IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000239

First-tier Tribunal No: HU/01258/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 14th of March 2024

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JABRIL HUSSEIN ABDULLAHI

Respondent

(NO ANONYMITY ORDER MADE)

Representation:

For the Appellant: Mr N. Wain, Senior Home Office Presenting Officer
For the Respondent: Ms S. Alban, Seren Legal Practice (by video link)

Heard at Field House on 05 March 2024

DECISION AND REASONS

1. For the sake of continuity, I will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.

Background

2. The original appellant (Mr Abdullahi) appealed the respondent's (SSHD) decision dated 19 May 2023 to refuse a human rights claim in the context of deportation proceedings.

3. First-tier Tribunal Judge Oxlade ('the judge') allowed the appeal in a decision sent on 30 November 2023. The judge outlined the appellant's immigration history [1]-[5]. The appellant is a 24 year old Italian national who entered the United Kingdom with his mother on 13 July 2015 by exercising rights of free movement under EU law. In preparation for the United Kingdom's exit from the

EU, the appellant applied for leave to remain under the EU Settlement Scheme in October 2019. He was granted leave to remain on that basis until 20 December 2024.

4. Following a conviction for supplying a Class A drug (crack cocaine) in November 2021, the appellant was sentenced to three years and five months imprisonment. On 19 May 2023 the respondent made an automatic deportation order pursuant to section 32 UK Borders Act 2007 ('UKBA 2007').

5. The judge went on to summarise the relevant legal framework [6]-[11]. In particular, she referred to the decision of the Supreme Court in *HA (Iraq) v SSHD* [2022] UKSC 22. The judge outlined a range of factors quoted by the Supreme Court from the decision of the European Court of Human Rights (ECtHR) in *Unuane v United Kingdom* (2021) 72 EHRR 24. Those factors might be relevant to the assessment of the proportionality of the decision with reference to the 'very compelling circumstances' test outlined in section 116C(6) of the Nationality, Immigration and Asylum Act 2002 ('NIAA 2022') [10]. The judge also referred to section 117C(2) NIAA 2002 and reminded herself that the more serious the offence the greater the public interest in deportation, as well as other matters that were relevant to the weight that should be given to the public interest in deportation [11].

6. The judge went on to outline what facts were or were not in dispute before going on to make findings on the oral and other evidence before her [12]-[16]. She noted that the appellant was born in Italy and lived there until he was 12 years old. He attended school there and was 'a fluent Italian speaker and writer.' After that he moved to live with family members in Mogadishu for three years. He entered the UK with his mother when he was around 16 years old. He continued to live with his mother until she returned to Somalia to be with her husband at the end of 2020. The appellant stayed with his aunt and was given some money [12].

7. The judge outlined the nature of the offence. She noted that the sentencing judge took into account the appellant's relative youth, his guilty plea, and his 'almost' good character (having a previous conviction for possession of cannabis). The sentencing judge also considered aggravating factors, such as evidence to show that he continued activities after he was released on police bail, non-cooperation in allowing police access to a phone, and the period of five months in which he was active. The sentencing remarks described the appellant as having 'operational control' of the drug selling line albeit limited to supplying at street level under the direction of others [13]-[14]. While in prison the appellant continued his education by taking a series of courses [15].

8. A number of other matters were not agreed or remained in dispute. These included whether the appellant had lost his fluency in Italian, whether his family would be able to provide him with any meaningful support, whether he would be able to integrate in Italy given that he had never lived independently, the effect of removal on his relationship with his partner of four years, and the extent of his rehabilitation [16].

9. The judge took a structured approach to her findings with reference to the relevant legal framework. She began by noting that the appellant was a foreign offender to whom Part 5A NIAA 2002 applied [22]. The appellant is a 'medium' offender who was sentenced to more than 12 months but less than four years'

imprisonment. As such, the judge went on to consider whether the appellant met any of the exceptions to deportation contained in section 117C NIAA 2002.

10. After having analysed the evidence, the judge concluded that the appellant was unable to show that he met the private life exception under section 117C(4) NIAA 2002 because he had not been lawfully resident in the United Kingdom for most of his life. However, she went on to conclude that he did meet the other two limbs of the test finding that (i) he was socially and culturally integrated in the United Kingdom; and (ii) there would be very significant obstacles to his integration into the country to which it was proposed he would be deported [23]-[29]. The judge outlined somewhat conflicting evidence as to the appellant's language ability and concluded that it was likely that currently he only spoke Italian at a basic level 'though with a distinct possibility that he could pick it up quite quickly, if needs must.' She also resolved some difference in the evidence as to whether he continued to have family members in Italy, preferring the evidence of the appellant's mother to that of his partner. The judge accepted that it was likely that the appellant no longer had any family members in Italy who might be able to assist him to find work or accommodation [28]. The judge went on to make the following findings:

> '29. I also find that the Appellant – though believing himself to be [wordly]-wise – is young for his age and naïve; on his own evidence he did not manage money well, took what seemed like a good money-earning opportunity to deal drugs, without thinking of the consequences… Living within his very female family and the youngest child – a boy – speaks very strongly to his being cossetted, spoilt, and never being expected to "man-up". In this scenario, I consider it unlikely that he has the language, the skills, or the adaptability to settle in Italy, to find his own [accommodation], a job, and make friendships, without making bad choices. I appreciate that I am slipping into conjecture in coming to this conclusion, but remind myself that exception 1 requires me to do so. The Appellant said that he would not ask or expect his mother or partner to financially support him if he were returned to Italy; having heard their evidence, I am not satisfied that the Appellant's mother would be able to do so, nor that his partner would be prepared to do so. That being so, it would be up to him alone. I find that there would be very significant obstacles to his reintegration into Italy.'

11. The judge went on to consider whether the appellant met the family life exception under section 117C(5) NIAA 2002 by considering whether deportation would be 'unduly harsh' on the appellant's partner. She considered the evidence given by the appellant, his partner, and other family members about the strength and nature of their relationship. She found his partner to be a credible witness who was willing to give evidence that might be contrary to the appellant's interests. For example, the judge noted that his partner did not think that there would be a language barrier in Italy because she had heard the appellant speaking to his mother in Italian. However, the judge noted that his partner did not speak Italian, so she could not say how fluent he was. The appellant and his partner did not live together but planned to marry [31]. The judge accepted that the appellant had a qualifying partner, but having considered all the evidence, she concluded that the effect of deportation would not be 'unduly harsh' within the meaning given to the term under section 117C(5) NIAA 2002 and the relevant case law [32].

12. Finally, the judge turned to consider the overall proportionality assessment under Article 8 with reference to the stringent 'very compelling circumstances' test set out in section 117C(6) [34]-[44].

13. Having found that the appellant was socially and culturally integrated in the UK, she accepted that removal would amount to an interference with his right to private life. The judge turned to consider whether removal would also interfere with a right to family life She noted that the appellant continued to live with his mother, who provided him with financial and emotional support, despite the fact that he was now 24 years old. She considered whether family life was engaged between adult relatives with reference to the relevant case of *Kugathas v SSHD* [2003] EWCA Civ 31. She was satisfied that there was evidence of 'real, effective, or committed support.' The judge concluded that deportation would also amount to an interference with the appellant's family life in the UK.

14. The judge made clear that she understood the importance of the public interest in deportation. She said:

> '41. The public interest in the Appellant's deportation is strong; s117C(1) provides that deportation of foreign offenders is in the public interest and the more serious the offence, the greater the interest in deportation; here, the length of sentence speaks to the gravity of the offence and the public interest in deportation is strong. Here the Appellant expresses remorse and says that he has learned his lesson and is rehabilitated; [the] OASYS assessment, assesses the risk of reoffending as 12% in year 1 and 22% in year 2; his adjudications in prison for holding mobile phones and vaping cannabis do to my mind speak to the anti-social aspect of his personality and do diminish his claimed rehabilitation. It was unimpressive when he said that the last adjudication was ages ago – when it was March 2023 – and in the same breath that he claims "drugs" are not a problem for him; there is nothing more than a comment to say that he is positively engaging in drug rehabilitation courses, and nothing further filed in evidence about that – so it is not clear how far along the path he has travelled. Be that as it may, the risk of re-offending is one aspect. There remains the undeniable public concern over foreign offenders and the deterrent effect that deportation has.
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> 42. Having considered the totality of the factors, I find that the balance (just) tips in the Appellant's favour, collectively stronger on the Appellant's side. I provide a "balance sheet" approach, as advocated by [*HA (Iraq)*].'

15. The judge then summarised the various factors that she had already discussed on each side of the scales before concluding that the appeal should be allowed [43]-[44].

16. The Secretary of State applied for permission to appeal to the Upper Tribunal, making the following series of submissions under the generic heading of 'Making a material misdirection of law / Failing to give reasons or any adequate reasons for findings on a material matter':

    (i) The respondent submitted that the First-tier Tribunal failed to give adequate reasons for finding that the 'very compelling circumstances' test was met. It was further submitted that the list of factors set out at [43] of the decision 'fail to reach the very high threshold' set out in *HA (Iraq) v SSHD* [2022] UKSC 22.

    (ii) The respondent submitted that the First-tier Tribunal failed to emphasise the strong public interest in deporting foreign criminals or to give sufficient weight to aggravating factors referred to at [13] of the decision.

(iii) The respondent submitted that the appellant sought to downplay his language skills and therefore 'does not face any "language barrier" as later found at [43].' The respondent submitted that even if there was no familial support the appellant is a healthy adult and has the necessary language skills to integrate in Italy.

(iv) The respondent further submitted that any positive weight afforded to the appellant's claimed rehabilitation was 'misplaced' because the appellant remained on licence until the completion of his sentence (expiring on 17 April 2025).

(v) The respondent submitted that that the First-tier Tribunal failed to identify a very strong claim on the facts and evidence, which would justify allowing the appeal.

17. I have considered the First-tier Tribunal decision, the documentation before the First-tier Tribunal, the grounds of appeal, and the submissions made at the hearing, before coming to a decision in this appeal. It is not necessary to summarise the oral submissions because they are a matter of record, but I will refer to any relevant arguments in my findings.

Decision and reasons

18. The Supreme Court in *HA (Iraq)* reiterated that judicial caution and restraint is required when considering whether to set aside a decision of a specialist tribunal. In particular, judges of the specialist tribunal are best placed to make factual findings. Appellate courts should not rush to find misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently: see *AH (Sudan) v SSHD* [2007] UKHL 49 and *KM v SSHD* [2021] EWCA Civ 693. Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account: see *MA (Somalia) v SSHD* [2020] UKSC 49. When it comes to the reasons given by the tribunal, the court should exercise judicial restraint and should not assume that the tribunal misdirected itself just because not every step in its reasoning is fully set out: see *R (Jones) v FTT (SEC)* [2013] UKSC 19.

19. At the hearing, Mr Wain reduced the arguments to three main points as set out at [16(i)-(iii)] above. In my assessment, the grounds of appeal make a series of general submissions disagreeing with the outcome, without particularising any errors of law that would have made any material difference to the decision.

20. The judge directed herself to the correct legal framework. The decision makes clear that she understood that the public interest in deportation must be given significant weight. However, she also reminded herself that the public interest was not a fixity, and that the more serious a crime, the more weight must be given to the public interest.

21. In a detailed and well-structured decision, the judge outlined the relevant evidence and gave adequate and sustainable reasons for each of her findings. She found that the appellant did not meet all of the requirements of the exceptions to deportation contained in sections 117C(4) and (5). However, when considering whether there were 'very compelling circumstances' that might outweigh the public interest in deportation for the purpose of section 117C(6), a

judge should carry out an overarching Article 8 assessment taking into account all the relevant circumstances: see *HA (Iraq)* and *Sanambar v SSHD*[2021] UKSC 30.

22. The weight to be given to the public interest is not fixed. The starting point was that the appellant was in the 'medium' category of offenders rather than the most serious category involving sentences of over four years. It is against this background that the judge undertook an assessment of factors that might fall in favour of the appellant in order to assess whether they outweighed the factors giving weight to the public interest in deportation. In doing so, it was open to her to take into account the cumulative effect of various features in the appellant's personal circumstances which, albeit they did not meet the full requirements of the exceptions, formed part of the overall proportionality assessment. The factors on each side of the 'balance sheet' were set out at [43] and [44], but it is clear from her earlier findings that this was a summary of the main points that had already been considered in some detail.

23. The aggravating factors now relied on by the respondent formed part of the sentencing remarks summarised by the judge at [13]. They were factors that determined the length of the sentence imposed, which is one of the main measures of the weight to be placed on the public interest within the statutory scheme contained in section 117C NIAA 2002. To place additional weight on those factors in the balancing exercise, when the length of the sentence is already taken into account, might lead to double counting. In any event, the mere fact that the judge did not include sentencing factors in the summary at the end of the decision does not, in my assessment, lead to the conclusion that she erred in law when it is clear from the decision that she considered all the evidence before her in some detail. Nevertheless, the judge took into account other matters relevant to the public interest which post-dated the conviction. In assessing the level of rehabilitation, she considered some of his 'unimpressive' behaviour in prison. This formed part of her overall summary in favour of the public interest at [44].

24. Nor do I consider there to be any merit in the argument relating to the appellant's Italian language ability.

25. First, the fact that the decision noted potentially different language skills was a feature of the somewhat conflicting evidence that the judge was required to resolve. It was open to the judge to note that it was not disputed that he was likely to be fluent when he went to school in Italy until the age of 12 years old. However, given that he had not lived in Italy since then, that it seems likely that his parents' first language is Somali, and that he had lived in the UK since he was 15 years old, it was within a range of reasonable responses to the evidence for the judge to conclude that his current language ability in Italian was likely to be at a 'basic level'. She gave adequate reasons to explain why the appellant's partner's observations might not be all that reliable [28].

26. Second, I see no meaningful contradiction between the judge accepting that the appellant was now only likely to speak Italian at a 'basic level' but might be able to 'pick it up quite quickly, if needs must' [28], and the finding made in the next paragraph, that it was unlikely that he had the language skills or the adaptability to settle in Italy 'without making bad choices'. It is trite to observe that the judge was required to consider the situation as it stood at the date of the hearing. The finding in [29] must be read in the context of her other findings relating to the obstacles that the appellant might face if removed to Italy, which included his

immaturity, lack of experience of independent living, and lack of family support there. If the appellant did have family support available in Italy to help him settle in, then perhaps he would have time to improve his language skills to the level required to obtain work and to reintegrate. However, at the date of the hearing, it was open to the judge to conclude that the combination of factors, including his lapsed language skills were relevant to whether he would face very significant obstacles to reintegration. Even if the appellant could brush up his language skills 'quite quickly' it might not be quick enough to enable him to find work and to support himself in the short to medium term.

27. The last point made a general submission about the threshold, but the grounds are generalised and amount to no more than a disagreement with the outcome. It is clear that the judge had in mind the high threshold for the test set out in section 117C(6) and referred to *HA (Iraq)* at several points in the decision. I accept that the tone of the findings relating to the appellant's ability to reintegrate in Italy to some extent perpetuated the cosseting attitude that the judge had observed from his family members. Another judge might have come to a different conclusion on the same evidence, perhaps finding it reasonable to expect the appellant, at the age of 24, to be able to find work, earn a living, and to live independently without an immature dependence on his partner or other female members of his family. Some might see this as a generous decision given the serious nature of the offence. However, in my assessment, the judge gave adequate reasons for her findings with reference to the relevant legal framework. The judge heard evidence from the appellant and his family members and was in the best position to assess whether deportation was proportionate. She made clear that it was a finely balanced decision that only just tipped in the appellant's favour. While no one factor was all that compelling, it was open to the judge to consider the cumulative effect of a range of factors. There is no evidence to suggest that she did not give appropriate weight to the public interest in deportation, which she emphasised throughout the decision. For these reasons, I conclude that the judge's findings were within a range of reasonable responses to the facts and evidence and do not disclose an error of law.

28. For the reasons given above, I conclude that the First-tier Tribunal decision did not involve the making of an error of law. The decision shall stand.

29. I do not know why the appellant did not attend the hearing in the Upper Tribunal. On the face of it, his non-appearance, either at court or online, might demonstrate a lack of seriousness and perhaps immaturity in relation to these appeal proceedings. The appellant has succeeded in his appeal at this stage. However, he should be aware that if he were to commit any more criminal offences, especially if they were serious, the respondent might be obliged to consider further deportation proceedings. Given the finely balanced nature of this decision, the outcome might be different on another occasion. Whether the appellant takes advantage of this opportunity to develop a more mature and responsible attitude is a matter for him.

Notice of Decision

The First-tier Tribunal decision did not involve the making of an error of law

M.Canavan
Judge of the Upper Tribunal

Immigration and Asylum Chamber

07 March 2023