IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/02396/2013

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Decision and Reasons Promulgated**
On 22 June 2015	**On 17 August 2015**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ASHKAN SANAMBAR

Respondent

Representation:
For the Appellant: Mr S Walker, Home Office Presenting Officer
For the Respondent: Mr T Hodson, Elder Rahimi Solicitors

DETERMINATION AND REASONS

1. The appellant in these proceedings is the Secretary of State but we continue to refer to the parties as they were before the First-tier Tribunal.

2. This appeal comes back before the Upper Tribunal following a hearing on 23 March 2015 at which Upper Tribunal Judge Kopieczek found an error of law in the decision of the First-tier Tribunal. The written error of law decision, described as a 'Decision and Directions' is attached as an Annex to this determination.

3. To summarise, the appeal by the appellant against the respondent's decision to deport him following his convictions for various offences of robbery, attempted robbery and handling stolen goods, was allowed by the First-tier Tribunal. Although its decision was set aside, a number of findings of fact were preserved as set out in the Error of Law decision at [28]. For convenience we reproduce those preserved findings as follows:

> "28. The question of what findings of fact are to be preserved was canvassed with the parties. My provisional view, subject to any further submissions by either party at the resumed hearing, is that the following findings of fact are to be preserved:
>
> (i) The appellant is a national of Iran and was born on 4 October 1995.
>
> (ii) He arrived in the UK on 24 February 2005.
>
> (iii) The appellant does not have any family ties with Iran.
>
> (iv) He speaks Farsi with his mother.
>
> (v) The appellant's mother has a friend in Iran whom she has visited on more than one occasion.
>
> (vi) The appellant has an established private and family life in the UK and his deportation would interfere with his private and family life.
>
> (vii) The appellant has a particularly strong bond with his mother and his deportation would be a source of considerable distress to her. He has lived with her all his life. The appellant had a difficult upbringing because of his father's violent conduct.
>
> (viii) The risk of the appellant being reconvicted is medium.
>
> (ix) The appellant has attended drug awareness and anger management classes in prison.
>
> (x) His mother is supportive and she is able to play an important role in the appellant's rehabilitation."

4. With one exception, neither party sought to disagree with Judge Kopieczek's provisional view as to the findings of fact that were to be preserved. That exception relates to [28(viii)] whereby a suggested modification on behalf of the appellant was to the following effect: the risk of the appellant being reconvicted was assessed as medium in the pre-sentence report dated 9 April 2013. Mr Walker did not object to that modification of that preserved finding and we agreed that it is appropriate.

5. At the start of the hearing Mr Walker made an application to admit new evidence not previously relied on. In part the evidence was the same as that referred to at [7] of the error of law decision. Additionally, we were informed that there were a number of computer records in relation to the appellant's conduct in detention since July 2014.

6. Mr Walker informed us that the documents had been sent to the Upper Tribunal the previous Friday, 19 June 2015. He accepted that they were not served in accordance with the directions given at the end of the last hearing and set out in the error of law

decision but said that the case papers in this appeal could only come back to him last week. Mr Hodson objected to the admission of this further evidence.

7. We declined to allow this further evidence to be admitted. Directions were given in the error of law decision dated 24 April 2015 which included a direction that any further evidence relied on by either party was to be filed and served no later than fourteen days before the next date of hearing. Plainly that direction was not complied with in respect of the new evidence sought to be admitted. Indeed, as at the time of the hearing on 22 June 2015, the evidence had not found its way onto the Tribunal file. It has to be said that Mr Walker really did not offer much, if anything, by way of explanation for the very belated attempt to introduce this evidence, stating only that the file came to him "by chance" on the Friday preceding the hearing, indicating that the appeal had not previously been allocated to him or reserved to him since his representation on behalf of the respondent before the Upper Tribunal on 23 March 2015.

8. Not only was there a failure to comply with directions given some two months ago, it is to be noted that at the earlier hearing there was similarly an application to adduce evidence late, Judge Kopieczek describing it at [9] of the error of law decision as an application made "at the very last minute, that is to say on the day of the hearing, there having been no advance notice either to the Tribunal or to the appellant's representatives." As already indicated, one aspect of the evidence sought to be admitted late, is precisely that evidence in respect of which the application was made late at the earlier hearing.

9. We proceeded to hear submissions from the parties which we summarise below. Mr Hodson indicated that no further oral evidence was to be called on behalf of the appellant.

Submissions

10. Mr Hodson accepted that the relevant paragraph of the immigration rules in play now is paragraph 399A, given that the appellant cannot rely on the provisions of paragraph 399 in terms of any relationship with a child or a partner. It was also accepted that it is paragraph 399A in its current form, that is to say as inserted into the immigration rules from 28 July 2015 that applies, having regard to the decision in YM (Uganda) v Secretary of State for the Home Department [2014] EWCA Civ 1292.

11. With reference to the decision in CG (Jamaica) v Secretary of State for the Home Department [2015] EWCA Civ 194, it was submitted that if the appellant meets the requirements of paragraph 399A he is entitled to succeed in his appeal.

12. Mr Hodson submitted that the appellant has, in terms of 399A(a) been lawfully resident in the UK for most of his life, that is to say as at the date of the hearing. Similarly, in terms of 399A(b) he is socially and culturally integrated in the UK notwithstanding his criminal convictions. The decision in Masih (deportation – public interest – basic principles) Pakistan [2012] UKUT 00046 (IAC) indicates that

criminal offending in itself does not negate a person's integration. We are also reminded of the decision in Maslov v Austria (No.1638/03 ECtHR [2008].

13. So far as very significant obstacles to integration are concerned, under 399A(c) it was accepted that the test is a stringent one but it was submitted that there were parallels with the former 'no ties' test. If the appellant has no ties to Iran, the question is could it be said that there is anything other than very significant obstacles to his integration. It was submitted that points of principle in previous authorities on the question of 'no ties' could assist in general terms.

14. Otherwise, it was argued that the real issue in the case of this appellant is one of 'integration' as opposed to very significant obstacles. In this respect we were again referred to the preserved findings. Factors to be borne in mind it was submitted included his ability to find work or accommodation and whether in the long-term he could achieve financial independence. A precarious financial position would mean that there would be the lack of ability to integrate. His age, the age that he left Iran and the fact that he has no experience of finding work, accommodation or financial security are relevant. These are not matters that he had ever experienced as an adult let alone in Iran. Although he may be able to speak Farsi with his mother his life in the UK, to paraphrase the points made by Mr Hodson, is English-centred. His evidence is that he is unable to read or write Farsi. In addition, the appellant's father's violent conduct towards him and his mother needs to be taken into account in terms of integration. The appellant's main support is his mother, a British citizen.

15. Furthermore, the appellant has not learnt the ways of the strict Islamic code that prevails in Iran, such as would enable him to navigate his way through society there.

16. So far as concerns his mother's friend in Iran, the appellant has no personal relationship with her and his mother says that she is not able to help the appellant. To suggest otherwise is speculation. In any event, the appellant's mother has only been there twice, for two weeks on each occasion to visit her friend. The appellant did not go with her. There is no evidence that she would be able to help the appellant to integrate, find accommodation or employment.

17. The appellant's mother has very limited financial resources, as is evident from the documentation. Her earnings amount to about £103 per week.

18. We were referred to the Pre-Sentence Report ("PSR") in terms of the extent of the appellant's vulnerabilities. Similarly, reference was made to the report of Dr Campbell, within the appellant's bundle.

19. Even if the appellant is unable to establish the very significant obstacles to integration, within a proportionality assessment outside the confines of the immigration rules it is relevant to take into account the effect on the appellant's mother of his removal. The offences were committed whilst he was still a minor and compelling reasons would be needed for his expulsion. It is also important to recognise that this was his first custodial sentence and he is able to rely on the significant support of his mother.

20. Mr Walker relied on the decision letter, reminding us of the appellant's offending history. So far as very significant obstacles are concerned, he is an Iranian national, speaks Farsi and had some limited education in Iran. He would be aware of the cultural norms. The ties that he has there could be pursued and strengthened.

21. Although he has no contact with his father, there is no evidence that he would be unable to pursue contact with his father's relatives.

22. The appellant's mother was not able to influence the appellant at all in relation to his offending between the ages of 14 and 17. He is an adult who has progressed to serious offending. A distinction is to be made between his circumstances and those in the case of Maslov. Reference was made to the sentencing judge's remarks.

Our Conclusions

23. It is as well at this stage to set out the relevant parts of the immigration rules as they apply to this appellant. They are as follows:

> "A398. These rules apply where:
>
> (a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom's obligations under Article 8 of the Human Rights Convention;
>
> (b) a foreign criminal applies for a deportation order made against him to be revoked;
>
> 398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and
>
> (a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;
>
> (b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12months; or
>
> (c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law,
>
> the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.
>
> 399. This paragraph applies where paragraph 398 (b) or (c) applies if –
>
> (a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and
>
> (i) the child is a British Citizen; or

(ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case

(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and

(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or

(b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and

(i) the relationship was formed at a time when the person (deportee) was in the UK unlawfully and their immigration status was not precarious; and

(ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2 of Appendix FM; and

(iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.

399A. This paragraph applies where paragraph 398(b) or (c) applies if –

(a) the person has been lawfully resident in the UK for most of his life; and

(b) he is socially and culturally integrated in the UK; and

(c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported."

24. We also set out the relevant provisions of ss.117A-117C of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). They are as follows:

"117A: Application of this Part

(1) This part applies where a court or Tribunal is required to determine whether a decision made under the Immigration Act –

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under Section 6 of the Human Rights Act 1998.

(2) In considering the public interest question the court or Tribunal must (in particular) have regard –

(a) in all cases, to the considerations listed in Section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in Section 117C.

(3) In sub-Section (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B: Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to –

(a) a private life, or

(b) a relationship formed with a qualifying partner,

That is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

117C: Article 8: additional considerations in cases involving foreign criminals

(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.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted."

25. So far as the immigration rules are concerned it was accepted on behalf of the appellant that he is not able to rely on a relationship with a child or with a partner, and thus paragraphs 399(a) and (b) do not apply.

26. Furthermore, it was also conceded on behalf of the appellant that it is the provisions of the immigration rules as they now are that applied to him, notwithstanding the date of the decision. Thus, the requirements of paragraph 399A as we have set them out are those that are relevant.

27. At this point it is necessary to remind ourselves of the preserved findings, as set out at [28] of the error of law decision. Thus, it is established that the appellant arrived in the UK on 24 February 2005. According to the decision letter he was granted ILR on 7 February 2005, thus entering the UK lawfully. He was then aged 9 years and 4 months. He is now aged 19 years and thus has been lawfully resident in the UK for most of his life. Accordingly, he is able to meet the requirement in 399A(a).

28. So far as 399A(b) is concerned (socially and culturally integrated in the UK) a preserved finding is that the appellant has an established private and family life in the UK and that his deportation would interfere with his private and family life. Similarly, it is established that the appellant "has a particularly strong bond with his mother and his deportation would be a source of considerable distress to her. He has lived with her all his life." It was not suggested on behalf of the respondent that the appellant is not socially and culturally integrated in the UK, a person's criminal offending is very often relevant to this issue but it has not been suggested that the appellant's offending and his custodial sentence mean that he has not integrated socially and culturally.

29. Accordingly, the appellant is able to establish that he meets the requirement in 399A(b).

30. As regards 399A(c) we bear in mind not only the preserved findings, but also the witness statement of the appellant and his mother, the PSR and the report of the Clinical Psychologist, Dr Catherine Campbell dated 6 June 2014.

31. We accept that there are obstacles to the appellant's integration into Iran. He has not been there since the age of 9 years, not even having visited since he left. Undoubtedly he has become used to life in the UK and the relative freedoms that a young person is able to enjoy, relative to life in Iran. Similarly, we are inclined to accept that the appellant does not read or write Farsi.

32. There is nothing to indicate that he is aware of any relatives in Iran and nothing in the evidence suggests that there is any contact between the appellant and/or his mother and any such relatives. It is likely to be the case that the appellant will encounter difficulties in obtaining employment and/or further education or training, because of the length of his absence from Iran and the lack of ability to read or write Farsi.

33. However, we are not satisfied that there are significant obstacles to his integration or that there are "very" significant obstacles to his integration. Integration, as was suggested on behalf of the appellant involves a number of features, it is, what could be described as multi-dimensional. We have referred to those most important factors of integration which seem to us to be relevant. However, the fact is that this is not a case in which an individual would be returning to a country where they have no familiarity with the language for example. The appellant speaks Farsi, conversing with his mother. The appellant's mother states in her witness statement that the appellant speaks Farsi but is no longer fluent in the language. We also bear in mind that the appellant says in his witness statement that his mother tells him that his Farsi is not very good. However, it is clear from the evidence, for example from both the appellant and his mother's witness statements, that although he underachieved at school in the UK, he is an intelligent person. Similarly, at 3.2 of the PSR it states that the appellant "presents as an academically capable young man who is able to articulate himself in an appropriate manner." He enrolled at Richmond College for a BTEC in Business Studies, albeit again that he did not achieve that qualification. At 3.5 of the PSR it is stated that the appellant said that he had genuine ambitions and would like to go back to college to study business and psychology, and again the point is made that he presents as an academically capable young man. At paragraph 5 of the PSR it is stated that the appellant's ambition is eventually to go to university. The appellant's evidence before the First-tier Tribunal [10(i)] was that he had completed catering and cycle repair courses and was interested in becoming a mechanic.

34. All this evidence supports the proposition that the appellant would be able to adapt to life in Iran because of his intelligence and his ability to speak the language. Again, we do not suggest that he would not encounter obstacles to that integration, but that is not determinative of the issue in question.

35. Similarly, we do not consider that the appellant is utterly isolated from Iranian culture in terms of knowing nothing about it and not having the ability to adapt to that culture. The appellant has always lived with his mother. His mother has connections with Iran in that that is where she was born, brought up and lived until an adult. She has visited Iran twice since she came to the UK, once in 2008 and once

in 2012, staying for about two weeks. She has a friend there whom she visited and with whom she keeps in touch, according to her witness statement.

36. Whilst we accept that there is some merit in the observation made by Mr Hodson to the effect that his mother's ties to Iran are not the appellant's ties to Iran (on this see [124] of Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 00060 (IAC)). However, notwithstanding Mr Hodson's reliance on CG (Jamaica) and the arguments advanced on the question of 'no ties', we must assess the extent to which the appellant is able to establish that he comes within the requirements of the immigration rules with reference to the rules as they are now, not as might more favourably be argued on his behalf under the former requirements of the rules which include the requirement of 'no ties'.

37. The fact that the appellant's mother has visited Iran, retains a connection with the country and has a close friend there we do consider to be a relevant matter, albeit that we accept that in a direct sense her ties are not the appellant's but they are nevertheless ties which, without speculation, can reasonably be said would be able to afford the appellant some assistance in terms of integration. There is at least one point of contact in the country to which reference could be made by or on behalf of the appellant. Whilst we accept that there is no direct evidence from the appellant's mother's friend, and the appellant's mother states that she could not be expected to support him, it is unrealistic to suppose that she would provide no assistance or support at all, bearing in mind her close friendship with the appellant's mother.

38. On behalf of the appellant reliance was placed on the report of Dr Catherine Campbell which refers to the appellant's trauma memories from childhood, witnessing and experiencing domestic violence. In the assessment in June 2014 she said that it appeared that he was experiencing symptoms of hyper arousal e.g. increased irritability, being jumpy or easily startled. Work involving tackling the trauma memories is said in the report to have resulted in a reduction of intrusions and time spent thinking about the domestic violence.

39. Also in the report it refers to treatment in relation to the appellant's feeling of paranoia, including learning strategies to take more control of his anger. It states that he appears "very bright" and was quick to understand the psychological concepts applying the strategies discussed with success. Under the heading "Outcome" it states that tackling past memories which were leading to high levels of anger have allowed his symptoms of trauma to reduce, alongside improvements in mood, anxiety and general well-being.

40. Thus, it appears from that report that the appellant needed treatment to deal with trauma associated with his having experienced domestic violence at a young age. The PSR, to which we were referred in submissions identified what could be described as various respects in which the appellant could be said to be vulnerable, for example concern being expressed about his "emotional health". We note that the PSR was completed on 9 April 2013, before the treatment undertaken with Dr Catherine Campbell.

41. It was submitted on behalf of the appellant that when he feels threatened he does not react well which it was contended must be a very significant obstacles to integration. It was also submitted that he has a problem with authority figures and that the strict regime in Iran is relevant to these issues in terms of integration.

42. Naturally, those submissions have to be seen in the context of the offences which the appellant committed, as clearly set out in the sentencing remarks. These were knifepoint robberies at night of victims aged between 15 and 18 years. The offences were pre-planned against vulnerable young victims against a background of previous offences by the appellant of attempted robberies and possession of an offensive weapon. On 11 April 2013 he was sentenced for seven counts of robbery, three counts of attempted robbery and one count of handling stolen goods. That offending is indicative of an individual who is plainly and obviously very assertive. We consider this also to be relevant to the extent to which he would be able to adapt to life in Iran because it reveals a certain robustness of character.

43. Having considered all the evidence, we are not satisfied that it is established that there would be very significant obstacles to the appellant's integration into Iran.

44. In coming to that view, we do not consider that a separate public interest enquiry is required within the confines of paragraph 399A, those features of the immigration rules having been identified and set by the Secretary of State as representing the balance to be struck in a case where the public interest requires deportation by reason of a particular sentence of imprisonment.

45. We would reach the same conclusion in terms of a consideration of Section 117C(4) the provisions of which mirror those in the immigration rules. In the language of s.117C, we are not satisfied that the appellant has established that Exception 1 (under sub-paragraph 4) applies.

46. Given that we are not satisfied that either paragraph 399 or 399A apply, the question arises as to whether there are "very compelling circumstances over and above those described in [those] paragraphs". Amongst other things, reliance on behalf of the appellant is placed on the decision in Maslov, in particular at [75] which states that:

> "In short, the Court considers that for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile."

However, as explained in Akpinar, R (on the application of) v The Upper Tribunal (Immigration and Asylum Chamber) [2014] EWCA Civ 937, that is not to be regarded as a threshold that the state has to meet in every case involving deportation of a person whose offences were committed when they were a juvenile. In considering the issue of 'very compelling circumstances' we nevertheless take into account the appellant's age when he committed the offences, although such a consideration it seems to us is inherent in any event in 399A.

47. It was urged upon us the effect on the appellant's mother of the appellant's deportation. A preserved finding is that the appellant has a particularly strong bond with his mother and his deportation would be a source of considerable distress to her. The fact that the appellant was a victim of and witnessed domestic violence as a child is also a matter that we take into account in considering the issue of very compelling circumstances.

48. However, albeit that 399A does not on its own terms require any assessment of the risk of re-offending or the seriousness of the offences committed by the appellant, those issues are to be reflected in the question of whether there are very compelling circumstances over and above those described in paragraphs 399 and 399A. The offences for which the appellant was convicted were plainly very serious, as already described. The PSR assessed the risk of re-offending as medium.

49. There is a clear public interest in the removal of persons who commit serious offences, as has repeatedly been stated. There is a potent public interest in the removal of such persons. The risk of re-offending is but one factor to be taken into account but in any event his risk of re-offending has been assessed as medium. There is nothing in the evidence to indicate that that risk has reduced, notwithstanding the treatment or courses he has undertaken.

50. Even without taking into account the risk of re-offending or the public interest in deportation of those who commit serious offences, we cannot see that there are the very compelling circumstances over and above the requirements of the rules which would indicate a decision in favour of the appellant in this appeal.

51. Accordingly, we are not satisfied that the appellant meets the requirements of the immigration rules in terms of resisting his removal, and we bear in mind what was said in MF (Nigeria v Secretary of State for the Home Department) [2013] EWCA Civ 1192 about the deportation immigration rules forming a complete code.

52. There is no room for any argument therefore, in relation to Article 8 of the ECHR.

53. The appellant's appeal is therefore dismissed.

54. The appellant's appeal is therefore dismissed.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside and re-made, dismissing the appeal.

Signed Date

Upper Tribunal Judge Kopieczek

ANNEX A

1. The appellant in these proceedings is the Secretary of State. However, for convenience I refer to the parties as they were before the First-tier Tribunal. Thus the appellant is a citizen of Iran, born on 4 October 1995. He arrived in the UK on 24 February 2005 when aged 9 years and 4 months. He was granted indefinite leave to remain on 7 February 2005.

2. A decision was made by the respondent on 15 November 2013 to make a deportation order against the appellant under Section 3(5)(a) of the Immigration Act 1971 on the basis that his deportation is conducive to the public good.

3. That decision followed the appellant's convictions on 13 February 2013 for seven counts of robbery, three counts of attempted robbery and one count of handling stolen goods. On 11 April 2013 he was sentenced to a total of three years imprisonment.

4. The appeal came before First-tier Tribunal Devittie on 26 August 2014, whereby he dismissed the appeal under the Immigration Rules but allowed the appeal on human rights grounds with reference to Article 8 of the ECHR.

5. The Secretary of State's grounds of appeal against that decision, in summary, are to the effect that the First-tier Judge failed to have any regard to Section 19 of the Immigration Act 2014 and the changes brought about by that section to the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). It is argued that the judge had failed to engage with the public interest considerations inherent within ss.117A-D of the 2002 Act and had failed to identify compelling circumstances necessary to engage Article 8, in circumstances where the appellant was not able to meet the requirements of the Immigration Rules or the provisions set out in the amendments to the 2002 Act.

6. The second ground contends that Judge Devittie erred in his conclusion that the appellant has no ties to Iran having regard to the fact that he had spent the majority of his life there, attended school there and would have an understanding of the customs and cultures in Iran. In addition, the appellant has linguistic ties to Iran given that he is able to speak Farsi. Those are matters which would assist in his reintegration to Iran.

Submissions

7. At the start of the hearing Mr Walker applied to amend the grounds to admit new evidence that was not before the First-tier Tribunal which it was said was relevant to the issue of error of law. Such evidence, in summary, is an intelligence report concerning the appellant's contact with an individual convicted in the UK of a terrorist related offence and who received a sentence of life imprisonment. It was submitted that the evidence was not put before the First-tier Tribunal because of an administrative error, the hearing having been brought forward. The evidence was

said to be relevant to the public interest considerations that needed to be assessed by the First-tier Tribunal.

8. Mr Walker relied on the decision of the Upper Tribunal in MM (unfairness; E&R) Sudan [2014] UKUT 00105 (IAC) as to the principles to be applied in relation to evidence that was not before the First-tier Tribunal sufficient to found an error of law.

9. I do not consider it necessary to rehearse in detail the reasoning in MM. Suffice to say that reference was made in that case to the decisions in E&R v Secretary of State for the Home Department [2004] EWCA Civ 49, and R & Ors (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982. I am not satisfied that the evidence which it is proposed to adduce in support of the proposed amendment to the grounds before the Upper Tribunal comes within the principles of any of those cases. It seems to me to be clear that the evidence sought to be relied on was in existence before the date of hearing before the First-tier Tribunal but by administrative error was not adduced. Furthermore, the evidence or information does not, on initial consideration at least, relate to the reasons for the decision to make a deportation order against the appellant, although that is not to say that that information could never be relevant. Furthermore, the application to adduce that evidence before the Upper Tribunal was made at the very last minute, that is to say on the day of the hearing, there having been no advance notice either to the Tribunal or to the appellant's representatives.

10. Insofar as the decision in MM has a bearing on the application, I do not consider that it could be said that there is a defect or impropriety of a procedural nature in the proceedings before the First-tier Tribunal. Furthermore, I do not consider that it could be said that there is any unfairness to the respondent in that evidence not now being received by the Upper Tribunal.

11. So far as the original grounds are concerned, Mr Walker relied on them. I was referred to the decision in Bossadi (paragraph 276ADE; suitability; ties) [2015] UKUT 42 (IAC), in particular [16], which concluded that the question of family ties requires not only a subjective assessment but also an objective one, which it is submitted was lacking in the decision of the First-tier Tribunal. I was referred to various matters relied on in the grounds, in terms of what are said to be the appellant's ties to Iran.

12. So far as ss.117A-D of the 2002 Act are concerned, the First-tier Tribunal needed to make an assessment under those provisions. Furthermore, although at [29] there is reference to "very significant obstacles" to the appellant's integration in Iran, it was not explained what those very significant obstacles are.

13. Mr Hodson conceded that there is an error of law in the decision of the First-tier Tribunal in the failure to refer to ss.117A-D explicitly, but it was submitted that it was not an error of law that was material to the outcome. I was referred to the decision in Dube (ss.117A-117D) [2015] UKUT 00090 (IAC) which was also a case in which there was a failure to refer to s.117.

14. Furthermore, Mr Hodson submitted that in fact the amendments to the 2002 Act changed nothing in favour of the respondent on the facts of the appellant's case. I was referred in detail to the provisions of ss.117A-D. The appellant was able to speak English, he was financially independent in the sense that he was fully supported by his mother and then was in detention. At the time of the hearing he had been in the UK for most of his life, that is say nine and a half years, and there is no basis for suggesting that that period needed to be discounted for periods of imprisonment.

15. As to very significant obstacles, that is a question of fact which was resolved in favour of the appellant by the First-tier Tribunal. In the circumstances the appeal should have been allowed with reference to the Immigration Rules, which contain parallel provisions.

16. So far as the respondent's ground 2 is concerned (failing to provide adequate reasons), that is really nothing more than a disagreement with the facts as found by the First-tier Tribunal. The First-tier Tribunal's decision was not a purely subjective assessment of the issues. I was referred to the decision in Green (Article 8 – new rules) [2013] UKUT 00254 (IAC) and Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 00060 (IAC) on the question of "ties". It was submitted that Green contained a similar challenge to that advanced in the appeal before me.

My *assessment*

17. I announced at the hearing that I was satisfied that there is an error of law in the decision of the First-tier Tribunal such as to require the decision to be set aside.

18. Mr Hodson informed me, and of course I accept, that ss.117A-D were canvassed in detail at the hearing before the First-tier Tribunal. In those circumstances it is, with respect to Judge Devittie, surprising that the statutory framework within which his decision was required to have been made, was not set out. The only clue to any recognition of those issues that needed to be assessed is in the last phrase of the penultimate paragraph of the determination whereby he stated that in his view there would be very significant obstacles to the appellant's integration in Iran.

19. That is the phraseology contained in s.117C(4)(c) and paragraph 399A(c) of the Immigration Rules, both of which applied at the time of the hearing before the First-tier Tribunal.

20. Judge Devittie concluded that the appellant did not have any family ties with Iran, noting that the appellant spoke Farsi with his mother who has visited Iran on "a few occasions". He also noted that the appellant left Iran at the age of 9 and concluded that at that age he would not have established any strong social ties that he would have been able to retain after coming to the UK. He found that the appellant's social and cultural ties with Iran are tenuous and that having lived in the UK for most of his life, is socially and culturally integrated in the United Kingdom. He further decided that with no social or family ties and remote cultural ties with Iran, and given his young age, there would very significant obstacles to his integration in Iran.

21. Mr Hodson relies on those findings to suggest that, even accepting that the judge erred in law in not making explicit reference to the statutory provisions and the provisions of the Immigration Rules, the error of law is not material because on the basis of those findings the outcome would have been the same. I do not agree. It is plain from the determination that Judge Devittie was concerned with the issue of whether the appellant had ties to Iran in terms of paragraph 399A, being the former manifestation of the Immigration Rules at 399A(b). It was not sufficient in my judgement for Judge Devittie to state that there would be very significant obstacles to his integration in Iran, at the end of an assessment of matters which were evidently directed to the question of "no ties".

22. Mr Hodson accepted that the issues of "no ties" and "very significant obstacles" to integration are not the same, although he submitted that, in effect, on the facts of this case, they are. However, questions of integration inevitably concern issues such as, a person's ability to speak the language of the country to which they are to be returned, and whether for example, any family member in the UK would be able to assist with integration. In this case, the appellant's mother has visited Iran in the relatively recent past, including in 2012. She has a friend there whom she has known for many years, albeit that she does not know the appellant. Whilst the evidence from the appellant's mother was that her friend would not be able to provide the appellant with any support if he were returned, that does not necessarily mean that she would not be able to assist in some way with integration. All these are matters that were not the subject of any assessment by the First-tier Tribunal. Other issues such as employment are also potentially relevant. It is to be noted that the appellant said in evidence that he had completed a catering course, a course in cycle repairs and was interested in becoming a mechanic.

23. My reference to those aspects of the evidence is not any indication of my own view on the question of whether there would be very significant obstacles to the appellant's integration in Iran, only that this is an assessment that should have been undertaken by the First-tier Tribunal. I do not consider that it could be said that the judge's failure in this respect was immaterial to the outcome of the appeal. Likewise, the finding that there would be very significant obstacles to his integration in Iran does not follow from any reasoned assessment of that critical issue.

24. Thus, the failure to undertake that important assessment goes hand in hand with the judge's failure to consider and apply ss.117A-D and the amendments to the Immigration Rules that came into effect on 28 July 2014.

25. Furthermore, Mr Hodson suggested that in actual fact there was no need for Judge Devittie to have undertaken an Article 8 assessment because the appeal could have been allowed with reference to the Immigration Rules and ss.117A-D in any event. Of course, if that be the case, it underlines the fundamental structural (and material) defect in the First-tier Tribunal's decision, considering the appeal with reference to Article 8 proper, on the basis that there were reasons to go beyond the confines of the Immigration Rules.

26. I indicated to the parties that it was my view that the re-making of the decision is appropriately to be dealt with by the Upper Tribunal, rather than the matter being remitted to the First-tier Tribunal. There was no dissent from that proposition.

27. Accordingly, the decision of the First-tier Tribunal being set aside, the decision will be re-made in the Upper Tribunal on a date to be notified. I gave oral directions to the parties at the hearing which are now confirmed as set out below.

28. The question of what findings of fact are to be preserved was canvassed with the parties. My provisional view, subject to any further submissions by either party at the resumed hearing, is that the following findings of fact are to be preserved:

    (i) The appellant is a national of Iran and was born on 4 October 1995.

    (ii) He arrived in the UK on 24 February 2005.

    (iii) The appellant does not have any family ties with Iran.

    (iv) He speaks Farsi with his mother.

    (v) The appellant's mother has a friend in Iran whom she has visited on more than one occasion.

    (vi) The appellant has an established private and family life in the UK and his deportation would interfere with his private and family life.

    (vii) The appellant has a particularly strong bond with his mother and his deportation would be a source of considerable distress to her. He has lived with her all his life. The appellant had a difficult upbringing because of his father's violent conduct.

    (viii) The risk of the appellant being reconvicted is medium.

    (ix) The appellant has attended drug awareness and anger management classes in prison.

    (x) His mother is supportive and she is able to play an important role in the appellant's rehabilitation.

29. The parties are reminded of the directions given orally at the hearing and as set out below.

DIRECTIONS

    (i) Any further evidence relied on by either party is to be filed and served no later than 14 days before the next date of hearing.

    (ii) In relation to any witness whom it is proposed to give oral evidence, there must be a witness statement drawn in sufficient detail to stand as

evidence-in- chief such that there is no need for any further examination-in-chief.

(iii) The parties must be in a position at the next hearing to make submissions if necessary as to what findings of fact should be preserved.