



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

Appeal Number: HU/14197/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 17 April 2019**

**Decision & Reasons Promulgated
On 22 July 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**SM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J L Blair (Counsel), Duncan Lewis & Co Solicitors
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of SM, as I will refer to him since I think an anonymity application was made in the skeleton argument and I can see the reasons for that, against refusal to revoke a deportation order which involved the assertion of a human rights claim.
2. The appellant came to the United Kingdom at the age of 13 having endured an abusive childhood and subsequently having been sexually abused in a Young Offenders' Institution in Algiers. He came to the United Kingdom in April 1995, worked for a few years, and after a relationship began with Ms [P], a British citizen, in 2000, they had a daughter born in

May 2006 but sadly she died at birth. This had an impact on the appellant who seems not to have worked thereafter during the years since that time. That relationship broke down subsequently. He then formed another relationship with Ms [R], having had twin girls with his previous partner, and they had a daughter also in this most recent relationship in 2015. The judge set out the criminal history of the appellant describing it as a significant number of criminal convictions in this country, fifteen convictions for 30 offences between March 2000 and July 2016 of various types, the most recent ones I think being a conviction in July 2016 for eleven separate counts of theft and he was sentenced to two years' imprisonment and this led to the deportation order. That was made on 6 December 2016 and then came subsequent applications to revoke the order, the refusal to do so and the hearing against that refusal.

3. The judge noted the evidence before him including a psychiatric assessment by Dr Reddy and the best interests of a child report from Dr Pagella. There was an OASys Report, a risk assessment report and there were witness statements also, and he heard oral evidence from the appellant and also from Ms [R]. The judge in the circumstances of the psychological and psychiatric assessment of the appellant decided that he should be treated as a vulnerable witness and approached the matter accordingly and there is no criticism of his approach in that regard, and then he set out the evidence in summary noting the submissions also that were made including a reference in the respondent's submissions to the diagnosis of post-traumatic stress disorder and schizophrenia and the highlighting by the respondent that the only medication being administered was Diazepam and noting the argument that there was treatment available in Algeria and the appellant had relatives still living in Algeria, he had gone back for his aunt's funeral in I think 2008.
4. The judge then set out the relevant legal provisions and concluded that the test under paragraph 399A(c) of there being very significant obstacles to the appellant's integration into Algeria had not been met by him and he dealt with this in essence at paragraph 66 of his decision, noting the relationship with the family and the psychological problems and psychiatric condition but did not consider there were very significant obstacles to his integration in that he retains significant family members in Algeria, numerous siblings and his mother, and he had been able to work in the past. The judge said he had focused very carefully on the medical aspect of the case because he was aware of previous suicide attempts and the psychological/psychiatric analysis was one that was extremely valuable to the judge in trying to make an overall assessment and on that specific question he concluded there would not be very significant obstacles to integration. Then he considered matters outside the Rules including the impact on the family members but these did not amount to such circumstances as to outweigh the public interest given his criminality and the appeal was dismissed.

5. Permission to appeal was sought and granted and this morning I granted permission to add a ground of appeal to which I will come shortly.
6. The main challenge is to paragraph 66 and as it is said the failure by the judge to take proper account of the medical evidence, and that evidence is to be found in the bundle before the First-tier Tribunal, a detailed report from Dr Reddy which starts at page 85. The report at paragraph 4 summarises the appellant's primary psychiatric illness as being paranoid schizophrenia and the fact that he also seemed to be experiencing a major depressive disorder and post-traumatic stress disorder, and also in the summary it was the doctor's view that the appellant's psychological wellbeing would undoubtedly worsen were he to be re-detained and deported to Algeria. This was well evidenced in his case as he had tried to commit suicide on a number of occasions. There is more detail then later on in the report, for example at paragraph 35, in which it was recorded he still gets flashbacks of a varying degree and the thought of returning to Algeria being a dominant trigger. And then at paragraph 33 there is reference to poor cognitive functioning, slow decision-making, poor concentration and anxiety with loss of interest in certain hobbies and impaired memory and low self-esteem, and given the recently assessed depressed state it would seem that his state of mind is indeed unstable and given the diagnoses of schizophrenia and depression with PTSD it would seem that he is at elevated risk in the longer term were he to be deported back to Algeria. This may cause him to act in an impulsive and potentially irresponsible manner, and then there is reference to past and potential suicide attempts, and then there are also issues identified at page 102 at paragraph 46 as to the difficulties that might be experienced in putting safeguards in place for returning him. He would represent a significant flight risk in the absence of these kind of safeguards that Dr Reddy identified and the long term in effecting his removal in such a manner would result in a much poorer prognosis in terms of his suicidality and self-harm.
7. I find it troubling that none of this detail was really gone into by the judge. There is the brief description of what the medical issues were and the extreme value that he said he obtained from the analysis, but there are specific points here which as it seems to me needed to be referred to in more detail by the judge and Mr Avery accepts that there could have been greater detail but says, well, there was sufficient but I think that the nature and extent of the problems has a real materiality to the issue of significant obstacles to integration, in particular bearing in mind his evidence about the circumstances in which he left Algeria, the fact that he did not feel able to rely on family support there, and the lack of really any ongoing support or proper connection with the family. The judge simply said that he retains significant family members in Algeria in the form of numerous siblings and his mother, but the fact of their existence and their ability to provide support are two very different matters. Equally he has shown a capacity to be able to work, that was until a few years ago since when his significant mental health problems have arisen. So, as it seems

to me, the judge did err materially in paragraph 66 in assessing the issue of very significant obstacles to integration. There needs to be a much fuller and more careful engagement with the medical evidence in the application of that test.

8. Ground 2, the new ground, is with regard to the issue of a failure to assess within the Rules the issue of undue harshness and the implications for the children, in particular of the appellant's removal to Algeria should that happen. The judge addressed this briefly outside the Rules at paragraph 69 concerning the impact upon Ms [R] and upon her daughter, there will also be a lesser impact upon the twins given the history that I have heard. None of these factors, either viewed individually or collectively, amount to sufficient circumstances to outweigh the public interest, given the appellant's criminality. Again it is argued on behalf of the respondent there is really no materiality to this but again, as it seems to me there are issues here particularly given the judge's failure in that context to address the best interests report of Dr Pagella. It was listed in the evidence but was not addressed in considering the undue harshness test which was not considered in the proper context at all and it was not considered at all either in regard to the consideration of Article 8 outside the Rules. So, I find an error of law in that regard also. It seems to me that given the extent of the errors of law in this case it is going to be necessary for this to go back for a full rehearing in the First-tier. So, since there is no objection to that I think the extent of re-making is such that it would properly be re-done in the First-tier so this will have to go back for a rehearing at Taylor House before a judge other than Judge Cockrill.

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 his 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

29 April 2019

Upper Tribunal Judge Allen