SSHS's second round of challenge amounts to little more than disagreement with the overall outcome of the appeal.

Discussion and analysis

10. Mr Melvin in his submissions referred to the grounds and lack of adequate reasoning, as pleaded.
11. In his submissions Mr Biggs referred to two main authorities being MS (Malaysia) v Secretary of State the Home Department [2019] EWCA Civ 580 and R (on the application of Yasir Mahmood) v Of the Tribunal (Immigration and Asylum Chamber) and Secretary of State for the Home Department [2020] EWCA Civ 717.
12. Mr Biggs submissions were, in summary, to the effect that the Judge had made reference to appropriate case law and the applicable legal test such that this tribunal had no reason to interfere in the conclusions of Judge Peer, which were neither irrational nor outside the range of those reasonably open to the Judge. I do not agree for the following reasons.
13. The decision to deport dated 23 May 2022 is in the following terms:

PART 1 - DEPORTATION DECISION

You were previously sent a letter notifying you of the Secretary of State's decision to make a deportation order against you. That earlier letter did not make clear that because you have EU SS leave you have the right to appeal this decision under regulation 6 of the Immigration (Citizens Rights Appeals) (EU Exit) Regulations 2020. This letter, therefore, replaces that earlier decision with a new decision that confirms your appeal rights.

On 22 September 2021 at Lincoln Crown Court, you are convicted produce a controlled drug of class B - cannabis, for you which you were sentenced to 5 months imprisonment.

The Secretary of State has deemed your deportation to be conducive to the public good and accordingly it is in the public interest that you be removed from the United Kingdom without delay. Therefore, the Secretary of State has decided to make a deportation order against you under section 5 (1) pursuant to section 3(5) or 3(6) of the Immigration Act 1971.

What this means for you

If a deportation order is made against you then you will be required to leave the United Kingdom and prohibited from returning whilst the order remains in force. The deportation order will also invalidate any leave to enter or remain in the United Kingdom. The order will remain in force until or unless the Secretary of State decides to revoke it.

Right of appeal

As a person with EUSS leave there is a right to appeal against this deportation decision under regulation 6 of the Immigration (Citizens Rights Appeals) (EU Exit) Regulations 2020 which may be certified under those Regulations.

PART 2 - CONSIDERATIONS IN YOUR DEPORTATION DECISION

You have been convicted of a criminal offence as set out in part 1 of this letter. The Secretary of State deems your deportation to be conducive to the public good under section 3 (5) (a) as set out in part 1 of this letter. In this part you will find details of various additional considerations that were taken into account as part of this decision.

Immigration history

In reaching the decision to deport you full account has also been taken of your immigration status as set out below:

It is not known when you entered the United Kingdom. However, you claim that you have been in the UK for two years.

On 15 January 2020 you were granted the pre-settled status under the EU Settlement Scheme.

In light of your criminality you were served a stage 1 decision to deport as an Albanian national on 27 September 2021.

On 30 September 2021, correspondence received from your legal representative introduced to you as a Greek national; they included a copy of a Greek passport and confirmation of limited leave to remain under the EU Settlement scheme.

.....

14. In relation to the applicable statutory provisions the Judge writes:

4. The relevant national legislation is the Immigration Act 1971. Section 3(5) provides that a person who is not a British Citizen is liable to deportation if the Secretary of State “deems his deportation to be conducive to the public good” or “another person to whose family he belongs is or has been ordered to be deported”. Section 3(6) provides that persons over the age of 17 are liable to deportation where a court recommends deportation on conviction. Section 5(1) provides the Secretary of State discretion to make a deportation order where a person is liable to deportation under section 3(5) or 3(6).
5. I note that section 3(6) appears to have no application to the appellant’s case as there is no evidence before me that any court has recommended his deportation.

15. At [29 - 30] the Judge writes:

29. The respondent submitted that the appellant’s deportation was conducive to the public good due the 5 month sentence for the index offence of production of

controlled class B drug (cannabis). The respondent submitted that this was potentially very damaging to people from all walks of life in the local society. The appellant submitted that the threshold for 'serious harm' was not met in relation to the index offence.

30. The legislation gives the respondent discretion to deport persons liable to deportation and persons are liable to deportation where the Secretary of State deems their deportation conducive to the public good. 'Conducive Deportation' dated 25 November 2021 is the respondent's published guidance on conducive deportation and sets out that the government's policy is to pursue deportation where: a person has received a custodial sentence of 12 months or more; has been convicted in the UK or overseas of an offence which has caused serious harm; or is a persistent offender. In the appellant's case, the decision must have been based on the conviction of an offence which has caused serious harm as he did not receive a custodial sentence of 12 months or more nor is he a persistent offender.
16. It can be seen from [30] that the Judge refers to the Secretary of State's published guidance on conducive deportees referred to as 'Conducive Deportation' dated 25 November 2021.
17. The date of the hearing before the Judge was 9 December 2022. This was therefore before the current version of the guidance published on 8 June 2023.
18. There is no change to the definition section including the definition of serious harm in the guidance. That reads:

Serious harm

It is at the discretion of the Secretary of State whether an offence is considered to have caused serious harm.

An offence that has caused 'serious harm' means an offence that has caused serious physical, psychological, emotional or economic harm to a victim, victims or to society in general.

A person does not have to have been convicted in relation to any serious harm which followed from their offence. For example, they may fit within this provision if they are convicted of a lesser offence because it cannot be proved beyond reasonable doubt that they were guilty of a separate offence in relation to the serious harm which resulted from their actions.

Recent court cases have shown that minor offending that more broadly contributes to societal harm does not necessarily meet the definition of serious harm. In the case of *Mahmood, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Ors* [2020] EWCA Civ 717 (05 June 2020), which dealt with the joint appeals of three persons subject to a deportation decision (*Mahmood, Kadir and Estnerie*) the Court of Appeal stated that the prevalence of (even minor) offending may cause serious harm to society, but that does not mean that an individual offence considered in isolation has done so ('Shoplifting, for example, may be a significant social problem, causing serious economic harm and distress to the owner of a modest corner shop; and a thief who steals a single item of low value may contribute to that harm, but it cannot realistically be said that such a thief caused serious harm himself, either to the owner or to society in general'). This was reaffirmed in the case of *Wilson (NIAA Part 5A; deportation decisions)* [2020] UKUT 350 (IAC) (25 November 2020), in which it was concluded that 'the contribution of an offence to a serious or widespread problem is not sufficient; there needs to be some evidence that the offence has caused serious harm'.

The fact that the offending is not characterised as having caused "serious harm" for sentencing purposes will not always be determinative of whether serious harm has been caused.

An evaluative judgement should be made in light of the facts and circumstances of the offending.

Where a person has been convicted of one or more violent, drugs or sex offences, they will usually be considered to have been convicted of an offence that has caused serious harm.

19. In relation to the judgement in R (Mahmood and Ors) [2020] EWCA Civ 717 the Court of Appeal was considering whether that appellant had committed an offence that could cause serious harm within the meaning of section 117D(2)(c) (ii) of the Nationality, Immigration Asylum Act 2002. The definition of a foreign criminal within that provision includes a person who has been sentenced to a period of imprisonment of at least 12 months, a person has been convicted of an offence that has caused serious harm or is a persistent offender.
20. In relation to section 117D(2) Simon LJ, with whom the other members of the Court agreed, wrote:
 34. Various issues arise as to the interpretation of this provision; but a number of preliminary points can be made.
 34. First, the three categories in subsection (2) (c) have a potential to overlap. Plainly an offender who has received a sentence of more than 12 months may have done so because he committed an offence which caused serious harm. Equally, an offender who persistently offends is likely to receive a longer sentence (and more than 12 months) because of a poor antecedent history.
 36. Second, the provision must be given its ordinary meaning informed by its context. The three categories must be read together. This is more than simply a conventional approach to statutory interpretation. It is plain, for example, from the structure of the provision that an offender who has been sentenced to a term of less than 12 months for an offence may nevertheless be treated as a 'foreign criminal' if the offence caused serious harm; and that 'serious harm' will only be relevant when the sentence for an offence is less than 12 months. This throws light on what may be encompassed by an offence which causes serious harm. While it is possible to think of offences which, despite causing the most serious harm, would not typically attract an immediate prison sentence of at least 12 months (causing death by careless driving is an example), in general paragraph (c) (ii) is not concerned with the most serious kind of harm which comes before the Crown Court.
 37. Third, Mr Biggs drew our attention to s.32(1)-(5) of the UK Borders Act 2007 ('UKBA 2007'). Section 32 (3) provides that, where an offender is sentenced to imprisonment for an offence specified by the Secretary of State by order, a deportation order may be made under s.5(1) of the IA 1971. His submission was that allowing the 'serious harm' test under s. 117D(2)(c)(ii) to be satisfied where a given type of offence has been committed, merely because of a perceived generalised harm caused by such offending, would 'trespass into territory' covered by s.32(3) of the UKBA. We are not persuaded that there is any merit in this argument. Section 32 (3) has not been brought into legislative effect and the Secretary of State has not made any order as envisaged; and part 5A of the NIAA 2002 was introduced so as to provide a structured approach to the issue of deporting foreign criminals by reference to rights under article 8 of the ECHR.
 38. Although, Mr Biggs and his attractive submissions sought to confine the ambit of section 117 D(2)(c)(ii) by reference to the words 'caused' and 'harm', these are words in common usage and do not call for extensive commentary.
 39. So far as the word 'caused' is concerned, the harm must plainly be causatively linked to the offence. In the case of an offence of violence, injury will be caused to the immediate victim and possibly others. However, what matters is the harm caused by the particular offence. The prevalence of (even minor) offending may cause serious harm to society, but that does not mean that an individual offence considered in isolation has done so. Shoplifting, for example, may be a significant social problem, causing serious economic harm and distress to the owner of a modest corner shop; and a thief who steals a single item of low value may

contribute to that harm, but it cannot realistically be set that such a thief caused serious harm himself, either to the owner or to society in general. Beyond this, we are doubtful that a more general analysis of how the law approaches causation in other fields is helpful.

40. As to 'harm', often it will be clear from the nature of the offence that harm has been caused. Assault Occasioning Actual Bodily Harm under s.47 of the Offences Against the Persons Act 1861 is an obvious example.
41. Mr Biggs argued on behalf of Mahmood that the harm must be physical or psychological harm to an identifiable individual that is identifiable and quantifiable. We see no good reason for interpreting the provision in this way. The criminal law is designed to prevent harm that may include psychological, emotional or economic harm. Nor is there good reason to suppose a statutory intent to limit the harm to an individual. Some crimes, for example, supplying class A drugs, money-laundering, possession of firearms, cyber crimes, perjury and perverting the course of public justice may cause societal harm. In most cases the nature of the harm will be apparent from the nature of the offence itself, the sentencing remarks or from victim statements. However, we agree with Mr Biggs, at least to this extent: harm in this context does not include the potential for harm or an intention to do harm. Where there is a conviction for a serious attempt offence, it is likely that the sentence will be more than 12 months.
42. The adjective 'serious' qualifies the extent of the harm; but provides no precise criteria. It is implicit that an evaluative judgement has to be made in the light of the facts and circumstances of the offending. There can be no general and all embracing test of seriousness. In some cases, it will be a straightforward evaluation and will not need specific evidence of the extent of the harm; it will be for the tribunal to evaluate the extent of the harm on the basis of the evidence that is available and drawing common sense conclusions.
43. In *LT (Kosovo) and DC (Jamaica) v Secretary State for the Home Department* [2016] EWCA Civ 1246, the Court considered the proper application of s.3(5)(a) and paragraph 398 (c) of the Immigration Rules (see above). The issue was whether an offence of supplying a class A drug fell to be treated as causing 'serious harm' within the meaning of paragraph 398 (c), regardless of the particular circumstances of the offending.
44. One of the arguments before the Court was that the seriousness of harm should be considered by reference to the sentencing of 'dangerous offenders' under the Criminal Justice Act 2003 and the definition of 'serious harm' in s.224(3) as meaning 'death or serious personal injury, whether physical or psychological.' Laws LJ, in giving a judgement with which Lewison and Tomlinson LJ agreed, rejected the argument.

17. I should say straightaway that I am afraid I do not consider that the references to the Criminal Justice Act or the sentencing guidelines are of any assistance to the adjudication of the questions before us on this appeal.

That may be putting the matter too high, since the characteristic of an offence as causing 'serious harm' within the Sentencing Council Definitive Guidelines may be referred to in the sentencing remarks which are likely to be of assistance. On the other hand, the fact that the offence is not characterised as one causing 'serious harm' for sentencing purposes is plainly not determinative of the issue that arises under s. 117D(2)(c)(ii).

45. Although in *LT (Kosovo)* at [24], the Court questioned the Secretary of State's view that 'all drug offences are by their nature serious'; it is accepted as 'perfectly reasonable' the Secretary of State's view that supplying class A drugs causes serious harm. In that case, LT had been convicted of an offence of possession with intent to supply a single deal of less than 1 gram of a class A drug, cocaine, to a friend, which she had been sentenced to a term of 10 months. We considered below the argument that it is not the Secretary of State's view of the matter that is material when considering the provisions of Part 5A of the NIAA 2002. However, we note the Courts view in *LT (Kosovo)* that it was a reasonable view that dealing in

class A drugs, even on a personal basis caused serious harm, on the basis of societal harm caused by the distribution and consumption of drugs.

21. The fact the appellant's role is minor does not mean the offence for which he was convicted did not cause serious harm. Mr Biggs in his submissions referred to the example of a shoplifter. That is a scenario specifically considered by Simon JL in R (Mahmood) where it was found:

39. So far as the word 'caused' is concerned, the harm must plainly be causatively linked to the offence. In the case of an offence of violence, injury will be caused to the immediate victim and possibly others. However, what matters is the harm caused by the particular offence. The prevalence of (even minor) offending may cause serious harm to society, but that does not mean that an individual offence considered in isolation has done so. Shoplifting, for example, may be a significant social problem, causing serious economic harm and distress to the owner of a modest corner shop; and a thief who steals a single item of low value may contribute to that harm, but it cannot realistically be set that such a thief caused serious harm himself, either to the owner or to society in general. Beyond this, we are doubtful that a more general analysis of how the law approaches causation in other fields is helpful.

22. Whether an offence causes serious harm is a question of fact. It was acknowledged by the Court of Appeal that even a minor offender could give rise to serious harm depending on the nature of the offence. Mr Rentiol's role in the production of cannabis meant there is a clear causative link to the offence for which he was convicted and serious harm arising from the drug.

23. Any submission that the fact he was only involved in the cultivation was not enough fails to give proper regard to the fact that it was his cultivation that enabled the plants to come to maturity and for the drugs to be produced. I find no merit in an argument that Mr Rentiol's role within the organisation, which was clearly material, can somehow be separated from the negative impact on society of the drugs he was cultivating.

24. The Judge finds that the Secretary of State, upon whom the burden of proving serious harm laid, failed to prove his case as he had provided no evidence in support of this claim. The Secretary of State clearly did provide support by reference to the conviction of Class B drug - cannabis.

25. The classification of drugs is determined by the Misuse of Drugs Act 1971. Between 1928 in 2004, and since 2009, cannabis is being classed as a Class B drug. Between 2004- 2009 it was a Class C drug. It is currently a Class B drug with very limited exceptions.

26. The classification of drugs set in Schedule 2 of the Misuse of Drugs Act 1971 is based upon the harm they may cause. Class A, the most harmful, includes morphine and diamorphine (heroin). Class B, referred to as the intermediate category, includes amphetamines, barbiturates, cannabis and cannabis resin. Class C, the least harmful, includes anabolic steroids, benzodiazepines and growth hormones. The classification is based upon physical harm that the drug may cause, their pleasurable effect, associated with adverse reactions after chronic use, and the harm that misuse may bring to families and societies at large.

27. Over the past few decades, the amount of Tetrahydrocannabinol (THC) in cannabis has steadily increased meaning today's cannabis has in the region of three times the concentration of THC compared to 25 years ago. The higher the THC amount, the stronger the effects on the brain—likely contributing to increased rates of cannabis related hospital visits. More THC is also likely to lead to higher rates of dependency and addiction. It was as a result of the

- detrimental effects upon society and harm caused to individuals that cannabis was reclassified from a Class C to Class B drug.
28. The NHS identifies risk factors that cannabis can make some existing mental health symptoms worse and has been linked to possible development of mental health issues. People using cannabis over a prolonged period may develop a tolerance of the effects and increase their intake and commonly known symptoms include difficulty sleeping, vivid dreams or nightmares, low mood, difficulty concentrating, irritability, cravings, potential damage to lung tissue by inhaling the substance, can arise. Cannabis may also worsen anxiety and paranoia in some people, in addition to the harm caused to society in general and any costs resulting from involvement to the police, NHS services, and drug-related domestic issues. This is information within the public domain.
 29. Average yield for a hydroponic cannabis plant, such as those Mr Rentiol would have been involved in cultivating is approximately 24 ounces per plant, providing a considerable amount of material for a person smoking spliffs, blunts, or joints. In the house in which Mr Rentiol was arrested he was found to be nurturing 99 cannabis plants which will have a related yield of approximately 2,376 ounces (24 x 99) for that number of plants. Whilst the cost of the product may vary across the UK, taking a low average of £21 per 1/8 ounce gives a cash value for the crop Mr Rentiol was convicted of producing in the region of £19,000. That money would have been taken by a criminal organisation, more often than not. It is known that such groups exploit individuals to cultivate the plants, including trafficking, use of threats and violence, and other illegal means.
 30. It is the Secretary of State's policy to deport those convicted of drug offences which are found to cause serious harm to society, as reflected in their individual classification. The Secretary of State is entitled to set out in her view of what constitutes relevant public policy. It must be remembered that that is the policy that applies to the community as a whole and not just an individual. The grant of permission to appeal reflects the concern the Judge did not give appropriate weight or consideration to the public policy element.
 31. The Grounds assert the Judge did not give adequate weight to the seriousness by reference to [38], [39] and [43], nor the implications of illegal drug production on society as a whole.
 32. At [38] the Judge concludes that having taken account of the evidence available, and in all the circumstances, Mr Rentiol was not to be regarded as having been convicted of an offence which has caused serious harm.
 33. No issue was taken in relation to the Judge's reference to case law at [31 - 32]. The Judge noted it was for a judge to decide having regard to relevant factors, including the Secretary of State's view being the starting point, and the sentencing remarks when considering whether an offence has caused serious harm. At [33] the Judge properly records that it is not a requirement for the Secretary of State to adduce any victim evidence, i.e. to show there was a specific victim of the criminal activity. That has to be the case as with an individual convicted of production of cannabis or any other drug, or even possession with intent to supply, the eventual victim who suffers harm may not be easily identifiable at that point in time. It is accepted the potential for harm is irrelevant but there is clear evidence that Class B drugs, including cannabis, causes serious harm to individuals and society as a whole, and that the offence of which Mr Rentiol was convicted, production with intent to supply, will have caused serious harm.
 34. The effect of drugs, including Class B cannabis upon society is well known, including a rise in drug driving offences. It appears the Judge dismissed the appeal because the Secretary of State did not set out chapter and verse in the

- decision notice in relation to a matter which is in the public domain, the harmful impact of cannabis. I find that amounts to an error based upon the Judge omitting from his considerations material aspect of the known information in relation to the effect of cannabis upon society, without adequate reason.
35. Referencing case law to a person possessing a class A drug and mere possession being enough does not assist Mr Rentiol as that is one example being provided by the Court to Appeal, not a finding by that Court that unless the offence relates to at least a small possession of a Class A drug serious harm cannot be found or inferred. It is a rational finding that as it is known cannabis is a drug that causes serious harm, the Judge was able to infer from the evidence that this was the case being advanced.
36. Whilst I agree with Mr Biggs' submission that it was up to the Judge to evaluate the evidence I do not find that the Judge did so with the required degree of anxious scrutiny in this case.
37. Mr Biggs in his submission referred to [42] of R (Mahmood) referring to the need for the evaluative judgement, that there is no general and all embracing test, and it was up to the tribunal to draw on the evidence and commonsense conclusions. A common sense conclusion will be based upon all the material available including that in the public domain. A common sense conclusion must be that the Class B drug cannabis does cause serious harm.
38. A find the Secretary of State has made out her argument in relation to Ground 1.
39. In relation to Ground 2, the proportionality of deportation decision, I find the Judge has erred in law as one of the elements included in the assessment is the finding that it had not been established Mr Rentiol had been convicted of an offence that caused serious harm and also at [54] the Secretary of State not setting out details or reasons for why Mr Rentiol's presence in the UK was not conducive to the public good.
40. I therefore set the decision aside. In light of the omission from the Judge's consideration of a material element, relevant to the question of whether Mr Rentiol can be deported from the UK, and the impact of that on the proportionality assessment, there is a need for detailed fact-finding in relation to all aspects of this appeal.
41. My starting point has been that the case should be retained in the Upper Tribunal. However, I have had regard to the Upper Tribunal decision in Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC) and the fact that the errors I have identified will necessitate further findings of fact and a complete reassessment of the serious harm issue and proportionality of the decision. On balance it is appropriate to remit this appeal to the First-tier Tribunal. In light of the errors of law I have identified, the remitted hearing will need to address all issues in the case. There will be no preserved findings..
42. I remit the appeal to the First-tier Tribunal sitting at Taylor House to be heard afresh by a judge other than Judge Peer.

Notice of Decision

51. The First-tier Tribunal has been found to have materially erred in law. I set the decision aside. The appeal shall be remitted to the First-tier Tribunal sitting at Taylor House to be heard afresh by a judge other than Judge Peer.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 January 2024