



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/08189/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 16 November 2017**

**Decision & Reasons
Promulgated
On 14 December 2017**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SMK
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondent: Ms K Cronin, instructed by Wesley Gryk solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Cooper who allowed the appeal of the appellant, SMK, as he was before him, against the Secretary of State's decision of 26 July 2016 refusing to revoke a deportation order made against him on 27 May 2011. The judge had of course to bear in mind the nature of the index offence which occurred in 2005 and as both representatives mentioned, the facts are somewhat unusual. There was a trial where there were separate indictments. The appellant and his wife as summarised by the judge at paragraph 12 of his decision pleaded guilty to offences of conspiracy to

defraud, obtaining a pecuniary advantage by deception and in the appellant's case having a false instrument with intent. He was sentenced to eighteen months' imprisonment and his wife to fourteen months' imprisonment.

2. The grounds of appeal, if I may just touch on those before getting back to the judge's decision, on which permission was granted by Judge Blum are summarised by him as follows. The principal issue before the First-tier Tribunal was whether the appellant's deportation would have an unduly harsh impact on his children. The respondent accepted it would be unduly harsh to expect the children to relocate to the DRC. Although the First-tier Judge properly took account of the factors weighing in the appellant's favour identified at paragraph 69 and although there was strong evidence that the appellant's deportation would have a significant impact on the family unit, it was arguable that the First-tier Judge failed to identify or take full account of the scope of the public interest factors in favour of the deportation as identified in OH (Serbia) and this may have materially affected his assessment of undue harshness.
3. The issue then that concerned the Secretary of State which led to the grant of permission was that where she noted at paragraph 69 of his decision the judge referred to the public interest in deportation of foreign criminals as being a strong one it was argued that the judge had diluted the strength of the public interest in the appellant's deportation by downplaying the seriousness of his offending by noting the sentencing judge's failure as it is put to recommend the appellant for deportation and the appellant's lack of offending behaviour. It was argued that this as referred to by Judge Blum in granting permission went contrary to what was said by the Court of Appeal in OH (Serbia) EWCA Civ 694 in 2008, noting such factors that the risk of re-offending is one facet of the public interest but there are others. There is also a need to deter foreign nationals from committing serious crimes. There is the element of an expression of society's revulsion at serious crimes and all the facets of the public interest should be considered as a linked but independent feature, the approach to them adopted by the respondent in the context of the facts of the case, the duty being no higher than to weigh this feature but it was argued by downplaying the appellant's offence the judge had failed correctly to balance the weighty public interest in deportation against the effect on the children and had therefore incorrectly considered the test of undue harshness as set out by the Court of Appeal in MM (Uganda) [2016] EWCA Civ 450.
4. The judge as I say set out at paragraph 12 the offences that had been committed and when he went on from paragraph 49 onwards to consider the facts of the case and the relevant law he noted for example at paragraph 57 that they were both convicted of serious criminal offences, both he and his wife, and both made the subject of deportation orders but of course noted that subsequently his wife was successful in an appeal. The children are British citizens and the wife had made an application for

renewed leave to remain as her previous grant of leave had expired on 20 March and the judge took the view, and this has not been challenged, that it could be assumed that the wife and children will continue to live lawfully in the United Kingdom for the foreseeable future.

5. The judge then went on to consider the evidence of the social workers and the relevant legal principles including what had been said by the Upper Tribunal in the decision relating to the wife.

6. Then at paragraph 69:

“I acknowledge that the public interest in deportation of foreign criminals is a strong one. On the other hand, it is of note that the sentencing judge consciously decided not to make a recommendation for deportation in the cases of the Appellant and his wife. The pre-sentence report identified the Appellant as presenting a low risk of reoffending, and a low risk of harm to the public. As a matter of fact in the period of nearly 12 years that have elapsed since conviction, the Appellant has indeed not reoffended and he has complied with his reporting conditions attending every Monday for over seven years to sign on.”

7. The respondent, as he is before me, the appellant before the judge, has put in a Rule 24 response drafted by Ms Cronin which goes through the issues raised in the grounds. Among other matters it is relevant to refer to is the issue of revulsion; society’s view of criminality, should not be any longer seen as a component of the public interest in deportation. That was said by Lord Kerr in Hesham Ali [2016] UKSC 60 which is the most up-to-date analysis of the law relating to deportations and attempts to revoke deportations. A number of points are made there but essentially in the context of Hesham Ali it is argued that the judge in fact did give proper consideration to the relevant issues in considering the public interest and there was not this downplaying of the appellant’s criminal history. It is right that the judge did go into detail into the differences that exist between the couple and Mr Bramble has somewhat expanded the points made in the grounds today by essentially arguing that the judge failed to look at the public interest in respect of the particular convictions of the appellant and had not sufficiently focused on the specific criminality of the appellant but essentially took the two together.

8. It is the case though that the judge clearly set out at paragraph 12 the fact that they were convicted of different offences and this is relevant to the judge’s sentencing remarks including such matters as the fact that the appellant’s wife was seen as the front woman in the operation. Curiously, in passing, one notes that when the judge is talking about the use of a false passport as being literally indefensible and noting the work he got as a result of that, it seems that the appellant’s wife also used false documents to get herself work but there was no charge I think in relation to that but it seems clear to me from looking at the sentencing remarks

that there was a significant overlap between the offences committed but nevertheless the judge took proper account in my view, at paragraph 69, of the fact that there were differences between the two. I think that the sentencing judge consciously decided not to make a recommendation for deportation, rather than it is put in the Secretary of State's grounds, failing to recommend the appellant for deportation. It was not a lapse by the judge, a conscious decision was made and the judge makes that clear at the first and second pages of the sentencing remarks.

9. On bringing these matters together the grounds are relatively narrow. They have been expanded slightly by Mr Bramble and Ms Cronin has not taken a point on that but has responded to it and it seems to me that when one looks at the consideration of details and balanced consideration as I find it to be by the judge in this case that it has not been shown that there is any error of law in his decision. That of course is my task. I am not re-deciding this case. I have to look at the judgment in the context of the law and the submissions that have been made and decide whether there is any error of law in the judge's approach in the manner identified in the grounds and developed by Mr Bramble and in my judgment there is no error of law. As a consequence the judge's decision allowing this appeal will stand.

Notice of Decision

The appeal of the Secretary of State is 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 him or any member of their 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.



Signed

Date

Upper Tribunal Judge Allen

