Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01480/2019

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 31 January 2020	**On 05 February 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A S Z
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr C Howells, Senior Home Office Presenting Officer
For the Respondent: Mr R Goodwin, Counsel

DECISION AND REASONS ON ERROR OF LAW

1. It is more convenient to refer to the parties as they were before the First-tier Tribunal.

2. The appellant in this appeal is a citizen of Afghanistan who appealed to the First-tier Tribunal against a decision of the respondent, made on 31 January 2019, to refuse his protection and human rights claims. The

appellant was the subject of a deportation order, signed on 9 January 2015, and his appeal had previously been dismissed on all grounds. The current appeal arose from a fresh protection claim based on the appellant's claimed conversion to Christianity.

3. In a decision promulgated on 24 June 2019, Judge of the First-tier Tribunal Lloyd-Lawrie allowed the appellant's appeal on both protection and human rights grounds.

4. In relation to the protection claim, the judge recorded that the parties agreed that, if the appellant's claim to have converted to Christianity were genuine, the appellant was entitled to international protection [22]. She heard oral evidence from the appellant and two church ministers and she concluded that the appellant is a genuine Christian convert [31-32].

5. In relation to article 8, the appellant had been sentenced to ten years' imprisonment in 2010. However, the judge accepted there were very compelling circumstances to warrant a finding that removal would be disproportionate [40]. She relied on evidence showing that removing the appellant would be unduly harsh on the appellant's son, who has autistic spectrum disorder. In reaching her conclusion she referred to the case of JG (Jamaica) v SSHD [2019] EWCA Civ 982.

6. The application for permission to appeal addressed both limbs of the judge's decision. In relation to her finding on the protection claim, it is difficult to discern from the grounds where it is said the judge arguably erred in law. The grounds simply point out that the appellant had a serious criminal history and had consistently been found not to be credible in the past. Caution needed to be exercise before accepting a claimed conversion.

7. In relation to the judge's conclusion on article 8, the grounds argue with greater conviction that the judge failed to give adequate reasons for finding there were very compelling circumstances, which is a very high threshold, particularly as contact between the appellant and his son had only been established recently.

8. Permission was granted to argue both grounds by Judge of the First-tier Tribunal E B Grant.

9. The appellant has not filed a rule 24 response.

10. I heard oral submissions from the representatives as to whether the judge's decision contains material errors of law such that it should be set aside and remade.

11. For the respondent, Mr Howells relied on both grounds. In respect of the protection ground, he took me to Shirazi v SSHD [2003] EWCA Civ 1562, in which Sedley LJ commented that great caution was appropriate in deciding the genuineness of religious conversions [32], and he criticised the judge's reliance on the citation from SA (Iran), R (on the application of) v SSHD

[2012] EWHC 2575 (Admin) (wrongly cited by the judge) [24] because that was a judicial review case and therefore not binding authority.

12. I do not consider that this argument gets off the ground. Both Sedley LJ and Judge Gilbart QC were giving sage advice to decision-makers on the perils of assessing claimed religious conversions but neither case is authority for a proposition of law by reference to which it can be said the judge in the present case erred. Mr Goodman's response was to argue that the respondent's ground was essentially a disagreement with the judge's finding and I agree with him.

13. Both representatives relied on the persuasive Scottish case of TF and MA v SSHD [2018] CSIH 58 in which Lord Glennie, delivering the Opinion of the Court, analysed the approach to the evidence of church ministers in great detail. In particular, he explained that such evidence is "*admissible opinion evidence which is entitled to respect*" [59].

14. At [39], he said,

> "… the appellant's case has to be considered in the round, not only on the basis of the appellant's own evidence, which may or may not be accepted as credible, but also on the basis of other evidence that may be available. It does not follow from the fact the appellant himself is disbelieved, even on very large parts of his story, that other evidence in support of his case cannot be relied upon. Much will depend, of course, on what that other evidence is. If, for example, that other evidence comes from some wholly independent source and is, on the face of it, impartial and objective, it is difficult to see how a finding that the appellant himself is dishonest can materially affect the weight to be attached to it."

15. It is clear to me the judge's approach cannot be criticised for falling short on these grounds. She looked at the evidence in the round and the fact she found parts of the claim not credible was not a reason to treat the evidence of the ministers as tainted. She was plainly aware of the timing of the conversion and the appellant's record of being found not credible. However, she gave reasons for placing decisive weight on the evidence of the ministers after having seen and heard them give evidence, as she was perfectly entitled to do. In my judgment, the judge's decision at [31-32] contains sustainable reasons for concluding that the appellant's conversion was genuine.

16. I find there is no error of law in the First-tier Tribunal's decision to allow the appeal on protection grounds and therefore the respondent's appeal against that decision is dismissed.

17. Any error in relation to the judge's consideration of the article 8 claim could not be material given I have found the decision on the protection claim is not vitiated by material error of law. However, as the ground was argued in the alternative, I shall set out my reasons for finding the judge's decision does contain an error of law in relation to article 8.

18. In essence, the judge found, in a single paragraph ([40]), that there were very compelling circumstances over and above those described in Exceptions 1 and 2, per section 117C(6) of the Nationality, Immigration and Asylum Act 2002. The threshold for meeting the test is very high. In PF (Nigeria) v SSHD EWCA Civ 1139, Hickinbottom LJ reiterated that this is a more stringent test than unduly harsh [33] and he referred to Underhill LJ's description of the test in SSHD v JG (Jamaica) [2019 EWCA Civ 982 as "*extra* unduly harsh".

19. It is not suggested the judge in the present appeal failed to appreciate the demands of the test because she referred at the end of the same paragraph to her conclusion that removing the appellant would be "*far in excess of unduly harsh on the Appellant's son*". However, where the judge erred was in failing to recognise that, as also explained in PF (Nigeria) [33], the assessment under section 117C(6) requires the effects of deportation on the child to be balanced against the public interest in deportation.

20. The President of the Upper Tribunal has also set this out in RA (s.117C: "unduly harsh"; offence: seriousness) Iraq [2019] UKUT 00123 (IAC) [22]:

> "It is important to keep in mind that the test in section 117C(6) is extremely demanding. The fact that, at this point, a tribunal is required to engage in a wide-ranging proportionality exercise, balancing the weight that appropriately falls to be given to factors on the proposed deportee's side of the balance against the weight of the public interest, does not in any sense permit the tribunal to engage in the sort of exercise that would be appropriate in the case of someone who is not within the ambit of section 117C. Not only must regard be had to the factors set out in section 117B, such as giving little weight to a relationship formed with a qualifying partner that is established when the proposed deportee was in the United Kingdom unlawfully, the public interest in the deportation of a foreign criminal is high; and even higher for a person sentenced to imprisonment of at least four years."

21. I can find no evidence in the judge's consideration of the test that she recognised the importance of the public interest, bearing in mind the appellant was sentenced to ten years' imprisonment for a serious drugs offence, and balanced that against the matters put forward on behalf of the appellant.

22. I do not agree with Mr Goodwin that the judge's reference at [37] to having directed herself to "*consider all of the considerations in section 117B and 117C*" is sufficient to show she conducted a proportionality balancing exercise as she was required to do.

23. Nor do I agree with him that the respondent's challenge is akin to a perversity challenge. The error is not to have found that there were extra

unduly harsh consequences for the appellant's son but to have failed to set that against the public interest.

24. However, for the reasons already explained above, the judge's error in relation to article 8 is not material to the outcome.

Notice of Decision

25. For these reasons the Secretary of State's appeal is dismissed and the decision of Judge Lloyd-Lawrie allowing the appeal on protection grounds shall stand.

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 his 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 31 January 2020

Deputy Upper Tribunal Judge Froom