



16 July 2021

PRESS SUMMARY

Sanambar (Appellant) v Secretary of State for the Home Department (Respondent)

[2021] UKSC 30

On appeal from: [2017] EWCA Civ 1284

JUSTICES: Lord Reed (President), Lord Hodge (Deputy President), Lord Sales, Lord Stephens, Sir Declan Morgan

BACKGROUND TO THE APPEAL

This appeal concerns the effect of the European Convention on Human Rights (the “**Convention**”) on decisions to deport foreign nationals who lawfully settled in the UK as children and were subsequently convicted of serious criminal offences.

The appellant is a national of Iran. He was born in 1995. He arrived in the UK with his mother in 2005, having been given indefinite leave to remain. He has had a difficult upbringing due to his father’s violent conduct, but he has a particularly strong bond with his mother, with whom he has lived all his life. He has no family ties with Iran, although he speaks Farsi with his mother.

Between 2009 and 2013 the appellant was convicted of three counts of attempted robbery (2009), possession of an offensive weapon (2011) and six counts of robbery, three counts of attempted robbery, and one count of handling stolen property (2013). The 2013 robberies were all committed at night and at knifepoint. The victims were aged between 15 and 18.

In the light of his 2013 convictions, for which the appellant was sentenced to three years’ detention in a Young Offender Institution, the respondent Secretary of State decided that the appellant’s deportation would be conducive to the public good and would not be in breach of his article 8 right to respect for his private and family life. She made a deportation order against him. The appellant appealed against that decision. Following a rehearing before the Upper Tribunal his appeal was dismissed. The Upper Tribunal held that the appellant had not met the threshold under the Immigration Rules (the “**Rules**”) for resisting his removal, essentially because he had failed to show that there were very significant obstacles to his integration in Iran. A further appeal by the appellant to the Court of Appeal was dismissed.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. The Upper Tribunal correctly approached the balancing exercise required by article 8. It was entitled to conclude that the interference with the appellant’s private and family life was outweighed by the public interest in the prevention of crime. Sir Declan Morgan gives the only judgment, with which all the other members of the Court agree.

REASONS FOR THE JUDGMENT

The Immigration Act 1971 (the “**1971 Act**”) provides that a person who is not a British citizen is liable to deportation from the UK if the Secretary of State deems his deportation to be in the public good. As explained in *Hesbam Ali v Secretary of State for the Home Department* [2016] 1 WLR 4799, Parliamentary and public concern about failures to deport large numbers of foreign citizens who had committed serious

offences in the UK led to the adoption of the UK Borders Act 2007, which provided that for the purpose of the Secretary of State's power to deport under the 1971 Act, the deportation of a foreign criminal is conducive to the public good [10]-[11]. So far as relevant to this appeal, the Rules reflect the government's and Parliament's view of how, as a matter of public policy, the balance should be struck between the right to respect for private and family life under article 8 and the public interest in public safety. They were intended to align with the body of caselaw concerning article 8: [12]-[13].

At the time of the Upper Tribunal's decision in this case, the Rules provided that in the case of a foreign criminal who had not been sentenced to a period of imprisonment of four years or more the public interest required his deportation unless an exception applied. The exception on which the appellant relied here is engaged where the foreign criminal had been lawfully resident in the UK for most of his life, he was socially and culturally integrated in the UK, and there would be very significant obstacles to his integration in the country to which he was proposed to be deported. If the exception does not apply, the public interest requires deportation unless there are very compelling circumstances over and above those described in the exception: [12]-[16].

The appellant, who entered the UK lawfully with leave to remain, is a settled migrant. According to an established line of European Court of Human Rights ("ECtHR") authority concerning the deportation of settled migrants who lawfully entered the host country as children, national authorities have a margin of appreciation in deciding whether the interference with their article 8 rights is necessary in a democratic society and proportionate to the legitimate aim pursued: [18]-[19]. That margin can be exercised by Parliament, by the executive through the Rules, or by judicial decision, but is subject to European supervision: [54]-[63]. Those authorities also establish that in striking the balance in such cases between a settled migrant's rights under article 8 and the prevention of crime, the court should consider (i) the nature and seriousness of the offence committed by the applicant; (ii) the length of the applicant's stay in the country from which he or she is to be expelled; (iii) the time elapsed since the offence was committed and the applicant's conduct during that period; and (iv) the solidity of social, cultural and family ties with the host country and with the country of destination (together, the "*Üner* criteria" see: *Üner v Netherlands* (2006) 45 EHRR 14). Subsequently, in *Maslov v Austria* [2009] INLR 47, the ECtHR held that where a settled migrant has lawfully spent all or the major part of his childhood and youth in the host country, very serious reasons are required to justify expulsion, particularly where the person committed the offences underlying the decision to deport as a juvenile: [22]-[25].

The Supreme Court rejects the appellant's argument that in a case involving a settled migrant who has lawfully spent all or the major part of his childhood in the host country, the court must separately consider whether there were very serious reasons to justify expulsion, as a separate condition after the examination of the *Üner* criteria: [39]-[46]. Rather, the authorities establish that the court must carry out a delicate and holistic assessment of all the criteria flowing from the ECtHR's caselaw in order to justify the expulsion of a settled migrant, such as the appellant, who has lived almost all of his life in the host country. It must be demonstrated that the interference with his private and family life was supported by relevant and sufficient reasons: [49].

Here, the Upper Tribunal gave careful consideration to the particular circumstances of the appellant's situation. It considered the nature and seriousness of the offences, the background of previous offending, and the continuing risks of re-offending despite the rehabilitative measures the appellant had undergone in custody: [51]-[53]. The Upper Tribunal accepted that the appellant had an established private and family life in the UK and was socially and culturally integrated. It did not, however, accept that there were very significant obstacles to the appellant's integration in Iran: [54]. It acknowledged that the appellant had not been in Iran since he was nine, was used to the life in and relative freedoms of the UK, could not read or write Farsi and would have difficulty in obtaining employment or training. On the other hand, the appellant spoke Farsi. He was academically capable, able to articulate himself appropriately and ambitious. He was not utterly isolated from Iranian culture, particularly because of his mother's ties to the country. While her ties were not his ties, the fact that she had visited Iran, retained a connection to the country and had a close friend there were factors which could reasonably be said to afford the appellant some assistance in terms of integration. There was ample material to justify the

Upper Tribunal's conclusion that the obstacles to the appellant's integration in Iran were not very significant: [54]-[63].

Accordingly, having regard to the Upper Tribunal's careful consideration of the *Üner* criteria, the seriousness of the appellant's offending and continuing risk of future offending, the Upper Tribunal was entitled to conclude that the deportation of the appellant would not be disproportionate or that there were very compelling reasons to prevent it. It gave relevant and sufficient reasons for its conclusion. There was substantial material to support its view that the interference with the appellant's private and family life was outweighed by the public interest in the prevention of crime: [64].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>