



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03261/2018

THE IMMIGRATION ACTS

Heard at Field House
On 15 August 2018

Decision & Reasons Promulgated
On 5 September 2018

Before

LORD BECKETT SITTING AS AN UPPER TRIBUNAL JUDGE
UPPER TRIBUNAL JUDGE PITT

Between

MT
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Fripp, Counsel, instructed by Duncan Lewis & Co,
Solicitors

For the Respondent: Mr Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The respondent is the Secretary of State for the Home Department in these deportation proceedings brought on the ground of the appellant being sentenced to more than four years imprisonment in 2014. The appellant, born in Turkey in 1977, has been in the UK since 20 June 1990. He began to commit criminal offences in 1995, has continued to do so regularly and has accrued 54 convictions. The respondent has made a number of attempts to deport him. He has appealed

against a deportation order which was served on him on 27 February 2018 and his appeal was refused in a determination of the First-tier Tribunal (FtT) dated 16 April 2018.

2. His lengthy immigration history is set out in detail in paragraph 2 of the FtT's determination and it is not necessary to repeat it all save for the following details.
3. It is relevant to this appeal that whilst the appellant was granted indefinite leave to remain as a refugee on 8 March 1994, his application for naturalisation was refused by reason of criminality on 12 September 2002.
4. He was first served with a liability to deportation letter on 22 December 2006 followed by a notice of intention to make a deportation order on 17 January 2007.
5. On 3 April 2007, the Turkish Consulate advised the Home Office that the appellant had been rejected as a Turkish national because he lost his Turkish citizenship in 2002.
6. He was served a deportation order on 26 August 2009 but it was subsequently revoked as there was then no prospect that Turkey would readmit him. He was informed that if he committed a further offence, or if the Turkish authorities agreed to his return, deportation would be pursued. He was granted discretionary leave from 17 July 2012 to 12 July 2015.
7. On 23 January 2014 he was sentenced to 6 years and 9 months' imprisonment for rape with a concurrent sentence of 18 months for a second sexual offence.
8. In response to a deportation letter and questionnaire, the appellant caused prison staff to inform the respondent that he was stateless.
9. On 12 September 2016 a notice to deport was served on the appellant. On 16 December 2016 he was detained under immigration powers on the expiry of his sentence.
10. The appellant made an application to the Home Office to be accepted as a stateless person which was refused with no right of appeal on 15 February 2017. The appellant intimated judicial review proceedings in relation to his immigration detention and had by this time applied for asylum.
11. His challenge to the lawfulness of his immigration detention was refused by the High Court, *T v Secretary of State for the Home Department* [2017] EWHC 2679 (*Admin*). The court had cause to examine the basis on which the appellant could be removed to Turkey, notwithstanding his not having nationality there. The court concluded that such removal is possible under the European Union Readmission Agreement (EURA) reached between the EU and Turkey and that the appellant's circumstances qualify under EURA. They noted in particular the terms of articles 3.1 and 3.3 of the agreement:

- “3.1 Turkey shall readmit, upon application by a Member State and without further formalities to be undertaken by that Member State other than those provided for in this agreement, all persons who do not or who no longer, fulfil the conditions in force under the law of that Member State or under the law of the Union for entry to, presence in, or residence on, the territory of the requesting Member State provided that in accordance with Article 9, it is established that they are nationals of Turkey.
- 3.3 Turkey shall also readmit persons who in accordance with the Turkish legislation have been deprived of, or who have renounced, the nationality of Turkey since entering the territory of a Member State, unless such persons have at least been promised naturalisation by that Member State.”

12. The High Court found as a fact that:

- “10 Nonetheless, a deportation order was served on C on 26 August 2009 after further convictions. On 16 September 2010 he was told that an ETD could be got if he agreed to do national service. He refused...”

This is consistent with a skeleton argument lodged in advance of the hearing before the First-tier Tribunal at page 2, “salient point 2:”

“The appellant states he is unwilling to apply to reunify his Turkish Nationality as he is unable to undertake military service upon return to Turkey, firstly as a conscientious objector (he is of Kurdish ethnicity), and secondly because he suffers from mental health difficulties.”

13. On 27 February 2018 a deportation decision was served on the appellant and it also refused his claims for international protection and a challenge on human rights grounds. The decision letter which was subject of the appeal to the FtT is long, detailed and reasoned.
14. In hand-written grounds of appeal it was contended that deportation would breach the appellant’s rights under articles 2, 3 and 8 and asserted that he is still stateless.
15. Permission to appeal was granted on the issue of whether lacking nationality is, of itself, capable of engaging article 8 and bearing on the lawfulness and proportionality of removing him to Turkey.
16. In advance of the appeal hearing in the Upper Tribunal on 15 August 2018, the appellant’s advisers intimated a skeleton argument focussing entirely on the implications of statelessness which they submit must be considered in a careful article 8 analysis.

Submissions

For the appellant

17. In the course of oral submissions before us, counsel focussed particular attention on paras 47.3, 50 and 54 of the determination, parts of which we quote.

- “47.3 There would not be significant obstacles to the reintegration of the appellant to life in Turkey, even given his lengthy residence in the UK. Such obstacles as there are would not be very significant obstacles. ...”
50. It is said in the skeleton argument that there are very significant obstacles to reintegration into life in Turkey as presently he cannot be removed there. This is a fallacious argument, as the issue of statelessness bears on the practicality of getting the appellant to Turkey, not whether it would be problematic for him if he was deported there. That issue is dealt with above, and there would not be very significant obstacles to his reintegration. Given his offending, even if there were very significant obstacles, this would not be unduly harsh (*cf Agyarko*) given the appellant’s offending (*cf SSHD v SC Jamaica [2017] EWCA Civ 2112*).
54. Counsel for the appellant also raises statelessness as an exceptional circumstance. In my judgment that is an obstacle that has to be addressed before any deportation order can be implemented. It is not any obstacle as to whether such an order is within the law. If it were otherwise, a stateless person who refused to cooperate with his country of origin to seek to restore citizenship or to have issued an emergency travel document could intentionally frustrate an otherwise unimpeachable deportation order.”
18. Counsel recognised that in terms of section 117C of the Nationality, Immigration and Asylum Act 2002 the appellant, as a foreign criminal sentenced to more than four years imprisonment, would automatically be deported unless there are very compelling circumstances over and above those described in the two exceptions set out in that section. Exception 2 could not apply to the appellant who does not have a qualifying child or partner, but counsel wished to found on Exception 1 which may demonstrate that it is not in the public interest to deport a foreign criminal. Exception 1 applies where a person has been lawfully resident in the UK for most of their life; they are socially and culturally integrated in the UK; and there would be very significant obstacles to their integration into the country into which it is proposed that they be deported. There was authority that considerations which appear to belong in consideration under subsection (4), Exception 1, may still form part of an assessment of whether there are very compelling circumstances under subsection (6); *NA (Pakistan) v Secretary of State for the Home Department [2017] 1 WLR 207*; *Akinoyemi v Secretary of State for the Home Department [2017] 1 WLR 3118*; *Secretary of State for the Home Department v Barry [2018] EWCA Civ 790*.
19. The assessments to be made under Part 5A of the 2002 Act generally, and particularly whether there are very compelling circumstances, must be fact sensitive; *Secretary of State for the Home Department v KE(Nigeria) [2018] 1 WLR 2160*. We agree.
20. Counsel submitted that a stateless person would not have the same benefits as a citizen. If Turkey re-admits the appellant through the mechanism of EURA, it would not be re-admitting him as a Turkish national, so the question remained,

what rights would he have, would he have a right of residence in Turkey? Further, he accepted that this matter had not been argued before the FtT.

21. Counsel had to accept that there had been no evidence led before the FtT to demonstrate what relative disadvantage a stateless person would face compared to a Turkish national. However, he clarified that his fundamental point was that if the appellant's statelessness meant that he could not be deported to Turkey, it necessarily followed that there would be very significant obstacles to his integration there. For this reason, his appeal must succeed

For the respondent

22. Mr Avery confirmed that there had been no evidence before the FtT to show that there was any particular disadvantage in being stateless in Turkey as opposed to being a Turkish national there. That being so, even if the FtT judge had erred, there could be no materiality to any error.
23. Even if there had been any such evidence, any relative disadvantage deriving from lack of nationality which could sound in article 8 would inevitably be outweighed by the extremely strong public interest in deporting a foreign criminal who had been sentenced to 6 years and 9 months imprisonment for rape against a background of persistent offending.
24. As the High Court had recorded in their judgment, the indications are that the Turkish authorities would comply with the EURA treaty and re-admit the appellant, but if they did not do so, then he would not be deported and there could be no issue about re-integration in Turkey if the appellant never reaches Turkey.
25. The first two sentences of paragraph 50 of the determination were the FtT judge's response to counsel's submission that, on the hypothesis that the appellant will not get to Turkey on deportation, there must be very significant obstacles to the appellant's integration in Turkey which counsel had argued before the FtT should then be viewed as an exceptional circumstance such that deportation should not be required.

Analysis

26. We have considered all of the submissions contained in counsel's note of argument and developed in the hearing and the respondent's reply.
27. The appellant is not a British citizen and, having been sentenced to imprisonment for 6 years and 9 months is a foreign criminal within the scope of section 32 of the UK Borders Act 2007 rendering him liable to automatic deportation unless he falls within exception 1 in section 33, which subsists where removal of the foreign criminal in pursuance of the deportation order would breach his Convention rights.

28. It is useful to examine certain provisions in part 5A of the 2002 Act which was introduced on 28 July 2014:

“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 Acts –
 - (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 subsection (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).”

29. Section 117B provides that the maintenance of effective immigration controls is in the public interest and sets out general principles which are relevant in all immigration decisions where article 8 is relevant.

30. Section 117C is in these terms:

- “(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.”

31. This is a coherent structure intended to ensure that in questions relating to the deportation of foreign criminals where article 8.1 considerations are in play, due weight is given to Parliament’s determination that this is in the public interest; *NA (Pakistan)* at para 38. Exception 1 is concerned with private life and Exception 2 is concerned with family life and the best interests of a child as an aspect of family life.
32. As Mr Avery conceded, if Turkey will not accept the appellant under the EURA treaty there will be no deportation, the appellant will not leave the UK. This was also the position of the respondent in 2012 when earlier attempts to deport were ongoing; *T v SSHD* at para 11.
33. We consider that if there is no deportation there could be no breach of any article 8 rights by virtue of deportation.
34. Section 117C (4) (c) is not promoting some general aspiration that people should integrate successfully in a receiving country. It is concerned with the assessment of proportionality between the strong public interest in the deportation of foreign criminals and any restriction or limitation on private life in the country to which someone is deported within the structure provided by Parliament.
35. We consider it to be an untenable construction of this statutory scheme that a consideration which could in certain circumstances render it unnecessary in the public interest to deport a person (significant obstacles to their integration in the receiving country when they get there) encompasses a situation where the person never leaves the deporting country. We find some, indirect, support for our interpretation in the decision of the Court of Appeal’s judgment in *Kamara v Secretary of State for the Home Department [2016] 4 WLR 152* at para 14. The court explained that:

“14 ...the concept of a foreign criminal's “integration” into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one...

The idea of “integration” calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.”

36. We heard submissions on the legal implications of possessing nationality. Counsel submitted that the most important deficiency for a stateless person in deportation would be the absence of an obligation for the receiving state to admit the person. We have dealt with that argument in the preceding paragraphs.
37. Whilst the case law referred to in para 20 of the appellant's note of argument may vouch that statelessness may have implications bearing on article 8 rights in certain circumstances, the cases to which we referred relate to markedly different situations and do not further the appellant's argument. In any event, article 8 considerations in a case involving deportation of a foreign criminal must be evaluated through the structure created by Parliament in part 5A of the 2002 Act and the associated rules.
38. Neither before the FtT nor in the hearing before us was there any evidence as to what practical difference deportation as a person who had been rejected as a Turkish national because he had lost his Turkish citizenship would make to a person's rights in Turkey compared to a Turkish national, far less what the actual practical implications for the appellant would be. Whilst the FtT judge may have gone too far in considering that statelessness could not bear on whether the appellant would find it problematic in Turkey if deported there, we do not consider this phrase in the second sentence of para 50 of the determination, (quoted above at para 17) was a material error in the absence of evidence about actual implications for a person lacking nationality who is deported to Turkey as opposed to the theoretical implications of statelessness generally.
39. Counsel for the appellant posed questions (para 20 above) but we have been provided with no evidential basis to evaluate whether some unspecified disadvantage could outweigh the very strong public interest in deporting a persistent offender who went on to be sentenced to 6 years and 9 months for rape. Given the strength of the public interest in deportation in the circumstances of this case, it would almost inevitably outweigh limitation on private life in Turkey.

Decision

40. For these reasons we can detect no material error of law in the FtT's consideration of the appellant's article 8 rights in accordance with part 5A of the 2002 Act and the related Immigration Rules.
41. Accordingly the appeal is dismissed.

Notice of Decision

The decision of the First-tier Tribunal does not disclose a material error on a point of law and shall stand.

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 24 August 2018

Lord Beckett sitting as an Upper Tribunal Judge.