IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004952, UI-2024-004953
First-tier Tribunal No: PA/02219/2024
HU/00665/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of January 2025

Before

UPPER TRIBUNAL JUDGE HIRST
DEPUTY UPPER TRIBUNAL JUDGE BIBI

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PM
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms Stuart-King, counsel instructed by Shawstone Associates
For the Respondent: Ms Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 9 January 2025

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Secretary of State appeals from the decision of First-tier Tribunal Judge Swaney promulgated on 2 September 2024, allowing the Respondent's appeal on human rights (Article 8 ECHR) grounds.

2. At the hearing on 9 January 2025, having heard submissions from the parties, the panel gave its decision that there was no error of law in the decision of the First-tier Tribunal. Our reasons for that decision are set out below.

Background to the appeal

3. The Respondent is a citizen of the Philippines born on 31 March 2003, who first arrived in the UK in May 2019 with indefinite leave to enter. On 38 July 2022 she was convicted of using threatening/abusive/insulting words/behaviour with intent to cause fear of/provoke unlawful violence, common assault, and threats to kill, and was sentenced to 14 months' imprisonment. The sentencing remarks recorded that the Respondent had been suffering from mental illness at the time of the offence and that the court's ability to sentence her to a mental health treatment requirement had been circumscribed by the non-cooperation of the relevant mental health trust.

4. On 1 August 2022 the Secretary of State made a decision to deport the Respondent and on 15 November 2022 refused her human rights claim. On 1 December 2022 the Respondent claimed asylum. She was subsequently referred to the National Referral Mechanism and on 21 September 2023 a positive conclusive grounds decision was made recognising her as a victim of child sexual exploitation.

5. On 29 April 2024 the Secretary of State refused the Respondent's protection claim. The Respondent's appeal against both that decision and the 15 November 2022 decision to refuse her human rights claim came before the First-tier Tribunal on 31 July 2024.

6. In a detailed decision, the judge found that the Respondent was not excluded from refugee protection under s72 Nationality, Immigration and Asylum Act 2002 ('NIAA 2002'), but concluded that the Respondent would be able to obtain sufficient protection from the authorities in the Philippines and dismissed the protection appeal. She also dismissed the appeal on Article 3 ECHR grounds. The judge found that the Respondent had had lawful residence in the UK throughout, but could not meet the private life exception in s117C(4) NIAA 2002 because of her age and length of residence. Having reviewed the evidence the judge accepted that there were 'very compelling circumstances' under s117C(6) NIAA 2002 and allowed the appeal on Article 8 grounds.

7. The Appellant's grounds of appeal asserted that the judge had erred in law by conflating the private life exception in s117C(4) with 'very compelling circumstances' and had misdirected herself as to the high threshold to be met for the latter; the judge had also failed properly to consider the public interest. Permission to appeal was granted on 9 October 2024 by First-tier Tribunal Judge Boyes.

8. The Respondent filed a response under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 on 8 January 2025 with a request for an extension of time.

The hearing

9. Ms Lecointe did not object to an extension of time for the Respondent's Rule 24 response and indicated that she had had sufficient time to read and consider it. The panel granted the extension of time sought.

10. In submissions on behalf of the Appellant, Ms Lecointe relied on the grounds of appeal. She initially submitted that the judge had erred in finding that the Respondent's residence had been lawful, but subsequently withdrew that submission. Her alternative submission, relying on *SSHD v Garzon* [2018] EWCA Civ 1225, was that the judge had failed to give sufficient weight to the public interest in deportation, particularly in light of the lack of evidence as to the risk of reoffending.

11. For the Respondent, Ms Stuart-King relied on the Rule 24 response. The judge had clearly been mindful that the Respondent's failure to meet the exceptions in s117(4) and (5) NIAA 2002 meant that very compelling circumstances over and above the exceptions were required; that was inherent in the structure and content of her decision. The judge was not required to specify in detail which circumstances met the 'over and above' threshold in s117(6) NIAA 2002 and to do so would be an artificial exercise: *Yalcin v SSHD* [2024] WLR(D) 49 at §62. It was not suggested that the judge's conclusion that the risk of reoffending was low was perverse. The judge had properly and carefully considered the evidence before her and there was no error of law in her decision.

12. At the end of the hearing the panel gave its decision with reasons to follow.

Error of law decision

13. It is firmly established that an appellate court should exercise caution when considering first instance decisions of the First-tier Tribunal as a specialist tribunal of fact. The Court of Appeal and Supreme Court have repeatedly emphasised that an error of law should not be assumed where the First-tier Tribunal has not expressly referred to an authority or statutory provision. The focus must always be on the way the judge has "performed the essence of the task required": see, for example, *Yalcin v SSHD* [2024] WLR(D) 49 at §67 and the principles summarised in *HA (Iraq) v SSHD* [2020] EWCA Civ 1176 at §72.

14. S117C is part of the statutory framework in s117A-D NIAA 2002 which governs the consideration of Article 8 ECHR claims by courts and tribunals. It provides, so far as is relevant to this appeal:

> "(1) The deportation of foreign criminals is in the public interest.
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
> (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
> (4) Exception 1 applies where—
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
> (b) C is socially and culturally integrated in the United Kingdom, and
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
> (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
> (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation

> unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
> …"

15. The correct interpretation and application of s117C(6) NIAA 2002 has been considered in a number of authorities, including in particular *HA (Iraq), NA (Pakistan) v SSHD* [2017] 1 WLR 207 and more recently *Yalcin*. It is clear from those authorities that:

    a. In cases covered by the exceptions in s117C(4)-(5), the consideration of whether those exceptions apply is a self-contained exercise governed by their particular terms: *HA (Iraq)* at §47;

    b. Where they do not apply, S117C(6) requires a 'broad holistic assessment' of all the relevant circumstances of the case, which include all the relevant factors identified in Strasbourg caselaw as relevant to Article 8 proportionality: *HA (Iraq)* at §51;

    c. A foreign criminal seeking to rely on s117C(6) must be able to demonstrate either features of his case of a kind mentioned in s117C(4)-(5), or features falling outside those exceptions, which make his Article 8 claim "especially strong": *NA (Pakistan)* at §29;

    d. A serious offender will need to meet a higher threshold than a medium offender to satisfy subsection (6): *Yalcin* at §58;

    e. The tribunal is not required to specify with precision in every case what the 'something more' consists of which satisfies the higher threshold in subsection (6) and makes the Article 8 case 'especially strong': *Yalcin* at §62.

16. In this case, the judge identified the issues for determination at paragraph 48 of her decision. At paragraphs 49-66 she gave detailed consideration to the sentencing remarks of the criminal judge, the Respondent's mental health at the time of her offence, and the change in her circumstances when considering whether the Respondent was excluded from refugee protection by s72 NIAA 2002. The judge considered the private and family life exceptions to deportation under s117C(4) and (5) at paragraphs 86-103. She concluded at §94 that although the Respondent could not satisfy the private life exception because she had not been resident in the UK for most of her life (s117C(4)(a)), the extent to which the Respondent would otherwise have satisfied the conditions in s117C(4)(b) and (c) was relevant to whether her circumstances were 'very compelling'. The judge went on to give separate consideration to s117C(6) at paragraphs 104-119.

17. It is right that the judge did not expressly set out the terms of s117C(6) NIAA 2002, nor make express reference to the requirement for very compelling circumstances 'over and above' the exceptions in ss117C(4) and (5). It might have been preferable if she had done so. However, we accept the Respondent's submission that it is apparent from the structure and content of the judge's decision that in substance she applied the correct test.

18. The judge gave careful and detailed consideration to a number of factors. Those included the Respondent's mental health; her ongoing treatment and support in the UK; expert psychiatric evidence as to the impact of removal on her mental

health; the fact that the sentencing court had clearly considered that a non-custodial disposal would have been appropriate had it been available; the Respondent's history of sexual and physical abuse as a child in the Philippines by her step-father and by another adult (D); the Respondent's relationship with and dependence on her father in the UK; and the availability of family financial or emotional support in the Philippines. Those were all factors which were obviously relevant to the s117C(6) balancing exercise.

19. Although the judge's approach to the risk of reoffending was criticised by Ms Lecointe on behalf of the Appellant, we do not accept that criticism. The judge noted the lack of an up to date risk assessment or evidence by the Probation Service; she correctly directed herself that the lack of further offending and compliance with licence conditions should not carry significant weight. However, given the clear link between the Respondent's previous mental ill-health and her risk of offending, which was set out in the psychiatric evidence and sentencing remarks, we consider that it was open to the judge to give greater weight to the Respondent's engagement with mental health treatment and support, and in that context to give greater (but still limited) weight to the absence of further offending than she would otherwise have done.

20. We also reject the Appellant's submission that the judge gave "insufficient" weight to the public interest in the Respondent's deportation. At §108 the judge expressly stated that she had given the public interest "significant weight"; she also expressly recorded (§109) that she had given weight to the fact that the Respondent did not meet the exceptions in s117C(4)-(5). Having recognised the strong public interest in removal, the weight to be given to it, and the balance of other relevant factors in assessing proportionality, were matters for the judge.

21. It is not in dispute that, as the Respondent had been sentenced to more than twelve months' but less than four years' imprisonment, she was a 'medium' offender within the framework of s117C; subsection (6) therefore imposed a less demanding threshold than that required for a 'serious' offender. The judge structured her decision by reference to the statutory framework in s117C and it is clear from her conclusion that she recognised that the public interest required deportation unless it was outweighed. Her consideration of the factors relevant to Article 8, including the public interest in deportation, was detailed and reasoned clearly.

22. The judge had already identified that s117C(4)(b) and (c) applied to the Respondent's case. She was not required to specify with precision which circumstances took the case 'over and above' subsection (4), but only to consider, on a broad holistic assessment of all the relevant circumstances, whether the Article 8 case was 'especially strong': *Yalcin* and *NA (Pakistan)*. Having given detailed consideration to the unusual circumstances of the Respondent's case, the judge's conclusion that there were very compelling circumstances which outweighed the public interest in deportation one which was open to her. There was no error of law in her approach.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and we decline to set it aside. The Secretary of State's appeal is dismissed.

L Hirst

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 January 2025