



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00461/2013

THE IMMIGRATION ACTS

Heard at Field House
On 17 October 2013

Determination Promulgated
On 04 December 2013

Ex Tempore Judgment

Before

THE PRESIDENT, THE HON MR JUSTICE MCCLOSKEY
UPPER TRIBUNAL JUDGE PETER LANE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

COLIN RICARDO ALLEN

Respondent

Representation:

For the Appellant: Mr J Hopkin, Senior Home Office Presenting Officer
For the Respondent: Ms J Rothwell, counsel, instructed by Birnberg Peirce & Partners

DETERMINATION AND REASONS

- [1] This is the Secretary of State's appeal against a determination of the First-tier Tribunal which allowed the appeal of Colin Ricardo Allen against a decision of the Secretary of State dated 15 February 2013 to deport him from the United Kingdom.
- [2] At the outset of the hearing of the appeal, given that we found the grant of permission to appeal to be formulated in somewhat opaque terms, we requested Mr Hopkin on behalf of the Secretary of State to articulate the error of law which is

advanced on his client's behalf. This elicited the response that the determination of the First-tier Tribunal is contaminated by inadequate reasoning. Having taken into account the submission on behalf of Mr Allen by Mrs Rothwell (of counsel) we ruled that the grant of permission to appeal is couched in sufficiently broad terms to embrace this discrete legal defect. Accordingly we determine this appeal on the basis that the enquiry for this Tribunal is whether the decision of the First-tier Tribunal is adequately reasoned.

- [3] The focus of the argument of Mr Hopkin on behalf of the Secretary of State was that the particulars of the asserted inadequate reasoning consist of a failure to take into account the sentencing transcript. We turn to the transcript at this juncture. The Respondent was convicted at Northampton Crown Court. He was sentenced on 22 March 2010. He was convicted of the offences of supplying controlled drugs, being class A drugs, for which he received a commensurate sentence of four years and nine months' imprisonment. There were three counts in total. The circumstances are rehearsed in the transcript of the sentencing. We draw attention to the following statements on the part of the sentencing judge:

"What you supplied to those two men on those two days was a total of four 20 pound wraps, in round figures worth £70 or perhaps £80, so an example of low level drug dealing, but with a very specific method of operating, that is to say using car parks of places which were open to the public at times when you thought you would merge into the surroundings."

He then adverted to the surveillance operation by the police which uncovered the offending. He acknowledged that the Respondent was acquitted in respect of a number of counts but opined that he had probably been engaged in this criminal activity during a relatively lengthy period. We interpose here the observation that, of course, the Respondent was convicted only in respect of these particular offences.

- [4] The sentencing judge saw fit to repeat his assessment of the gravity and scale of the appellant's offending when he said:

"So to repeat, you were a low-level drug dealer but nonetheless an essential cog in a much larger machine."

He then elaborated in the following words:

"It is fairly obvious that you were not making much money out of this and were supplementing your income, honestly earned as a skilled carpenter and handyman, of whom many customers and indeed your family spoke very highly and it is a further tribute to your previous good character which you have now lost, that you did eventually comply with your bail conditions."

The judge then continued:

"I shall put your sentence towards the lower end of the scale which might otherwise have achieved in the circumstances as I have set them out."

He described the Respondent as a devoted family man, someone from an extended family who thinks highly of him. On the other side of the scales, he continued:

“What you did was to make a contribution in your way, as a minor dealer, to the perpetuation of those who were perhaps already corrupted. Accordingly, of course with some regret, because you are otherwise a good man, it is necessary to pass concurrently on each count a substantial sentence of imprisonment reflecting all the features outlined and all the matters highlighted in mitigation.”

The judge then gave consideration to the pre-sentence report and he continued by determining the appropriate sentence to be imposed.

[5] At the conclusion of the hearing the judge said the following:

“The clerk is checking with me about the deportation. There is nothing the court has to say about that except, of course, even though Mr Allen has just left, that one would see every justification for deportation for anybody convicted of these offences. But that is not controversial.”

Given the context, it seems to us that, here, the judge was reflecting on whether he was obliged by legislation to make any order in respect of deportation, whether a binding order or recommendation. We take into account that the legislation on this subject has changed during recent years. Continuing, the judge said, in terms, that the court had no function in this respect. He then added an opinion which, he recorded, was expressed in the absence of the Respondent [who had evidently been escorted from the courtroom] that “.....one would see every justification for deportation for anybody convicted of these offences”.

[6] We consider the contention that the First-tier Tribunal’s determination was inadequately reasoned in the following way. First of all, it is accepted, correctly, that the Tribunal directed itself correctly in law and gave consideration to all relevant jurisprudence. This, on any showing, is a positive starting point for any first instance Tribunal. The Tribunal recorded at some length, albeit in summary form, the evidence presented on behalf of the Respondent and in this respect we refer to paragraphs 26 to 41. The Tribunal then addressed its mind to findings of credibility and fact. It introduced this section of its judgment with the following statement at paragraph 54:

“After consideration of this case and the evidence, we concluded that this was anything but a normal Jamaican drug dealer’s case.”

This is the first clear signpost in the determination to the Tribunal’s assessment that this was a wholly exceptional case.

[7] Next the Tribunal referred to the child and adolescent psychotherapist’s report. Some further evidence bearing on the main issue which preoccupied the Tribunal,

namely the relationship between the Respondent and one of the children of the family and the predicted severe impact on the said child arising out of the deportation of his father, the Respondent, was then considered. Adopting the assessment in the psychotherapist's report, the Tribunal found [at paragraph 57] that the removal of the Respondent from the household and his deportation to Jamaica would have a significant adverse effect on the development of the child in question and the Tribunal elaborated in very clear and cogent terms on that assessment. It continued:

"We consider that this by itself would be an exceptional circumstance when we consider all the other factors including the length of time the Appellant has been in the United Kingdom, the low risk of offending and his family relationships, we consider that the whole appeal must fall within the exceptional category".

Here we have the Tribunal's ominous conclusion expressed in the context of making findings of credibility and fact and this is followed by a further consideration of the evidence and further findings - for example, a more detailed finding [at paragraph 59] concerning the low risk of future re-offending and a correct assessment of the scale and gravity of the Respondent's offending.

- [8] The sentence to which we have just referred [at the end of paragraph 59] is a rather important one in the context of this appeal because it confounds the contention on behalf of the Secretary of State that the Tribunal failed to give consideration to the contents of the sentencing transcript. This is the clearest possible indication that the Tribunal had the sentencing transcript to the forefront of its mind when pronouncing its determination.
- [9] In a series of other passages which follow the Tribunal adverted to the public interest and, in terms, to the relevant statutory superstructure. These passages must be considered cumulatively: they are found particularly in paragraphs 60, 68 and, in tandem, paragraphs 75 through to 81 to which we refer but which we need not rehearse.
- [10] The duty imposed on the Tribunal to provide an adequately reasoned judgment is one of longstanding. While it is rehearsed in Procedural Rules it is, properly analysed, a duty of common law pedigree and character. Indeed the rehearsal of this duty in Procedural Rules sometimes gives rise to the misconception of a purely procedural duty. It is something altogether more profound than that. It has been the subject of authoritative judicial consideration in a series of decisions. For example, Lane LCJ said in the case of **ex-parte Khan [1983] QB 790** at page 794:


"It must be apparent from what Tribunals state by way of reasons first of all that they have considered the point which is at issue between the parties and they should indicate the evidence on which they had come to their conclusions".

Comparable pronouncements are found in a series of other decisions. We confine ourselves referring to the comprehensive exposition of this duty formulated by the

Court of Appeal in Flannery v Halifax Estate Agencies [2000] 1All ER 373, in the judgment of Henry LJ at page 377. I quote from the first of the four propositions which are set out:

“The requirement of reasons is a function of due process and, therefore, of justice. Its rationale has two principal aspects. The first is that fairness surely requires that the parties, especially the losing party, should be left in no doubt why they have won or lost. The second is the requirement to give reasons concentrates the mind if it is fulfilled. The resulting decision is much more likely to be soundly based on the evidence than it is not.”

- [11] The function of this Tribunal in an error of law appeal, having identified at the outset the precise nature of the error canvassed by the Secretary of State, is to consider the Determination of the First-tier Tribunal as a whole and in the full context of all of the evidence which was before it including, *inter alia*, the sentencing transcript. We are in no doubt that the Determination of the First-tier Tribunal accords with the principles to which we have just referred. In our judgment this determination conveyed clearly to both parties why one succeeded and the other failed. The Tribunal, having directed itself correctly to the requirement that the case must be an exceptional one, balanced against the potent public interest in deportation as a general rule, conducted a balancing exercise and found the case to be a wholly exceptional one, giving determinate weight to the factors which are clearly articulated from paragraphs 57 and following of the determination. It is appropriate to highlight that the jurisdiction of this Tribunal is dictated by the consideration that it is constrained to conduct an exercise circumscribed by the asserted error of law committed by the First-tier Tribunal. This is not an appeal on the merits. Furthermore, it is not for this Tribunal to ask itself whether it would or would not have reached the same decision. Rather, the function of this Tribunal is to apply the appropriate legal standards and principles to the decision under challenge.
- [12] We conclude that this determination withstands the specific challenge which has been mounted by the Secretary of State. Thus the appeal must be dismissed. This constitutes a ruling which has some immediate consequences for the Respondent, Mr Allen, but does not have the standing or effect of any long-term resolution of his presence in the United Kingdom. That will be a matter for further and other decision making processes which lie outwith the boundaries of the appeal to this Tribunal.

Signed: 
Mr Justice McCloskey,
President
Dated: 22 November 2013