**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/07215/2018 **(P)**

**THE IMMIGRATION ACTS**

**Decided without a hearing** **Decision & Reasons Promulgated**
**On 20 July 2020**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**A T**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.**

**This decision has been made without a hearing, pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

**DECISION AND REASONS**

## Introduction

**1.** For reasons that will become apparent, my decision in this case is relatively brief. At the outset I wish to express my gratitude to Mr S Vnuk of Duncan Lewis Solicitors and Mr I Jarvis, Senior Presenting Officer, for their assistance provided in the resolution of this appeal.

**2.** This is an appeal by the appellant against the decision of First-tier Tribunal Judge Cameron ("the judge"), promulgated on 14 January 2020, in which he dismissed the appellant's appeal against the respondent's refusal of his human rights claim. That claim was made in response to a deportation order signed on 22 February 2011, which was followed some years later by a refusal to revoke that order. The deportation action was predicated upon a conviction and sentence of two years' imprisonment, both occurring on 8 July 2010, for possession of Class A drugs with intent to supply.

**3.** The lengthy procedural history which followed the instigation of deportation action need not be set out here.

**4.** In essence, the appellant's case on appeal involved three principal strands. First, that his absence from the Turkish Republic of Northern Cyprus ("TRNC") since the age of 3, together with his significant mental health problems and other relevant circumstances, meant that he would face "very significant obstacles" to integration into that society (with reference to exception 1 under section 117C(4) NIAA 2002). Second, that having regard to his marriage to a British citizen, their two British children, and the appellant's mental health conditions and those of his wife (who also suffers from physical disabilities), it would be "unduly harsh" for the family unit to live in TRNC and for the appellant to be deported whilst the rest of his family remained in United Kingdom (with reference to exception 2 under section 117C(5) NIAA 2002). Third, the appellant was an important witness in a serious criminal case and had placed himself at significant risk by giving evidence. This, combined with all other factors, went to show "very compelling circumstances" over and above those described in the two exceptions (with reference to section 117C(6) NIAA 2002).

## The decision of the First-tier Tribunal and the grounds of appeal

**5.** From what appears on the face of his decision, the judge did not appear to specifically reject any the evidence before him. This evidence included numerous expert reports, relating both to the health conditions of the appellant and his wife, and to the situation in TRNC.

**6.** In summary, the judge reached the following conclusions. He found that the appellant had been in the United Kingdom for "more than half his life" and was socially and culturally integrated in the United Kingdom ([41] and [43]). He found that the appellant could obtain relevant medical treatment in TRNC and would not face very significant obstacles to integration on

return (.45]-[46]) The appellant had a genuine and subsisting relationship with his wife and a genuine and subsisting parental relationship with his two children. It would be unduly harsh for the wife and children to relocate to the TRNC ([52]). Whilst the appellant's deportation would have caused "great distress" to the appellant's wife and children, splitting the family would not have been unduly harsh ([53]-[57]). Finally, the appellant had failed to show that there were "compelling circumstances outweighing the public interest in his deportation" ([58]-[64]).

**7.** The appellant challenged all three of the judge's principal conclusions.

**Subsequent events**

**8.** Following directions issued by the Upper Tribunal on 21 February 2020, the respondent provided a brief skeleton argument, the relevant passage of which states:

> "Having seen the grounds, and the FTT decision of 14 January, but lacking any access to the HO file, or the actual evidence dealt with at the hearing, it would be most appropriate for me to indicate the [respondent] does not oppose the application."

**9.** The appeal was then listed for an error of law hearing on 28 April 2020. The Covid-19 pandemic intervened and that hearing was adjourned. By directions dated 26 May 2020, the President expressed his view that a remote hearing was appropriate. At the same time he granted an extension of time for the appellant to file and serve written submissions and an application under rule 15(2A) of the Procedure Rules to rely on new evidence. All relevant documents were in fact received by the Upper Tribunal 2 June 2020.

**10.** A remote hearing was then listed for 6 July 2020.

**11.** On the respondent's side, the case was allocated to Senior Presenting Officer Mr Jarvis at a late stage. Having reviewed the relevant materials, a decision was made to withdraw the decision refusing to revoke the deportation order. Mr Jarvis communicated this decision by email to the Upper Tribunal and the appellant's solicitors on 5 July 2020 in the following terms:

> "As a result of a review of that evidence the SSHD takes the view that, on the current state of the evidence, deportation of the [appellant] would have an unduly harsh effect on his wife. This decision has been taken on the basis of the evidence of her significant physical and mental health difficulties, as well as the role the [appellant] currently plays in providing care for the children (as well as their young ages).
>
> The SSHD has therefore withdrawn her deportation decision (the refusal to revoke) in this case and will, as a result grant the [appellant] up to 30 months Leave to Remain under the Rules.
>
> The SSHD therefore asks that the UT allow the SSHD's case to be withdrawn from the Tribunal's jurisdiction under rule 17(2) of the [Procedure Rules] for the reasons given above."

**12.** As the "deportation decision" referred to in Mr Jarvis' email was not that under appeal, I take the view that he intended to confirm that the refusal of the human rights claim had also been withdrawn.

**13.** I attach no criticism to Mr Jarvis in respect of the timing of his communication. It is clear that he only received all relevant documents late in the day. It is equally clear that he conducted a thorough and productive review of those materials in the very limited time available. He is to be commended for this.

**14.** On receiving Mr Jarvis' email on the morning of 6 July 2020, I contacted both parties in order to ascertain their views as to the proper method of disposal of this appeal in light of the respondent's new position. In particular, I queried whether the appellant now wished to withdraw his appeal to the Upper Tribunal, or whether the respondent's withdrawal of the underlying decision meant that the appeal was now unopposed and that I should produce a substantive decision.

**15.** In reply, Mr Jarvis stated as follows:

> "The SSHD is content for [the Upper Tribunal] to proceed on the basis of producing a brief decision which notes that the SSHD conceded on error of law (this was an extremely brief document which simply conceded with no detailed reasoning) and then allowing the substantive appeal on the basis of the SSHD's concession on the unduly harsh test, the withdrawal of the decision to refuse to revoke and the [deportation order] as well as the undertaking that Leave will be granted."

**16.** For the appellant, Mr Vnuk confirmed that his client agreed to this course of action.

**17.** Both parties also agreed that the remote hearing should be vacated and that my decision could be made 'on the papers'.

## Decision without hearing: rule 34 of the Procedure Rules

**18.** Having regard to the core issue of fairness and the significant developments which have arisen at the latter stages of these proceedings (as set out above), it is clear that I should exercise my discretion under rule 34 of the Procedure Rules and make my decision in this appeal without a hearing.

## The jurisdictional issue

**19.** In light of SM (withdrawal of appealed decision: effect) Pakistan [2014] UKUT 00064 (IAC), the withdrawal by the respondent of the underlying decision does not deprive the Upper Tribunal of jurisdiction to determine the question of whether the First-tier Tribunal should be set aside for ever law and, if so, to re-make the decision in the appeal.

**20.** Therefore, I am able to proceed to reach a substantive decision in this appeal.

## Decision on error of law

**21.** Taking the respondent's brief skeleton argument together with Mr Jarvis' correspondence, it is clear that the respondent has formally conceded that the judge materially erred in law. That concession was quite properly made.

**22.** In respect of exception 1 under section 117C(4), it is plain that the judge failed to have regard to the evidence of Dr Thomas in so far as she had given an opinion that the appellant would face real difficulties in accessing any treatment in TRNC even if it existed. Further, the judge failed to assess the country report from Dr Bahceci, which provided relevant evidence as to significant obstacles in the path of integration into TRNC society.

**23.** For the avoidance of any doubt, although the judge did not specifically address the "lawfully resident" criterion within section 117C(4)(a), the appellant's temporary admission prior to the granting of Indefinite Leave to Enter in 2000 was to be treated as lawful residence (see SC (Jamaica) [2017] EWCA Civ 2112 and CI (Nigeria) [2019] EWCA Civ 2027). When this period is combined with that during which the appellant had leave, most of his life was spent in this country whilst lawfully resident.

**24.** I turn to exception 2 under section 117C(5) NIAA 2002. Having found that it would be unduly harsh for the appellant's wife and children to go and live in TRNC, the judge failed to have any (or at least any adequate) regard to, or failed to provide adequate reasons for rejecting, the significant expert evidence before him relating to the wife's mental and physical conditions, and the impact that the appellant's deportation would have on her and, by extension, the children. On the particular facts of this case, I would go further and accept (on an exceptional basis) that it was irrational for the judge to conclude that the appellant's deportation would not have been unduly harsh on his wife and/or the children.

**25.** In respect of the "very compelling circumstances" issue under section 117C(6) NIAA 2002, the judge failed to have any regard to, or at the very least provide any reasons for rejecting, the evidence from DC Williams. What can only be described as compelling evidence from this highly experienced officer as regards the appellant's significant participation in the criminal proceedings was simply left out of account. Given the fact that the criminal trial had not yet taken place at the date of the hearing and that the appellant's evidence was considered so important, this particular element of his case was certainly capable of constituting a very compelling circumstance, when taken together with all other factors.

**26.** In light of the above, the judge materially erred in law in his decision must be set aside.

## Re-making the decision

**27.** The respondent has formally conceded that it would be unduly harsh on the appellant's wife if he were to be deported to TRNC. That concession is fully justified in light of the evidence and legal framework. It is sufficient to dispose of this appeal, as it has the effect that the appellant satisfies exception 2 under section 117C(5) NIAA 2002.

**1.** Whilst strictly speaking it is unnecessary for me to say anything in respect of the other core issues, I nonetheless deem it appropriate to set out my conclusions in brief terms.

**2.** In respect of section 117C(4)(c ), I conclude that there would indeed be very significant obstacles to the appellant's integration into the society of TRNC, notwithstanding the high threshold set by the test. He has been away from that territory since the age of 3 and clearly has no meaningful memories of life there. He has no family there, nor any potential social network of any sort. The country expert sets out the significant obstacles in the path of integration (her report is contained in the appellant's second supplementary bundle). There is then his mental health conditions, which are undoubtedly significant. Even if relevant treatment is potentially available in TRNC, the powerful evidence from Dr Thomas indicates that the appellant would experience very real difficulties in actually accessing this. Having regard to paragraph 14 of Kamara [2016] EWCA Civ 813 and other relevant authorities, the appellant satisfies the high threshold and succeeds in his appeal on this basis.

**3.** In my view, it logically follows from the respondent's concession as to the position of the appellant's wife that it would also be unduly harsh on his children were he to be deported. It is not simply a question of them being highly distressed by his departure. The manifestly very great difficulties that their mother would experience as result of the appellant's deportation (as recognised by the respondent) would plainly have a direct impact on the wellbeing of the children. The evidence before me indicates that the involvement of Social Services would be likely. In addition, the eldest child has been assessed as requiring additional educational support at nursery (he will be entering Reception Class in September). This added factor goes to exacerbate the detriment faced by that child were his primary carer (the appellant) to be removed from his life. Put bluntly, the children would suffer undue harshness as a result of their mother suffering undue harshness. Thus, the appellant is able to succeed under the second limb of exception 2 under section 117C(5) NIAA 2002.

**4.** Finally, if it were necessary to reach a conclusion under section 117C(6) NIAA 2002, the following matters are to be taken into account (based on the unchallenged evidence of DC Williams set out in his letters dated 4 February 2020 and 22 April 2020):

a) the appellant was a victim of a serious crime;

b) despite his experiences and mental health conditions, the appellant did in fact give evidence at the criminal trial in January 2020;

c) this evidence was provided notwithstanding the fact that the appellant's name had been disclosed and his anonymity negated;

d) his evidence at the trial was accepted as both honest and true;

e) the evidence assisted in the conviction of an individual for the offences of robbery, possession of a firearm, and attempted murder of a police officer, for which the perpetrator was given a life sentence;

f) the appellant's participation is described as "highly commendable".

**5.** In my view, the appellant's actions were exceptional in nature. It does not take any real leap of faith to conclude that any right-minded member of society would regard what the appellant did as constituting a very significant public service. When this factor is combined with the appellant's overall circumstances (both in respect of his life in the United Kingdom and his position if he were removed to TRNC), the undoubtedly very strong public interest in deporting him by virtue of his drugs conviction in 2010 is reduced. This is a rare example of an Article 8 claim being sufficiently strong for the individual to succeed under section 117C(6).

**Anonymity**

**28.** The First-tier Tribunal made an anonymity direction. Given that minor children are involved and the issue relating to the criminal case in which the appellant was a witness, I maintain that direction.

**Notice of Decision**

**29. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**

**30. I set aside the decision of the First-tier Tribunal.**

**31. I re-make the decision by allowing the appeal.**

Signed: H Norton-Taylor Date: 7 July 2020

Upper Tribunal Judge Norton-Taylor

**TO THE RESPONDENT**
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed: H Norton-Taylor Date: 7 July 2020

Upper Tribunal Judge Norton-Taylor