Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/10675/2017**

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice	**Decision & Reasons Promulgated**
On 12th March 2018	**On 04th April 20128**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[K B]
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr B Lams, instructed by Oaks Solicitors
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State, I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Albania born on [ ] 1985. His appeal against deportation was allowed by First-tier Tribunal Judge A J M Baldwin on 24 January 2018 on human rights grounds.

2. Permission to appeal was granted on the following grounds: "It is arguable the judge did not engage with the appropriate case law and section 117C bearing in mind the conviction represented offending at the higher end of the scale. The evidence of rehabilitation and lack of family ties did not

© CROWN COPYRIGHT 2018

arguably reach the test of very compelling circumstances or unduly harsh given the great public interest in the appellant's deportation."

3. In the Rule 24 response the Appellant submitted that the judge did identify the correct test, namely whether there were compelling circumstances over and above the exceptions in paragraph 399A and section 117C of the Nationality, Immigration and Asylum Act 2002. The judge reviewed relevant case law and attached appropriate weight to the public interest. His findings were open to him on the evidence and there was no error of law in his decision to allow the appeal.

Submissions

4. Mr Jarvis submitted that the judge set out the law in relation to an Article 8 assessment outside the Immigration Rules, but he failed to have regard to section 117C. The judge's starting point demonstrated that he had not understood the legal position. The appeal was against deportation not a refusal of leave. The judge refers to a possibility of a relationship and therefore there was no family life in this case. The relevant exception was paragraph 399A on the basis of private life.

5. Mr Jarvis submitted that the judge erred in law in his assessment of compelling circumstances for the following reasons. He failed to consider the Appellant's criminal conduct in concluding that the Appellant was integrated in the UK. He focussed on rehabilitation, which was not material given the seriousness of the offence. He failed to assess whether the exceptions were met and then consider whether there were compelling circumstances. Significant obstacles to re-integration were not sufficient and any interruption to family life was the normal state of affairs in deportation cases. The fact that the Appellant had no family in Albanian was not enough to establish compelling circumstances over and above the exceptions.

6. Mr Lams submitted that the judge had identified and applied the correct test at paragraph 22. He then set out the facts relied upon and had drawn together all relevant matters in finding that the circumstances were compelling. This was not a rationality challenge. The Respondent may not agree with the reasons for the decision, but it was open to the judge. Reading the decision as a whole the judge had dealt with the Appellant's criminal conduct. Rehabilitation was relevant to whether the Appellant was someone who remained integrated notwithstanding his offending behaviour. The Appellant was extremely unlikely to re-offend and had taken advantage of courses in prison.

7. Mr Lams submitted that the decision was well reasoned. The judge found that the exceptions in 399A were met and he then went on to identify other elements outside the Immigration Rules. The Appellant's relationship was part of that, as was his background. The decision to allow the appeal was reasonably open to the judge. He applied the correct test and took into account all relevant matters.

8. In response, Mr Jarvis submitted that the structure of the decision was important in understanding the tests to be applied. The judge's statements at paragraphs 19 and 20 were material wrong. There was no

express finding of very significant obstacles to re-integration which was a high test. The judge considered the case from the angle of whether the Appellant was considered British. The Appellant's relationship was not relevant to the Appellant's re-integration in Albania and rehabilitation was not relevant to compelling circumstances. The judge had made mixed findings of facts and law and had not demonstrated that he applied the relevant legal test.

Discussion and Conclusion

9. The relevant facts in this case are as follows. The Appellant came to the UK when he was about 13 or 14 years old. He had no memory of Albania and none of his family remained there. His father is dead, his mother is in Germany and he believes his sister is in Italy. His claim for asylum was refused in 2001, but he was granted exceptional leave to remain until May 2005. In September 2005 he was granted indefinite leave to remain. He excelled at school and had been in full time employment since the age of 18. He had completed several courses and was currently studying for a level 5 certificate in management and leadership. He could barely read or write Albanian. Unemployment is very high in Albania and most jobs are offered because of a family contact.

10. The Appellant pleaded guilty to conspiring to supply a class A drug on 17 July 2015 and was sentenced to four years and six months' imprisonment. The Appellant's role was limited to transporting a packet of high quality cocaine from the South of England to West Yorkshire. He was asked to transport drugs twice and was caught on the first occasion. The offence was triggered by his gambling habit and he had completed money management and drug awareness courses in prison. He was remorseful and he wished to resume his relationship with his long standing partner who miscarried while he was in prison.

11. The Respondent stated that British nationality was refused on the basis of the Appellant's previous convictions. However, there was no Memorandum of Conviction or PNC list and none were drawn to the attention of the sentencing judge. The Respondent's letter of 26 July 2017 did not rely on convictions other than the one conviction in 2015.

12. The judge set out the legal test at paragraph 22 acknowledging that the Appellant had received a custodial sentence in excess of four years and therefore he had to show compelling circumstances over and above his lawful residence for most of his life, his social and cultural integration and very significant obstacles to his integration abroad. The judge was well aware of the factors to assess as set out in paragraphs 339A and section 117C. He did not commence his findings from the wrong starting point. The judge then reminded himself of the legal principles distilled from relevant case law including the significant weight to be attached to the public interest and the definition of very compelling circumstances.

13. The judge made findings on the following matters in the following order from paragraphs 25 to 29:

    (i) offending behaviour;

(ii) remorse, rehabilitation and risk of re-offending;

(iii) integration in the UK, including his relationship with his former partner;

(iv) family background and lack of support in Albania;

(v) ability to re-integrate on return to Albania;

(vi) the effect of deportation on his long standing partner who wished to resume her relationship with him.

14. I find that the judge considered all the relevant factors in paragraph 399A and section 117C and took into account other relevant factors over and above those referred to in the Immigration Rules. The judge's findings at paragraphs 25 to 29 are sufficient to support his conclusion that the Appellant's circumstances were very compelling such that they outweighed deportation.

15. At paragraph 30, the judge summarised his findings and concluded that the Appellant was fully integrated in the UK and he was unlikely to re-offend. The judge found that the Appellant left Albania in 2001, he had little memory of it, he had no family there, he had a limited command of Albanian and little or no familiarity with Albanian culture or customs. These findings were sufficient to show that there were very significant obstacles to re-integration, notwithstanding that the judge did not use that specific phrase in his decision.

16. The judge's findings were open to him on the evidence before him. I accept that a different judge may well have come to a different conclusion. However, this was not a rationality challenge. The judge applied the correct test to the facts as he found them. There was no error of law in the judge's decision to allow the appeal on human rights grounds.

17. I find there is no error of law in the decision of 24 January 2018 and I dismiss the Respondent's appeal.

Notice of Decision

Appeal dismissed

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

J Frances

Signed Date: 26 March 2018

Upper Tribunal Judge Frances