Neutral Citation Number: [2019] EWCA Civ 1252

Case No: C5/2017/3163

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
(IMMIGRATION & ASYLUM CHAMBER)
Upper Tribunal Judge Kebede

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/7/2019

Before:

LORD JUSTICE SIMON
and
LORD JUSTICE LINDBLOM

- -

Between:

MA (PAKISTAN)	**Appellant**
and	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -
- -

Mr Ramby de Mello (instructed by **Fountain Solicitors**) for the Appellant

Mr Marcus Pilgerstorfer (instructed by **Government Legal Department**) for the Respondent

Hearing date: 16 May 2019

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Approved Judgment

Lord Justice Simon:

Introduction

1. This is an appeal from the decision of the Upper Tribunal (Asylum and Immigration Chamber), promulgated on 4 September 2017, in which UT Judge Kebede dismissed the appellant's appeal against a decision of the First Tier Tribunal (Judge Gribble), dated 29 May 2017. The FtT had dismissed the appellant's challenge to a decision of the respondent contained in a letter dated 9 August 2016, refusing the appellant's human rights claim and maintaining a decision to deport him.

History

2. In order to understand the issues that arise on the appeal, it is necessary to summarise some of the background to the appellant's immigration history.

3. He married SB, a British citizen, in October 1996. In February 1998, he came to this country on a spousal visa. He has remained here since then. The couple have six children, the youngest of whom was born in November 2016.

4. In December 2005, the appellant's application for naturalisation was refused. This was because he had failed to inform the Home Office that he had become involved in a police enquiry into a fatal assault. In April 2006, he was convicted at Birmingham Crown Court of the manslaughter of Qamar Zaman. For this offence he was sentenced to a term of 4 years imprisonment. The two men had been involved in an altercation in a public park, both had left after being separated and had then returned. The appellant had armed himself with a screw-driver. While holding his victim in a head-lock, the appellant struck him in the eye with the screwdriver causing his death. The sentencing judge approached the sentence on the basis that the appellant did not intend either to kill or cause really serious harm, since the jury had acquitted him of murder, and on the basis that he had not intended to stab his victim in the eye. 'It was a misfortune that when [the appellant] struck out with the screwdriver it went into that particularly sensitive part of the [victim's] face.'

5. In October 2007, the respondent served the appellant with a notice of intention to deport him. In February 2008, the appellant's appeal against the deportation on asylum and human rights grounds was dismissed. His subsequent challenges on legacy and compassionate grounds were also dismissed.

6. He then appealed against the respondent's refusal to revoke the deportation order on human rights grounds. In December 2011, the FtT allowed his appeal; and in June 2012, the Upper Tribunal dismissed the respondent's appeal.

7. On 27 October 2012 the respondent wrote to the appellant in the following terms:

> I am writing to inform you that the Secretary of State has taken note of your conviction on 10 April 2006 at … for Manslaughter. The Secretary of State takes a serious view of your conduct and, in the light of your conviction, she has given careful consideration to your immigration status and the question of your liability to deportation.

> In all the circumstances, however, the Secretary of State has decided not to take any deportation action against you on this occasion, but you should clearly understand that the provisions of the Immigration Act 1971 as amended by the Immigration and Asylum Act 1999 relating to deportation continue to apply to you. Under these provisions a person who does not have the right of abode is liable to deportation if the Secretary of State deems his deportation to be conducive to the public good or if he is convicted of an offence and is recommended for deportation by a court.
>
> I should warn you therefore that if you should come to adverse notice in the future, the Secretary of State will be obliged to give further consideration to the question of whether you should be deported. If you commit a further offence, and are over 18 years of age, the Secretary of State would also need to consider the automatic deportation provisions of the UK Borders Act 2007. You should be aware that under such circumstances, the Secretary of State may be legally obliged to make a deportation order against you.

8. It will be necessary to consider later in this judgment the legal effect of this letter.

9. The appellant was given six months' discretionary leave to remain, which was subsequently extended. However, in March 2015, he was notified that the respondent was considering issuing him with a deportation order and was invited to make representations in response.

10. Having considered those representations, the respondent wrote on 9 August 2016 refusing the appellant's application for further leave to remain and his human rights claim, and maintained the decision to deport him.

11. The appellant appealed, as he was entitled, against the human rights decision under s.82(1) of the Nationality Immigration and Asylum Act 2002 (the 'NIAA 2002').

The hearing before the FtT

12. The hearing took place in Birmingham before Judge Gribble ('the Judge'). Her decision is clear and comprehensive. She set out the background and the material filed by each side (§§1-16), as well as the reasons underlying the 9 August 2016 decision letter. She set out the law that applied (§§24-33), and summarised the evidence of the appellant, his wife and children, as well as the submissions made on his behalf (§§34-50).

13. Before the FtT, a number of arguments had been raised in support of the appeal of which it is only necessary to mention the six which formed the basis of the grounds of appeal before us. For convenience the relevant statutory provisions and Immigration Rules are set out in an appendix to this judgment.

14. Ground 1 was founded on a contention that the deportation order was unlawful since it was in respect of a conviction that pre-dated the coming into force of ss.116-117C of

the NIAA 2002. It was argued that in circumstances where following adverse decisions in the FtT and UT the respondent decided not to deport the appellant, a subsequent decision to rely on his deportation as being conductive to the public good, see s.3(5)(a) of the Immigration Act 1971, was perverse and unlawful.

15. Ground 2 was an argument that the letter of 22 October 2012 raised a legitimate expectation that, unless he committed a further offence, the appellant would be allowed to remain in this country. He had not committed any further offences and it followed that he should be allowed to remain.

16. Ground 3 relied on paragraph 399C of the Immigration Rules, which provides:

> Where a foreign criminal who has previously been granted a period of limited leave under this Part applies for further limited leave or indefinite leave to remain his deportation remains conducive to the public good and in the public interest notwithstanding the previous grant of leave.

The argument was that this is a free-standing provision; and the respondent had failed to show that the appellant's deportation was in the public interest in the light of the previous grants of leave to remain.

17. Ground 4 (ground 6 in the FtT and UT) was based on section 117C of the NIAA 2002, which provides:

> (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.

18. The argument was that appellant's circumstances were such that there were very compelling circumstances over and above those described in exceptions 1 and 2.

19. Ground 5 (ground 7 before the FtT and UT) was that the respondent had failed properly to consider the best interests of the appellant's children, and in particular his youngest child, as required by s.55 of the Borders, Citizenship and Immigration Act 2009.

20. Ground 6 (ground 8 in the tribunals) was an argument that the respondent had failed to apply the law as set out in *Ali (Hesham) v. Secretary of State for the Home Department* [2016] UKSC 60, [2016] 1 WLR 4799 and particularly the judgment of Lord Reed at [50].

The FtT findings

21. The Judge made the following material findings.

22. The appellant had rightly accepted that he was a 'foreign criminal' to whom s.117C of the NIAA 2002 applied. Paragraph 399C of the Immigration Rules was not a freestanding provision but had to be read with the other Rules introduced in 2014. It

was clear from their context that they had to be read together, and the appellant had not identified any authority to the contrary.

23. The only legitimate expectation the appellant had was that he would be granted further periods of leave to remain in the UK in accordance with the law as it stood at any particular time. The respondent's letter of 27 October 2012 was clear in its terms: the appellant's deportation remained conducive to the public good and any grant of leave would be reviewed every six months.

24. The respondent's August 2016 decision was not a second punishment such as to engage the *ne bis in idem* principle. It was a decision based on a change in the law, in respect of which the position had been reserved in the 27 October 2012 letter.

25. The Judge considered the factors set out at s.117B Article 8: public considerations applicable in all cases, and subsection (1) which provides that the maintenance of effective immigration control is in the public interest. She then considered s.117C and the additional considerations which apply in all cases involving foreign criminals and in particular subsections (5) and (6), which provide:

> (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.

26. The Judge accepted that the appellant had a genuine and subsisting relationship with his wife and children, and that the effect of deportation would be unduly harsh on them. She then considered whether there were 'very compelling circumstances over and above exception 2'. She concluded that there were not [80]-[83].

27. The appeal was therefore dismissed.

The Upper Tribunal decision

28. The appellant appealed against the FtT decision and the appeal was dismissed in a reasoned decision.

Grounds 1 and 2

29. Mr de Mello argued in support of ground 1 that the decisions of the FtT (in December 2011) and the UT (in June 2012) in relation to the article 8 rights of the appellant and his family were binding on the respondent, absent a material change of circumstances. He referred in this context to the observations of Lord Neuberger of Abbotsbury PSC in *R (Evans) v. Attorney-General* [2015] AC 1787 at [52]. The respondent could not avoid the consequences of those decisions by repeatedly granting leave to remain and then exercising the powers under s.3(5)(a) of the Immigration Act 1971 ('IA 1971'),

relying on the change in the law brought about by the coming into force of ss.116-117C of the NIAA 2002. Unless there was some new factor which justified the making of a deportation order, it was unlawful to rely on the same material that had already been considered and rejected in the 2011-2012 tribunal decisions. The respondent's obligation under ss.32 and 33 of the UK Borders Act 2007 to deport foreign criminals arises once and cannot arise again unless a mistake occurs.

30. In the developed argument on ground 2, Mr de Mello relied on what he said was a legitimate expectation that arose from the terms of the 27 October 2012 letter: namely, that the appellant would have leave to remain unless he committed a further offence or came to the adverse notice of the respondent.

31. I do not accept these submissions, substantially for the reasons set out by the Judge in the FtT decision.

32. Two material questions arise in relation to a decision to deport a foreign criminal. The first is whether the deportation of an offender is conducive to the public good? If so, the offender is liable to deportation under s.3(5)(a) of the IA 1971. The second question relates to the circumstances in which it is open to the respondent to make a deportation order? There may be a legal obstacle to the deportation of an offender, for example, because it would infringe Convention rights; and such an obstacle may be permanent or temporary. However, the bar to deportation does not alter the fact that the offender is a person whose presence is not conducive to the public good, see the judgment of Lord Hughes in *R (George) v. Secretary of State for the Home Department* [2014] UKSC 28, [2014] 1 WLR 1831.

33. The first question was addressed in the respondent's letters of 27 October 2012 and remained unchanged: the appellant's conviction rendered his deportation conducive to the public good. The answer to the second question, depends on whether a change in the law provided a proper foundation for the respondent's decision in August 2016 to order his deportation.

34. In *Secretary of State for the Home Department v. TB (Jamaica)* [2008] EWCA Civ 977 Stanley Burnton LJ made clear that the respondent was not entitled to disregard a determination (in that case by the IAT), but added at [35]:

> Of course, different considerations may apply where there is relevant fresh evidence that was not available at the date of the hearing or a change in the law, and the principle has no application where there is a change in circumstances or there are new events after the decision … (*emphasis added*)

35. In *YM (Uganda) v. Secretary of State for the Home Department* [2014] EWCA Civ 1292 at [38], Aikens LJ said this:

> So far as the new Part 5A of the 2002 Act is concerned, section 117A is in force as from 28 July 2014. There is no guidance anywhere as to whether the new provisions are to be applied to cases in which the SSHD has already made a decision and the matter has been appealed through the tribunal system. But section 117A itself says that the new Part 5A applies 'where a

> court or tribunal is required to determine whether a decision made under the Immigration Acts' breaches a person's Article 8 rights and would so be unlawful under section 6 of the Human Rights Act 1998. Either this Court or the UT would, at the stage where the decision is being remade, have to determine whether a decision to deport YM is a breach of his Article 8 rights, so it would have to apply the statutory provisions applicable to that determination that are then in force. To my mind that does not involve any issue of 'retrospectivity'. Even if it did, it seems to me that the relevant question to ask is that posed by Lord Mustill (in the context of a new statutory provision) in *L'Office Cherifien des Phosphates v Yamashita-Shinnohon Steamship Co Ltd*: what does fairness require? This test was adopted by the House of Lords in *Odelola v SSHD* in the context of changes in the Immigration Rules between the date of an application for leave to remain and the time the application was determined by the SSHD. To my mind there is no unfairness in applying the new statutory provisions to a decision that has now to be made by a tribunal or court. The decision should reflect the balance that has been struck, which has some benefits and, perhaps, some drawbacks for the person concerned.

36. In *Secretary of State for the Home Department v. Rexha (s.117C - earlier offences)* [2016] UKUT 335 (IAC), the UT (Dove J and DUTJ Grimes) was concerned with an offender who was convicted in 2002 of possession of 188kg of cannabis with intent to supply. He was sentenced to 4 years' imprisonment; but persuaded an adjudicator that the offence was not sufficiently serious to justify the Secretary of State's decision to deport him. In 2010, he was convicted of (simple) possession of a class A controlled drug and was given a conditional discharge for 18 months. The Secretary of State decided to deport him, relying on the 2002 and 2010 offences. The FtT held that the relevant offence was the 2010 offence to which s.117C did not apply. On appeal the UT held that the Secretary of State was entitled to rely on the earlier conviction when considering s.117C(6).

37. At [18] of *Rexha*, the UT reasoned thus:

> It appears clear to us that the exceptions identified in paragraph 35 of *TB (Jamaica)* applied in this case. Not only have the factual circumstances of the appellant's case moved on considerably since the point in time when that determination was reached in excess of ten years prior to this decision, but also there had been a change in the law through the introduction of the provisions in the Immigration Act 2014 which are at the heart of this appeal. Whilst in our view it was necessary for the respondent to give consideration to which of the offences within the appellant's criminal past were relied upon as reasons for the decision to deport him, the respondent was not, in the circumstances, precluded by [IAT's] findings

> from relying upon the 2002 conviction as part of the overall appraisal of the appropriateness of deportation in his case.

The reasoning is persuasive.

38. In my view, subject to a consideration of the continuing effect of the letter of 27 October 2012, the changes in the law entitled the respondent to review the appellant's position and form a view as to whether the circumstances fell within s.117C(6). In *R (George)* (above), Lord Hughes said this at [31]:

> There is no legal symmetry in indefinite leave to remain co-existing with the status of someone whose presence is not conducive to the public good. It makes perfectly good sense, whilst the legal obstacle remains, for the Secretary of State to be in a position to re-visit the terms of the leave to enter. Moreover, the legal obstacle is not necessarily, or even usually, permanent.

39. UTJ Kebede summarised the position accurately at [23] of the UT decision:

> … it seems to me that the changes in the legislation and immigration rules, and the stricter approach to the public interest mentioned by the [FtT] at [70] were sufficient in themselves to constitute the said change in circumstances. There was no indication in paragraph 399C or in the case law to which Mr de Mello referred me that there was a requirement for further offending or a significant change of circumstances in order for a fresh deportation decision to be justified and lawful.

40. Mr de Mello relied on the 27 October 2012 letter as an important additional factor in the analysis, arguing that its contents created a legitimate expectation that the respondent would not deport the appellant unless he committed a further offence or came to the adverse notice of the respondent. Since the date of the letter the appellant had committed no crime and had given no cause to come to the adverse attention of the respondent. As the argument developed, Mr de Mello advanced his argument on the basis of unfairness.

41. The difficulty with the argument, whether put in terms of the thwarting of legitimate expectation or (more properly in this context) unfairness, is that the threshold is high. It requires an unambiguous and unconditional representation, see for example *R (Nesiami and ors) v. Secretary of State for the Home Department* [2019] 1 WLR 463, [50] or as expressed in terms of legitimate expectation, a promise which is 'clear, unambiguous and devoid of relevant qualifications', see Lord Hoffmann in *R (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No.2)* [2009] AAAC 453 at [60], citing Bingham LJ in *R v. Inland Revenue Commissioners, ex p MFK Underwriting Agents Ltd* [1990 1 WLR 1545, 1569. It would require that the statement be treated as if contained within it the words, 'even if there is a change in the law.' It seems to me that there is no warrant for reading the letter in this way, and no unfairness in the decision to remove the appellant in the light of the change in the law, see also *YM (Uganda)* at [38] (above). The FtT was fully entitled to conclude

that the only material indication in the letter was that further periods of leave would be considered on the basis of the law as it stood at any particular time, and that there was no indication the committal of a further offence was the only circumstance in which deportation could be ordered.

Ground 3

42. Mr de Mello's argument was that paragraph 399C of the Immigration Rules was a freestanding provision, unaffected by s.117A-C, which required the respondent to prove that the appellant's deportation was in the public interest, notwithstanding the previous grant of leave. He submitted that if paragraph 399C is not read as a freestanding provision it leads to the result that someone in the appellant's position will be subjected to an indefinite 'Kafkaesque regime'. He referred in this context to *Zoumbas v. Secretary of State for the Home Department* [2013] 1 WLR 3690 at [10], and to *Ullah v. Secretary of State for the Home Department* [2019] EWCA Civ 550 at [25].

43. The argument was another way of putting his overarching submission that an injustice occurs if the Home Department, having rightly accepted the decision of an earlier tribunal, bides its time and then relies on the change in the law brought about by statutory changes and new Immigration Rules. However, it is quite clear that paragraph 399C is not a provision that can be viewed in isolation. The Rules establish an order within which decision-making occurs. The FtT described the appellant as a foreign criminal whose appeal was allowed on article 8 grounds and who was granted short periods of leave in accordance with paragraph 399B, and ultimately discretionary leave. The paragraphs in the Rules deal sequentially with issues that arise in this type of deportation case and are to be read in this way. Mr de Mello has identified no authority to support a contrary view.

Grounds 4 and 5

44. Under these headings, Mr de Mello argued that the FtT erred in law in holding that there were not 'very compelling circumstances' within the meaning of s.117C(6), it ignored the implicit flexibility within the application of s.117C (see *Rhuppiah v. Secretary of State for the Home Department* [2018] UKSC 58 at [36]) and failed to consider separately the best interest of the child under s.55 of the Borders, Citizenship and Immigration Act 2009. He relies in particular on the medical condition of the appellant's youngest child.

45. The FtT noted that there was 'a paucity of evidence' as to compelling circumstances, and that 'Mr de Mello said there were [compelling] circumstances but did not elaborate what they were.'

46. The Judge concluded (at §79), in the context of his family's circumstances, that the deportation of the appellant would be unduly harsh, see s.117C(5), 'exception 2'. However, no identifiable error of law or approach has been identified in the very careful assessment of the appellant's family circumstances and the medical position of his youngest child in the light of this conclusion. The Judge addressed the question of whether there were very compelling circumstances over and above those described in exception 2 (at §§80-85); and separately considered the position of the youngest child

(at §§76, 82 and 83). None of these conclusions are open to legitimate challenge and there is no indication of inflexibility of approach.

47. So far as the best interests of the children were concerned, she recorded (at §75) that the children's best interests were a primary consideration, albeit capable of being outweighed by other factors; and that it was in their best interest to be cared for by both parents (at §79). The Judge clearly understood that the best interests militated against deportation.

48. The suggestion that the Judge's findings were perverse is wholly unfounded.

Ground 6

49. The final complaint is that the FtT failed to determine the appellant's article 8 Convention rights in accordance with the judgment of Lord Reed in *Hesham Ali v. Secretary of State for the Home Department* [2016] 1 WLR 4799 at [50].

50. That case was concerned with the application of the Immigration Rules before July 2014, when they were amended and Part 5 of the NIAA was enacted to give statutory authority to the new scheme, see *N-EA (Nigeria)* [2017] EWCA Civ 239 at [14]-[16], which was referred to by the FtT (at §71). This ground adds nothing to the argument.

Conclusion

51. For these reasons, I would dismiss the appeal.

Lord Justice Lindblom

52. I agree.

Appendix

The NIAA 2002

Part 5A was inserted into the Act with effect from 28 July 2014, after the revocation of the first deportation decision, but prior to the issue of the second deportation decision).
So far as material, it provides as follows:

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).

…

117C Article 8: additional considerations in cases involving foreign criminals

(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.

117D Interpretation of this Part

(2) In this Part, 'foreign criminal' means a person—

(a) who is not a British citizen,
(b) who has been convicted in the United Kingdom of an offence, and
(c) who—
(i) has been sentenced to a period of imprisonment of at least 12 months,
(ii) has been convicted of an offence that has caused serious harm, or
(iii) is a persistent offender.

Immigration Rules A362-400

A362: Where Article 8 is raised in the context of deportation under Part 13 of these Rules, the claim under Article 8 will only succeed where the requirements of these rules as at 28 July 2014 are met, regardless of when the notice of intention to deport or the deportation order, as appropriate, was served.

A363. The circumstances in which a person is liable to deportation include:

(i) where the Secretary of State deems the person's deportation to be conducive to the public good;

…

A398. These rules apply where:

(a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom's obligations under Article 8 of the Human Rights Convention

(b) a foreign criminal applies for a deportation order made against him to be revoked.

398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

(a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;

…

the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

399. This paragraph applies where paragraph 398 (b) or (c) applies if –

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i) the child is a British Citizen; or

(ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case

(iii) it would be unduly harsh for the child to live in the country to which the person is to be deported; and

(iv) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or

(b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and

(i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and

(ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and

(iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.

399A. This paragraph applies where paragraph 398(b) or (c) applies if –

(a) the person has been lawfully resident in the UK for most of his life; and
(b) he is socially and culturally integrated in the UK; and

(c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.

399B. Where an article 8 claim from a foreign criminal is successful:

(a) in the case of a person who is in the UK unlawfully or whose leave to enter or remain has been cancelled by a deportation order, limited leave may be granted for periods not exceeding 30 months and subject to such conditions as the Secretary of State considers appropriate;

(b) in the case of a person who has not been served with a deportation order, any limited leave to enter or remain may be curtailed to a period not exceeding 30 months and conditions may be varied to such conditions as the Secretary of State considers appropriate;

(c) indefinite leave to enter or remain may be revoked under section 76 of the 2002 Act and limited leave to enter or remain for a period not exceeding 30 months subject to such conditions as the Secretary of State considers appropriate;

(d) revocation of a deportation order does not confer entry clearance or leave to remain or re-instate any previous leave.

399C. Where a foreign criminal who has previously been granted a period of limited leave under this Part applies for further limited leave or indefinite leave to remain his deportation remains conducive to the public good and in the public interest notwithstanding the previous grant of leave.