Neutral Citation Number: [2016] EWCA Civ 893

C5/2015/1502

IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
IMMIGRATION AND SYLUM CHAMBER

Royal Courts of Justice
Strand
London, WC2

Friday, 17 June 2016

B E F O R E:

LORD JUSTICE JACKSON

LORD JUSTICE SALES

MN-T (COLOMBIA)

Respondent/Claimant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant/Defendant

DAR Transcript of
WordWave International Limited trading as DTI
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

Mr Andrew Sharland (instructed by GLD) appeared on behalf of the Appellant/Defendant

Mr Gordon Lee (instructed by Messrs Lawrence & Co) appeared on behalf of the Respondent/Claimant

J U D G M E N T
(Approved)

LORD JUSTICE JACKSON:

1. This judgment is in three parts, namely:

Part 1. Introduction	Paragraphs 2 - 4
Part 2. The facts	Paragraphs 5 - 22
Part 3. The appeal to the Court of Appeal	Paragraphs 23 - 45

Part 1. Introduction.

2. This is an appeal by the Secretary of State for the Home Department against a decision of the Upper Tribunal refusing to order that a foreign criminal be deported. The principal issue in this appeal is whether the Upper Tribunal was entitled to conclude that "compelling circumstances" existed sufficient to outweigh the high public interest in deporting foreign criminals. In these proceedings, the foreign criminal is MN-T. She was an appellant in the First-Tier Tribunal and respondent in the Upper Tribunal. I shall refer to her as "the claimant" in order to avoid confusion.

3. The Immigration Act 2014 amended the Nationality Immigration and Asylum Act 2002 by inserting a new Part 5A. Part 5A of the Nationality and Immigration Asylum Act 2002 ("the 2002 Act") 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).

117B Article 8: public interest considerations applicable in all cases:

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and
(b) are better able to integrate into society.

(3) It is in the "public interest", and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and (b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

...

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."

4. Rule 398 of the Immigration Rules is broadly to the same effect as sections 117A to C of the 2002 Act, as amended by the Immigration Act 2014. I need not therefore read out that provision of the Immigration Rules. Having set out the relevant provisions, I must now

turn to the facts.

Part 2. The facts.

5. The claimant is a citizen of Colombia. She was born on 27th May 1968, so she is now aged 48. She came to the United Kingdom in 1977 at the age of nine. She arrived in this country together with her mother and sister. On 25th September 1980 the claimant and her other family members obtained indefinite leave to remain.
6. The claimant had the benefit of an education in this country. Unfortunately, as a young adult she became involved in drug dealing. On 26th July 1999 the claimant pleaded guilty to supplying one kilogram of cocaine. She received a sentence of eight years' imprisonment. The judge recommended that the claimant be deported. The claimant duly served the first half of her sentence in prison. She was then released on licence in 2003.
7. On 23rd July 2008 the Secretary of State notified the claimant of his decision that the claimant's deportation would be conducive to the public good. The claimant appealed against that decision but her appeal was dismissed on 3rd March 2009. Notwithstanding that victory, the Secretary of State made no move to deport.
8. On 13th June 2012 the claimant applied for further leave to remain. She made that application on the following grounds as set out in her solicitors' letter. First, she said that she was rehabilitated and would have a low propensity to re-offend. Secondly, she said that there was a delay in implementing the decision to deport and taking any action thereafter. Thirdly, she had been resident in the United Kingdom since 1977, having arrived at the age of nine. Fourthly, she said that her mother had been diagnosed with dementia. She was under the care of the community mental health team. The claimant

said that she had received support and education on how dementia had affected her mother and she had received instruction as to the skills for coping with some of the behavioural symptoms of dementia.

9. The Secretary of State was unmoved by the grounds set out in that letter. The Secretary of State refused the application and indicated that she would make a deportation order. The claimant appealed against that decision to the First-Tier Tribunal.

10. The First-Tier Tribunal heard the appeal on 24th July 2014. At that date Immigration Rules 398 to 399(b) were in the form promulgated in July 2012. These are often referred to as the "2012 rules". The Immigration Act 2014 had not yet come into force. Therefore the First-Tier Tribunal was considering the claimant's appeal solely under the 2012 rules.

11. The First-Tier Tribunal heard oral evidence and it made a number of significant findings. I shall read out the paragraphs of the First-Tier Tribunal's decision which are of principal relevance to this appeal. I read them out because the findings of fact contained in these paragraphs have all been preserved by the Upper Tribunal:

> "28. We do not find that paragraph 399(b) applies. Although we accept that the Appellant and Mr Sanchez are in a genuine and subsisting relationship we are unable to find that the evidence goes so far as to show that they are "partners". They do not cohabit and they do not intend to marry. In fairness to the Appellant she did not seek to overstate her relationship with Mr Sanchez for fear of it being said that she was using it as ammunition to support her case. We will, however, consider their relationship as a feature of the Appellant's private life.
>
> ...
>
> 30. The Appellant has a long established private life in the UK which includes her work and her friendships. She has a relationship with Mr Sanchez which may in time lead to their marriage. We regard her relationship with Mr Sanchez as an important and developing part of her private life. She also plays an important role in the life of her mother, who suffers from dementia, and in the lives of her sister, her son and daughter in law and her grandchildren. We find therefore that those relationships form

part of her family life and part of the extended family life of her close relatives. We note that that finding is wider than that made by the Tribunal in 2009 who found only limited family life between the Appellant and her mother but we have taken into account the evidence before us and we are satisfied that the Appellant's family life has developed since January 2009.

...

36. We have taken into account the evidence in this case, much of which was unchallenged by the Respondent, and the submissions of both parties and we find that the following facts are of significance:

• The Appellant's work. It is her case that the Tribunal in 2009 did not consider all her work. We are not considering an appeal against that determination. We have taken into account the work that the Appellant has done since 2003, when she was released, and in particular that done since the hearing in 2009. The witness statements of Mr Langley, Ms Ishaque and Mr Ibrahim are of particular relevance in that they concentrate on their observations of the Appellant in recent years since the 2009 appeal. We consider that their evidence, together with that of other witnesses who speak of her work, is of weight in that it supports the Appellant's case that she is rehabilitated and that the risk of re-offending is therefore low.

• The Appellant has not re-offended.

• The Appellant's private life and family life in the UK has developed and strengthened in the past five-and-a-half years.

37. It is inevitable that such social and cultural ties as the Appellant has with Colombia have weakened over the years and, indeed, have weakened still further in the five-and-a-half years since the 2009 decision. Her immediate family are in the United Kingdom save for her father who has remarried. We accept the evidence that the Appellant has limited contact with him now."

12. In relation to delay, the First-Tier Tribunal said this at paragraph 42:

"No other explanation, reasonable or otherwise, has been put forward by the Respondent for the delay in this case. We have considered the case of EB Kosovo. We have already made findings of fact to the effect that in the years since 2009 the Appellant's private and family life has moved on and has strengthened. The progress she had made with rehabilitation in 2009 has been further consolidated. *EB Kosovo* also refers to a sense of impermanence being experienced by someone without leave to remain whose relationship will be under the shadow of severance by administrative order. Lord Bingham referred in paragraph 15 to this sense of impermanence fading as

months and then years pass."

13. The First-Tier Tribunal concluded that the claimant's Article 8 rights prevailed. Accordingly, the public interest in deportation was outweighed. The First-Tier Tribunal allowed the claimant's appeal.

14. The Secretary of State was aggrieved by that decision. Accordingly, she appealed to the Upper Tribunal.

15. The Upper Tribunal held a preliminary hearing, on a date which has not been disclosed to us, to determine whether the First-Tier Tribunal had made an error of law. The Upper Tribunal held that the First-Tier Tribunal had made certain errors of law and it fixed a date for a separate hearing for the purposes of remaking the decision.

16. The main Upper Tribunal hearing took place on 11th January 2015. By that date the Immigration Act 2014 had come into effect and the Immigration Rules had been amended so as to harmonise with the provisions of the new Part 5A of the 2002 Act.

17. The hearing before the Upper Tribunal proceeded on the basis of the facts as found by the First-Tier Tribunal. The debate centred upon legal argument and the legal consequences of those factual findings. The Upper Tribunal handed down its reserved decision on 23rd January 2015.

18. The Upper Tribunal dismissed the Secretary of State's appeal. In paragraph 17 of his judgment, Upper Tribunal Judge Moulden adopted the First-Tier Tribunal's findings of fact. In paragraphs 18 and 19 of his decision the Upper Tribunal judge correctly directed himself as to the effect of sections 117A to 117D of the 2002 Act, as amended by the Immigration Act 2014. He then continued as follows:

> "20. By reason of paragraph 117C I find that the deportation of the claimant is in the public interest. She committed a very serious offence and was

> sentenced to more than four years' imprisonment. As a result the public interest requires her deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
>
> 21. I find that Exception 1 applies because the claimant has been lawfully resident in the UK for most of her life. She is socially and culturally integrated in the UK. There would be very significant obstacles to her integration into Colombia. She has not lived there for 38 years. All her family and friends are here except for her father who has remarried and with whom she has very limited contact. She has no remaining contacts in that country and would find it very difficult to obtain accommodation and employment.
>
> 22. Exception 2 does not apply because the claimant is not in a genuine and subsisting relationship with a qualifying partner or a genuine and subsisting parental relationship with a qualifying child."

19. In paragraph 23, the Upper Tribunal Judge referred to the decision of the Court of Appeal in *MF (Nigeria) v SSHD* [2013] EWCA Civ. 1192; [2014] 1 WLR 544. After referring to that decision he stated quite correctly that the 2014 Rules and sections 117A to 117D of the 2002 Act, as amended by the Immigration Act 2014, formed a complete code.

20. In paragraph 24, the judge adopted what he had said in his error of law decision concerning the effect of delay. That passage in the error of law decision cited the decision in *EB Kosovo* [2008] UKHL 41; [2009] 1 AC 1159. That passage identified the different possible consequences of delay. It went on to criticise the Secretary of State for a period of delay here which was "inordinate" and "inexcusable".

21. At paragraphs 25 to 26 the Upper Tribunal Judge said:

> "25. It is clear that the claimant committed a very serious criminal offence resulting in eight years' imprisonment. She had pleaded guilty. As the judge's sentencing remarks in August 1999 make clear she played a major role in the importation of 1 kg of good quality cocaine then worth £25,000 at wholesale value and she must have been near to the source of these drugs in this country. He recommended that she be deported. In these circumstances the public interest requires her deportation unless she can show very compelling circumstances over and above those described in Exceptions 1

> and 2. She was released from prison in 2003 and has never re-offended. After that length of time the risk of reoffending must be very low. The Secretary of State did not start any action in relation to possible deportation until June 2008. There have been further delays since then. The claimant has built up a stronger private life and family life ties over a total period of approximately nine years between her release in 2003 and the decision under appeal in 2013.
>
> 26. I find that, to the standard of the balance of probabilities, the claimant has established that the low risk of reoffending, her rehabilitation and the extent to which her private and family life have grown over the period since her release and in particular the lengthy delays by the Secretary of State amount to very compelling circumstances over and above those described in Exceptions 1 and 2."

22. The Secretary of State was aggrieved by the Upper Tribunal's decision. She therefore appealed once again, this time to the Court of Appeal.

Part 3. The Appeal to the Court of Appeal.

23. The appeal has been argued today by Mr Andrew Sharland for the Secretary of State and Mr Gordon Lee for the claimant. I am grateful to both counsel for their concise and clear submissions, both in their skeleton arguments and at the hearing today. Conciseness and clarity are not a feature of every appeal in the field of immigration.

24. There are five grounds of appeal. They are as follows:

    (i) There is a material misdirection of law in relation to the assessment of public interest and the existence of very compelling circumstances. In particular the Upper Tribunal misdirected itself with regard to the risk of reoffending and failed to take into account relevant considerations when assessing the public interest.

    (ii) The Upper Tribunal failed to give adequate reasons in particular for its conclusion that the strength and ties amounted to very compelling circumstances.

(iii) The Upper Tribunal erred in law by taking into account the respondent's private life ties at two stages of its consideration, i.e. when concluding that the respondent's case fell within Exception 1 and also when considering the existence of very compelling circumstances.

(iv) There was a misdirection in law in considering the delay in the claimant's case.

(v) The Upper Tribunal failed to give adequate reasons for the finding that the claimant will face very significant obstacles to reintegrating in Colombia.

25. Those are the five grounds of appeal. For reasons not immediately obvious, the sequence and numbering of the appeals has changed somewhat in the skeleton arguments but I shall adhere faithfully to the numbering of the grounds of appeal in the Notice of Appeal.

26. I deal first with ground (i). The short answer to this ground is that the Upper Tribunal did not misdirect itself. The Upper Tribunal correctly identified the relevant statutory provisions. It correctly set out the principles of law which it was obliged to decide. The Upper Tribunal Judge correctly noted and directed himself as to the high public interest in deportation of foreign criminals. He correctly directed himself as to the nature of "very compelling circumstances" and there is no error in the legal part of the Upper Tribunal decision.

27. The real complaint here is that the matters upon which the judge alighted simply could not constitute "very compelling circumstances" of the kind referred to in section 117C(6) and, we would add, referred to again in Rule 398 of the 2014 Immigration Rules. This is clearly a case in which on the findings of fact made by the First-Tier Tribunal and the Upper Tribunal, the claimant had fulfilled the conditions of Exception 1 as set out in section 117C(4). However, since the claimant had received a sentence longer than four years' imprisonment, she was required to do more than that. She needed to show "very

compelling circumstances over and above those described in Exceptions 1 and 2".

28. At paragraph 26 of his decision, which I read out in part 2 of this judgment, the Upper Tribunal Judge set out what he regarded as the very compelling circumstances over and above Exception 1. Mr Sharland contends that the third of the four matters which the Upper Tribunal Judge identified in paragraph 26 of his decision was inadmissible at this stage of the analysis. Mr Sharland's argument is that the strength of the claimant's private and family life in this country formed part of the Exceptions defined in section 117C(4) and (5), therefore they cannot be taken into account as circumstances "over and above those described in Exceptions 1 and 2."

29. If the claimant were a person who only just satisfied the conditions of Exception 1, there would be much force in this point. But the claimant is not such a person. She satisfied the conditions of Exception 1 by a wide margin. Indeed on the date of her release from prison back in 2003 it appears that she already satisfied the conditions of Exception 1. She had lived in the United Kingdom for most of her life even discounting the time spent in prison. All of her links were with the United Kingdom and not with Colombia. So the claimant is a person who satisfied the requirements of Exception 1 many years ago. In the years since 2003 the claimant's private and family life in the United Kingdom has substantially increased, as explained by the First-Tier Tribunal. Therefore the Upper Tribunal Judge was entitled to take into account the post-2003 growth of the claimant's private and family life as a circumstance "over and above the matters described in Exception 1."

30. I come then to what both counsel agree is the crucial question in this appeal: was the Upper Tribunal entitled to treat the matters set out in paragraph 26 of the judge's decision as very compelling circumstances, sufficient to outweigh the public interest in deportation of the claimant as a foreign criminal? This is an evaluative exercise. The Tribunal must

look collectively at all the circumstances, both those within Exceptions 1 and/or 2 and those circumstances over and above the two Exceptions - see *JZ (Gambia)* [2016] EWCA Civ. 116 at paragraphs 28 to 32.

31. In carrying out that evaluative exercise, the Tribunal must have regard to the high public importance of deporting foreign criminals. This feature is enshrined in statute. Section 117C of the 2002 Act states that the deportation of foreign criminals is in the public interest. Therefore in carrying out the evaluative exercise the Tribunal or any decision maker must accord substantial weight to the policy enshrined by the legislature in statute that the deportation of foreign criminals is in the public interest. The decision maker must have regard not only to the matters set out in Part 5A of the 2002 Act as amended and in the 2014 Rules, but also in carrying out the evaluative exercise the decision maker must have regard to the Strasbourg jurisprudence on the operation of Article 8 in this field. In the present case, Mr Gordon Lee, who appears for the claimant, cited to the Upper Tribunal the case of *Maslov v Austria* [2009] INLR 47. He also cited the *Maslov* decision in this court. The *Maslov* judgment contains important and relevant guidance at paragraphs 68 to 76. In particular, at paragraph 73 of *Maslov* the Grand Chamber state:

> "In turn, when assessing the length of the applicant's stay in the country from which he or she is to be expelled and the solidity of the social, cultural and family ties with the host country, it evidently makes a difference whether the person concerned had already come to the country during his or her childhood or youth, or was even born there, or whether he or she only came as an adult. This tendency is also reflected in various Council of Europe instruments, in particular in Committee of Ministers Recommendations Rec(2001)15 and Rec(2002)4"

32. Now of course I accept that the provisions of Part 5A and the corresponding 2014

Immigration Rules form a complete code. That code requires evaluations to be carried out at various stages and when decision makers carry out such evaluations it is appropriate to do so having regard also to the Strasbourg jurisprudence.

33. It is significant in this case that the claimant came to the United Kingdom at the age of nine and she has lived here ever since. She is now aged 48. Therefore the observations at paragraph 73 of *Maslov* do have some relevance to the present case.

34. Mr Sharland submits that the claimant's rehabilitation is only of limited weight. In support of that submission, he cites the decision of the Court of Appeal in *OH (Serbia) v SSHD* [2008] EWCA Civ. 694. That was a case in which the appellant's efforts to rehabilitate himself were "almost heroic": see the judgment of Wilson LJ at paragraph 16. Nevertheless, the Court of Appeal upheld the Asylum and Immigration Tribunal's decision that those matters did not outweigh the high public interest in deportation.

35. I agree that rehabilitation alone would not suffice to justify the Upper Tribunal's decision in this case. If it had not been for the long delay by the Secretary of State in taking action to deport, in my view there would be no question of saying that "very compelling circumstances over and above those described in Exceptions 1 and 2" outweighed the high public interest in deportation. But that lengthy delay makes a critical difference. That lengthy delay is an exceptional circumstance. It has led to the claimant substantially strengthening her family and private life here. Also, it has led to her rehabilitation and to her demonstrating the fact of her rehabilitation by her industrious life over the last 13 years. This is one of those cases which is on the borderline. The Upper Tribunal might have decided either way. The Court of Appeal would not have reversed the Upper Tribunal's decision if the Upper Tribunal had decided that because of the high public importance the claimant must be deported. In the event the Upper Tribunal decided this

matter in favour of the claimant. This was, in my view, an evaluative decision within the range which the Upper Tribunal was entitled to make. I therefore conclude that the Upper Tribunal was entitled to hold that there were in this case very compelling circumstances over and above those described in Exceptions 1 and 2, which outweighed the high public interest in deportation. I therefore reject the first ground of appeal.

36. The second ground of appeal is a reasons challenge. It asserts that the Tribunal failed to give adequate reasons for its conclusion that the strengthened ties amounted to very compelling circumstances. In support of the second ground, Mr Sharland in his skeleton argument cites the well-known decision of the House of Lords in *South Bucks District Council and Porter No 2* [2004] 1 WLR 1953 in particular at paragraph 36 of the judgment of Lord Brown. I take into account those statements of principle made by the House of Lords. Nevertheless, applying those statements of principle it seems to me that the Upper Tribunal did give sufficient reasons for its decision that the strengthened ties amounted to very compelling circumstances. Certainly it did so when one bears in mind that the Upper Tribunal was not looking at the strengthened ties alone; it was looking collectively at a group of matters which together constituted very compelling circumstances. The First-Tier Tribunal has graphically described the strengthening of the claimant's social and family ties in this country during the period of the Secretary of State's delay. The Upper Tribunal has adopted those findings of fact.

37. Turning now to ground (iii), this is the double-counting argument which I have dealt with when discussing the first ground of appeal.

38. The fourth ground of appeal takes us into new territory. It is necessary for the purpose of this ground to consider the decision of the House of Lords in *EB Kosovo v SSHD* [2008] UKHL 41; [2009] 1 AC 1159. The appellant in that case came to the United Kingdom

from Kosovo, being a Kosovo-Albanian. She applied for asylum in September 1999. There was delay on the part of the Secretary of State who refused the application in April 2004. Therefore the total period was four-and-a-half years, not all of which would have been delay but some significant part would have been delay. So that was a case of lesser delay than the present case. The appellant challenged the refusal of asylum and humanitarian relief before the adjudicator, the Asylum and Immigration Tribunal and the Court of Appeal, at each stage without success. However, the appellant succeeded before the House of Lords. The only passage relevant for present purposes is the discussion of the effects of delay. At paragraphs 14 to 16 of his judgment, Lord Bingham identified three ways in which delay might be relevant. Only two are relevant for present purposes, therefore I shall read out the material parts of that passage:

> "14. It does not, however, follow that delay in the decision-making process is necessarily irrelevant to the decision. It may, depending on the facts, be relevant in any one of three ways. First, the applicant may during the period of any delay develop closer personal and social ties and establish deeper roots in the community than he could have shown earlier. The longer the period of the delay, the likelier this is to be true. To the extent that it is true, the applicant's claim under article 8 will necessarily be strengthened. It is unnecessary to elaborate this point since the respondent accepts it.
>
> 15. Delay may be relevant in a second, less obvious, way. An immigrant without leave to enter or remain is in a very precarious situation, liable to be removed at any time. Any relationship into which such an applicant enters is likely to be, initially, tentative, being entered into under the shadow of severance by administrative order.
>
> ...
>
> But if months pass without a decision to remove being made, and months become years, and year succeeds year, it is to be expected that this sense of impermanence will fade and the expectation will grow that if the authorities had intended to remove the applicant they would have taken steps to do so. This result depends on no legal doctrine but on an understanding of how, in some cases, minds may work and it may affect the proportionality of

removal."

39. In the present case, the Upper Tribunal found that delay was relevant in both of the first two ways identified by Lord Bingham - see the error of law decision at paragraphs 17 to 18 and the main decision at paragraph 19. Mr Sharland submits that the Upper Tribunal erred in taking account of the delay twice over. It should have limited this factor to the effect of strengthening family and private life ties.

40. In my view there was no error here. The Upper Tribunal found that delay operated in two of the three respects which Lord Bingham had identified in *EB (Kosovo)*. In both respects that delay was a factor in favour of the claimant. I reject therefore ground (iv) of the grounds of appeal.

41. I should perhaps add this in relation to delay. As a matter of policy now enshrined in statute, the deportation of foreign criminals is in the public interest. The reasons why this is so are obvious. They include three important reasons:

    1. Once deported the criminal will cease offending in the United Kingdom.
    2. The existence of the policy to deport foreign criminals deters other foreigners in the United Kingdom from offending.
    3. The deportation of such persons expresses society's revulsion at their conduct.

42. If the Secretary of State delays deportation for many years, that lessens the weight of these considerations. As to (1), if during a lengthy period the criminal becomes rehabilitated and shows himself to have become a law-abiding citizen, he poses less of a risk or threat to the public. As to (2), the deterrent effect of the policy is weakened if the Secretary of State does not act promptly. Indeed lengthy delays, as here, may, in conjunction with other factors, prevent deportation at all. As to (3), it hardly expresses society's revulsion

at the criminality of the offender's conduct if the Secretary of State delays for many years before proceeding to deport.

43. I turn finally to the fifth ground of appeal. This is developed in the skeleton argument but even Mr Sharland, with his diligence on behalf of the Secretary of State, was not inclined to develop this ground orally. Mr Sharland's case as set out in the skeleton argument is that the claimant can still speak Spanish, although not as well as she speaks English and she has a father in Colombia. The Upper Tribunal in those circumstances gave no proper reasons for finding that the claimant would face "very significant obstacles" in reintegrating in Colombia. Accordingly, if that point is a good one, it follows that the Upper Tribunal erred in deciding that the claimant was a person who fulfilled all the conditions of Exception 1 as defined in section 117C(4) of the 2002 Act, as amended by the Immigration Act 2014.

44. I do not accept this argument. The First-Tier Tribunal has found as a fact that the claimant had very little contact with her father. Apparently her father remarried and at the instigation of his second wife had minimal contact with his original family. The Upper Tribunal Judge adopted those findings of fact. He gave perfectly good reasons in paragraph 22 of his decision, which I have read out in Part 2 of this judgment, for finding that the claimant would face very significant obstacles in reintegrating in Colombia. This is unsurprising. She is a 48-year-old woman who has not been in Colombia since the age of nine and she has no social contacts in that country.

45. Let me now draw the threads together. I reject all five grounds of appeal. If my Lord agrees, this appeal will be dismissed.

LORD JUSTICE SALES:

46. I agree.