



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

Appeal Number: IA/46784/2013

THE IMMIGRATION ACTS

**Heard at Manchester
On 14 April 2015**

**Decision & Reasons
Promulgated
On 30 April 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MN
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms Johnstone, a Senior Home Office Presenting Officer

For the Respondent: Ms Mensah, instructed by Zacharia & Co, Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and to the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, MN, is a citizen of Iran who appealed to the First-tier Tribunal (Judge Cruthers) against decisions dated 28 October 2013 to refuse to vary his leave to remain in the United Kingdom and to remove him by way of directions under Section 47 of the Nationality, Immigration and Asylum Act 2002. The First-tier Tribunal allowed the appellant's

appeal on Article 8 ECHR grounds. The respondent now appeals, with permission, to the Upper Tribunal.

2. The grounds assert that the judge failed to provide adequate reasons as to why the appellant's circumstances were either compelling or exceptional such that his appeal should be allowed under Article 8 ECHR outside the Immigration Rules. Both parties accepted the appellant could not succeed in his appeal under the Immigration Rules. The appellant has a British citizen partner (SB) and a child (LN) the latter being born in 2009. There appears to be no dispute that the relationship between the appellant, his partner and child is subsisting as continued whilst the appellant has been in prison. The grounds assert that the judge failed to take account of the fact that the appellant and his partner began their relationship whilst the appellant's immigration status was precarious and that contact could be maintained from abroad by "modern means of communication". The grounds also assert that the judge failed to take proper account of the full extent of the appellant's offending and that he was not a credible witness whose claims (eg. to have lost his ability to speak Farsi) were not reliable. Finally, the grounds asserts that the Tribunal failed to have proper regard to the public interest concerned with the appellant's deportation.
3. Ms Johnstone, for the respondent, developed these arguments in her submissions before the Upper Tribunal. The appellant had succeeded in an appeal against a deportation order in January 2012. The determination of the Tribunal in that appeal had been available to Judge Cruthers and he took account of it. However, the appellant had been arrested in May 2012 for class A drugs offences for which he was subsequently convicted and sentenced to imprisonment in September 2012. The appellant claimed that he had been entirely truthful in his evidence before the previous Tribunal regarding his criminal offending (at that stage his convictions were limited to offences other than drug dealing). Ms Johnstone submitted that, had the previous Tribunal been aware of the appellant's full offending history, it might have reached a different decision on his appeal.
4. I am not satisfied that the respondent has revealed any error of law in Judge Cruthers's determination. At [43], Judge Cruthers noted that the appellant's claim to have been "entirely open with a Deportation Appeal Tribunal in January 2012" but went on to record that "I found nothing on the face of the January 2012 determination itself which confirms what the appellant says in this regard or contradicts what the appellant says in this regard." Having read the determination myself, I considered that statement to be accurate. It is possible that there was no reference of drugs offences in the previous determination because the Tribunal had been deceived by the appellant but it is equally possible that reference to that criminal behaviour (predating the appellant's conviction) may not have been considered relevant by the previous Tribunal to the issues before it. Judge Cruthers's comments admit both possibilities and effectively classify the issue as "neutral" in his analysis, as Ms Mensah submitted. However, at [50] Judge Cruthers wrote "in the light of the offence that the appellant was subsequently sentenced for on 24

September 2012, it is probably fair to say the Deportation Appeal Tribunal underestimated the seriousness of the appellant's criminal behaviour ...". Again, I find that to be an entirely reasonable finding based on the contents of the previous determination and Judge Cruthers's knowledge of the appellant's propensity to continue offending. This is not a case where the judge has simply adopted the findings and reasoning of a previous Tribunal; rather, he has accurately identified the likely basis upon which that Tribunal made its deliberations and has assessed all the relevant evidence up to and including the date of the hearing before him. Ms Johnstone's wider point, that nothing that the appellant has said should have been accepted by the judge because it was likely that he had concealed his offending from the previous Tribunal, does not really penetrate to the heart of Judge Cruthers's analysis. There is little indication in Judge Cruthers' determination that he has proceeded on the basis that this appellant is a reliable witness given the very dim view he took of his propensity to offend. At [54], the judge noted that the appellant had not "denied the assertions ... as to him having used a series of false names, dates of births and nationalities." The judge's findings about the nature of the relationship between the appellant, his partner and child (which were of particular importance in his analysis and conclusions) do not appear to have been based upon the appellant's own evidence but that of other witnesses whose credibility had not been put in doubt by the respondent. I find that Judge Cruthers has taken a clear-sighted view of the circumstances in this case in the submission that he has placed excessive faith on the evidence of an unreliable appellant is not made out.

5. I find that the same is true of the judge's assessment of the public interest in this case. There are many examples in his determination to show that he was well-aware of the appellant's "horrendous record of criminal behaviour" [49] and the strong public interest concerned with his removal from the United Kingdom. I also find that the judge's conclusion that the deportation of the appellant was likely to bring to an end all family life between the appellant, his partner and child was open to him on the evidence. The respondent's assertion family life might be continued by "modern means of communication" amounts to little more than disagreement with the finding of the judge. Ultimately, the judge at [64] concluded that the appellant's criminal activities ("very significantly more serious than was known to the Deportation Appeal Tribunal in January 2012") did not "quite justify the bringing to an end of all family life between him [his partner and child]." That was not a conclusion which all Tribunals would inevitably have reached given the same factual matrix. However, that is not the point. Judge Cruthers did not act perversely or irrationally by concluding that there were exceptional and compelling reasons for allowing this appeal outside the Immigration Rules. He achieved one of the possible outcomes available on the evidence and has supported that outcome by cogent and adequate reasoning. He has not taken into account irrelevant matters nor has he ignored relevant facts. I find that he has not erred in law and as a consequence I dismiss the

Secretary of State's appeal. I must, however, stress that I agree with the judge's comments at [65] that any further criminal behaviour on the part of the appellant that may well lead to his removal, notwithstanding the strength of the relationship with his family in the United Kingdom.

6. I am aware that there a further deportation appeal is pending before the First-tier Tribunal under reference DA/01578/2014. Directions will now be made in the First-tier Tribunal for that appeal to be listed as soon as possible. Both representatives should ensure that a copy of my decision be brought to the attention of the First-tier Tribunal Judge who may hear that appeal.

Notice of Decision

This appeal is dismissed.

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 their 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 25 April 2015

Upper Tribunal Judge Clive Lane