



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: RP/00144/2016

THE IMMIGRATION ACTS

Heard at Field House
On 9th May 2018

Decision & Reasons Promulgated
On 14th June 2018

Before

THE HONOURABLE MR JUSTICE C A HADDON-CAVE
UPPER TRIBUNAL JUDGE BLUM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

L C D R K
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr P Duffy, Home Office Presenting Officer
For the Respondent: Miss Allen

DECISION AND REASONS

1. The Secretary of State for the Home Department appeals a decision of First-tier Tribunal Judge Parker dated 12th February 2018 whereby Judge Parker allowed the claimant, LCDRK's, appeal against a decision by the Secretary of State to deport LCDRK. On 22nd February 2018 the Secretary of State sought permission to appeal Judge Parker's decision to the Upper Tribunal. Permission to appeal was granted on 7th March 2018 by First-tier Tribunal Judge Parkes.
2. The background facts to this case are set out in very great detail in the ruling of Judge C A Parker dated 12th February 2018, from paragraphs 2 to paragraph 108. It is not

necessary to rehearse all the background facts in this judgment. In brief, the respondent, LCDRK, arrived in the United Kingdom on 8th May 1990 aged only 23 months. She was with her parents and her father who had applied for asylum. That claim was refused. He appealed that decision but sadly passed away on 7th May 1996 before his appeal could be heard. The respondent's mother applied for asylum in her own right in July 1996. That claim was refused. In January 1997 the respondent's mother returned to Angola with the children, including the respondent. They returned to the United Kingdom in March 1997 and the respondent's mother made a further application for asylum. That application was refused in July 1998, but the appeal was allowed in April 1998. In October 1998 the respondent's mother, the respondent and siblings were all granted indefinite leave to remain in the United Kingdom. The respondent, LCDRK, has remained in the United Kingdom ever since and been educated here and lived with her family. She has had a somewhat unfortunate and chequered history and, in particular, between the ages of 14 and 19 committed a number of criminal offences which are set out in detail in Judge Parker's summary of the facts.

3. It is apparent that the respondent had a troubled and difficult time during her teenage years and certain mental health problems. She was further convicted in 2011 for assaulting a police officer and was last sentenced to a term of imprisonment in June 2014 but has not offended since 2015.
4. Judge Parker in the commendably careful and detailed judgment allowed LCDRK's appeal on three grounds, firstly, that the Secretary of State had not discharged her burden to demonstrate that there had been a change of circumstances following the grant of refugee status to LCDRK as the Secretary of State was required to do under, for instance, **RD (Algeria) v The Secretary of State for the Home Department [2007] UKAIT 00066**; secondly, Judge Parker held that LCDRK had discharged her consequential burden of proof and demonstrated that she was no longer a danger to the public and therefore had rebutted the presumption under Section 72 of the Nationality, Immigration and Asylum Act 2002; and thirdly, Judge Parker held that LCDRK had discharged a further burden under Section 339A and demonstrated that:-
 - (i) she had been lawfully resident in the United Kingdom for most of her life (this was not challenged);
 - (ii) she was not socially and culturally integrated in the United Kingdom; and
 - (iii) there were very significant obstacles to her returning to Angola.
5. Mr P Duffy on behalf of the Secretary of State challenges those findings and conclusions by Judge Parker and raises essentially three grounds of appeal. As to the first ground, the Secretary of State contends that the judge failed to have proper regard to the gravamen of the letter relied upon and cited by the Secretary of State in her decision letter dated 14th November 2016 in which the UNHCR had very clearly set out and explained that the general conflict situation that had occurred in Angola between 1961 and 2002 had come to an end. Mr Duffy submitted that the complaint made to Judge Parker that the Secretary of State had not addressed the specific risks relating to LCDRK's situation was not a point of any substance because, as he put it, if

the UNHCR had any particular concerns about any specific risk to LCDRK, then they would have raised it in their letter dated 4th December 2015. There was nothing he submitted to suggest that there was any continuing interest on behalf of the Angolan Government in the followers of the PDP-ANA, and if there were, one would have expected the UNHCR to object in more specific terms.

6. Ms Allen for LCDRK submits that the Secretary of State is wrong to submit that the judge misdirected herself in respect of her finding that the circumstances relating to the grant of refugee status no longer existed. Miss Allen emphasises the point that the burden of proof is squarely on the Secretary of State to demonstrate that the conditions for cessation are met in respect of the individual in question.
7. We have looked at the UNHCR letter and the decision letter with care. It is fair to say that the UNHCR letter does set out in general terms the fact that the general conflict in Angola has clearly ceased and ceased some time ago. However, what is missing from the letter is any specific analysis of LCDRK's particular situation. Strikingly, however there is a passage in the letter in which the UNHCR point out to the Secretary of State that it is important that the Home Office consider the individual's own position, and in particular suggest that the individual should be interviewed. The letter warns that to determine her case without such an assessment (which considers all relevant information relating to her return) would result in a burden of proof in establishing the appropriateness of cessation not being met.
8. In her decision, paragraph 109, Judge Parker said as follows:-

"Although the respondent refers to the basis of the asylum grant, the cessation decision relies upon generic evidence about a change of circumstances in Angola and does not address the basis upon which asylum was granted. I am not satisfied the respondent has discharged the burden of proof in establishing that the conditions for cessation are met in respect of this appellant. A general change of circumstances in Angola is not a sufficient reason for the refugee status of this appellant to be ceased."

9. The claim for asylum that was originally made was on the basis of the respondent's father's political activities, in particular in relation to the PDP-ANA (see also paragraph 56 of the judgment). It is apparent that when LCDRK's mother and children returned to Angola in 1997 they were detained because of documents held by the mother which related to the father's political affiliations. Whilst we understand Mr Duffy's submission that the Secretary of State relied on the UNHCR generic evidence as regards the cessation of hostilities in Angola, in our judgement, given that the fact of the father's particular political affiliations with the PDP-ANA were distinctly raised and relied upon as the original basis for the asylum claim, it was incumbent on the Secretary of State to address that point specifically in the evidence put before Judge Parker. However, nothing in the decision letter or the UNHCR letter addresses that point. Accordingly, in our view Judge Parker was reasonably entitled to conclude that the Secretary of State had not discharged her burden of proof (see the passage cited from paragraph 109 above). We do not think it is satisfactory to submit that this sort of burden can be discharged merely by inference. The danger was that the UNHCR

had not considered the point at all. The mere fact that the background to the case had been referred to in the original letter, amongst a great deal of other detail, is not to point. The UNHCR letter did not engage with this aspect, and indeed flagged up that the particular circumstances of the individual must be considered. Specifically, for these reasons, in relation to ground 1 we conclude that the challenge to Judge Parker's finding that the Secretary of State had not discharged her burden of proof fails

10. We turn to ground 2. The first of Mr Duffy's submissions under ground 2 was that Judge Parker had not taken into account the sheer scale of LCDRK's offending when considering the Section 72 test. In our judgment this point was hopeless on the face of the reasons themselves. Judge Parker set out the facts and the nature of the offending in very great detail in the body of her judgment. She summarises in paragraph 108 of the judgment as follows:-

"The appellant's offending began in 2002 at the age of 14 and, by the time she turned 18 in 2006 she had committed twelve offences. Since then she has committed a further sixteen offences. On any view she has an appalling criminal record ...".

She continues in that paragraph to note the evidence that alcohol and drugs played a significant driver in LCDRK's offending during those teenage years.

11. In paragraph 109 onwards Judge Parker then turns to her decision and reasons and sets out in paragraph 112 the details of the latest probation OASys Report and the nature of LCDRK's offending in 2013 to 2015 and says this:-

"Many of the appellant's offences occurred whilst she was juvenile and there have been lengthy periods - of up to four years - when she has not offended at all. Significantly the appellant's offending has been largely driven by her drug and alcohol use. I accept that the appellant has been sober and drug free for two years. Since then she has not offended. I am satisfied that the appellant is now well supported by her church community and family. Significantly she did not relapse following the death of her mother. She has taken on significant responsibility for her younger siblings. She is working closely with her GP and Mental Health Services. I am satisfied that there have been very significant changes in the appellant's life and motivation in the past two years. Having regard to all the evidence in the round, I am not satisfied that she is a danger to the community of the United Kingdom. She is therefore entitled to the benefit of the non refolement provisions."

In our view that finding by Judge Parker that LCDRK no longer represents a danger to the community is unimpeachable and fully justified and supported by the findings of fact and is not open to sensible challenge on public law grounds. It is clear that Judge Parker in reaching that conclusion had, as she said, regard to "all the evidence in the round", including clearly the history of offending which Judge Parker concluded was something in the past.

12. We turn to ground 3. Mr Duffy on behalf of the Secretary of State submitted that Judge Parker had dismissed "out of hand" the number of offences committed by LCDRK, the

lack of educational qualifications and lack of employment history and was not justified in concluding that she was socially and culturally integrated. It is not clear whether Mr Duffy also challenged the judge's findings that there were very significant obstacles to her return in the event that she was to return to Angola, but we assume that that was also part of the challenge under ground 3. Again, it is important to have careful regard to what the judge actually found and said. For these purposes we emphasise and treat as incorporated into this judgment paragraphs 115, 116, 117 and 118 of the judge's judgment. We briefly summarise some of the highlights in those paragraphs that were pointed out by Judge Parker:-

- (i) That it was common ground that LCDRK had been lawfully resident in the United Kingdom and indeed had been resident here since she was nearly 2 and she was now aged 30, and that she had only been absent for a very brief period in 1997 when she was 11 years old. This was, Judge Parker found, "a very lengthy period of UK residence on any view".
- (ii) Judge Parker referred to the large number of offences committed by LCDRK and the fact that she had not gained much by way of educational qualifications and not done much work, but concluded that these were not grounds for finding that this particular lady had not become socially and culturally integrated in the United Kingdom. On that topic Judge Parker said this at paragraph 118:-

"I find it significant that the appellant has never lived independently in the United Kingdom for any length of time or supported herself. She is very enmeshed with her family and lives with her uncle and at her mother's home. She identified a number of short term part-time jobs that she had many years ago. She is a volunteer at church. However, she is almost 30 years old and has never established her own household or supported herself successfully for any length of time."

13. Judge Parker heard evidence about LCDRK from a succession of witnesses, from her friend, MP, from her uncle, KAT, from her sister, A, and from DM, a Minister at the Hosanna Church in Brixton, and from another sister, PK, and from the journalist Sarah O'Connell. Judge Parker therefore had a very considerable body of evidence against which to judge LCDRK and her social and cultural integration.
14. As regards the question of obstacles to her reintegration to Angola if returned there, Judge Parker said this at paragraph 117:-

"... The Immigration Judge who determined her appeal in 2008 found that there were no significant obstacles but I have formed a different view based upon further evidence before me. The appellant has nowhere to go in Angola and no family there. She has no familiarity with the country and whilst she may be able to understand and speak some Portuguese and have some familiarity with Angolan culture she has no real connection with the country at all."
15. The Judge then continued in the next paragraph to pick up the theme that LCDRK had never lived independently and said this:-

“Having failed to live independently in the United Kingdom thus far I am satisfied that there would be very significant obstacles for her to do this in Angola, a country with which she has no familiarity and no support network. I further find that the appellant’s, relatively recent, sobriety has been achieved with the support of her family, church and medical intervention. The appellant’s mental health issues have already been described at some length and she is now making headway, with significant support, in addressed (sic) these. I am satisfied on a balance of probabilities that her removal from that support network is likely to cause a deterioration in her mental health symptoms.”

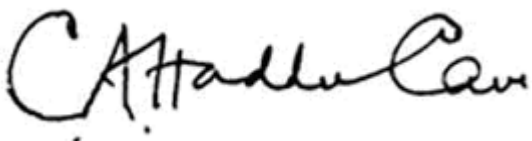
16. The judge was in those paragraphs addressing the second and third criteria under Section 339A. The fact that she was considering them together and then in tandem in our judgement is not a matter for criticism as Mr Duffy would have. The analysis of Judge Parker and the basis for her decisions on both points in our judgement is admirably clear. She did not dismiss out of hand the question of LCDRK’s offending or lack of education or work history. On the contrary Judge Parker took these matters into account but looked at all the evidence, and in particular the fact that she had turned her life around and was now well-supported by the local community and was looking for a brighter future. For those reasons we find no basis for challenge under ground 3 put forward by the Secretary of State.

Conclusion

17. For the reasons stated above we are not persuaded that any public law grounds for challenging the decision of Judge Parker in this case. Indeed, having read the decision of Judge Parker carefully, in our view she should be commended for the care in which she set out the facts and her reasoning in this case. None of the three grounds put forward by the Secretary of State is in our view supportable. For those reasons 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 respondent is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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: 23 May 2018

Mr Justice C A Haddon-Cave

TO THE RESPONDENT
FEE AWARD

This is a fee exempt appeal.

A handwritten signature in black ink, appearing to read 'C A Haddon-Cave'. The signature is written in a cursive style with a large initial 'C' and 'A'.

Signed

Date: 23 May 2018

Mr Justice C A Haddon-Cave