

SPECIAL IMMIGRATION APPEALS COMMISSION

Appeal No: SC/215/2024
Hearing Date: 6th June 2024
Date of Judgment: 25th July 2024

Before

**THE HONOURABLE MR JUSTICE JAY
UPPER TRIBUNAL JUDGE CANAVAN
MRS JILL BATTLE**

Between

H18

Appellant

and

**THE SECRETARY OF STATE
FOR THE HOME DEPARTMENT**

Respondent

OPEN JUDGMENT

Ms Amanda Weston KC and Mr Ali Bandegani (instructed by **Birnberg Peirce**) appeared on behalf of H18

Mr Robin Tam KC and Mr Karl Laird (instructed by the **Government Legal Department**) appeared on behalf of the Secretary of State

Ms S Rahman KC and Mr Dominic Lewis (assisted by **Special Advocates' Support Office**) appeared as Special Advocates

MR JUSTICE JAY

1. H18, a citizen of Sierra Leone, was born in the UK on 28 March 1992. He says that he has never left this country and there is no evidence to contradict him. H18's mother's immigration status was never regularised after her leave to remain ("LTR") in the UK expired (that was in December 2000). It follows that H18 has not had leave to remain in the UK since that date, although whether he has been here "unlawfully" is in dispute. The SSHD is not seeking to deport H18 on the basis that he is an overstayer but on the ground that deportation action would be conducive to the public good. H18 has not sought to regularise his immigration status beyond making an unsuccessful application for British citizenship in 2022. That was refused in October 2023 on bad character grounds.
2. H18 was brought up in difficult circumstances by a single mother with mental health difficulties. He was taken into care at the age of 11 and that has caused him obvious psychological difficulties. According to his witness statement, he has not had difficulty in holding down jobs in construction, groundwork and traffic marshalling. The first he learned that he was not a British citizen was in 2018 when he applied for a passport. From his perspective it is unfortunate to say the least that an application for registration was not made at a time he would have highly likely have obtained it.
3. H18 has a lengthy criminal record. He has convictions for offences of violence and for drugs. It is unnecessary to refer to all his convictions because we have seen a print-out from the PNC. Virtually all these offences were committed when H18 was a minor. Some of these are serious, including a conviction for attempted robbery in October 2007 and for robbery in November 2007. On 28 January 2011 at Croydon Crown Court H18 was convicted of offences of false imprisonment, having an imitation firearm with intent to commit an indictable offence, and robbery. These offences were all committed in June 2010 when he was just 18 and when he was on bail. He received a total sentence of 6 years' imprisonment in a Young Offenders' Institute and was not finally released until December 2015. H18 told us that he was released on licence in 2013 but was unjustly recalled.
4. The bundle also contains a police report which contains a "summary of non-convictions" relating to H18. Essentially, this material comprises a series of allegations against him which were not taken further. The most recent allegations were in 2019 and concern H18's then partner. Insofar as these non-conviction allegations relate to alleged criminal offences such as theft and non-domestic assault, we do not take them into account.
5. It is right to say, and to emphasise, that H18 has no criminal convictions since January 2011.
6. H18's personal circumstances have not been free from complexity. His partners/wives¹ have been MW, LX, FY and IZ. H18 has three children by LX and two by IZ. H18 accepts that his personal relationships have had their ups and downs. The Commission has seen a witness statement from LX stating that H18 is a loving father and denying any violence during the course of their relationship. However, the weight to be given to it must reflect the fact that she was not tendered for cross-examination. We will say more about IZ and her evidence in

¹ In order to avoid the possibility of "jigsaw" identification, we have replaced their real names with ciphers.

due course. At this stage we record that the elder child, MX, was born in December 2021 and the younger child, AZ, in July 2023. IZ also has three older children. H18's evidence is that before his arrest and detention he split his time between his previous address in Lewisham and IZ's home in Wembley.

7. On 15 November 2023 H18 was arrested on suspicion of rape and for possession of an offensive weapon, a lock-knife. The rape allegation was never taken further. A number of weapons were found at his home address in Lewisham. He was bailed for both offences the following day but before he was released he was detained under immigration powers, namely under para 2(2) of Sch 3 to the Immigration Act 1971. He was liable to deportation under the automatic deportation provisions as a "foreign criminal". H18 has remained in detention in HMP Belmarsh ever since, and on 26 February 2024 applied to this Commission for bail. SIAC has jurisdiction in this case because the SSHD has issued the necessary certificate under s. 3 of the SIAC Act 1997: that H18's detention is in the interests of national security.
8. The SSHD's certificate generated some discussion between the Commission and Mr Robin Tam KC. The SSHD has given Article 5(4) compliant disclosure which, despite complaint by Ms Amanda Weston KC on H18's behalf, provides him with sufficient information to contradict the SSHD's objections to bail, if so advised. The disclosure does not in fact reveal any national security case. The closest that we come to that is a reference to firearms, but without more this is not a national security case. It follows that the SSHD is in possession of other information relating to H18 which is not as yet relied on, even in CLOSED. We cannot speculate as to what that information may be. We decide this application solely on the material in the OPEN and CLOSED bundles.
9. Given that we are concerned only with H18's application for bail, it is unnecessary to set out the somewhat complex decision-making process in this case. There has been more than one deportation decision, and the first decision appears to have been made without reference to any CLOSED material. The First-tier Tribunal granted bail in December 2023 (for obvious reasons, without reference to any CLOSED material) but its decision has been superseded. As matters stand, the SSHD has only made a stage 1 decision. H18's human rights claim was not made until January 2024 and representations in support of it were not concluded until mid-April. We therefore cannot find that there has been any unacceptable delay on the part of the SSHD and those advising him. Even so, what we can take into account is that the decision-making process in this case, and the inevitable appeal should it be adverse to H18, will take some considerable time. It is highly unlikely that this Commission could reach a final decision in H18's case within less than 18 months. Although the strength of H18's case cannot be assessed at this stage, it is relevant that if bail were to be refused he would remain incarcerated in HMP Belmarsh, away from his family, for a considerable period of time.
10. The application for bail is supported by the evidence of H18 (who gave evidence from HMP Belmarsh via video-link) and from IZ (who appeared before us in person). We will come to address their evidence after summarising the SSHD's objections to bail.
11. The objections to bail fall under the various headings:
 - (1) Several allegations of domestic abuse when police were called took place between October 2016 and August 2019. There have also been allegations made by his current partner, IZ. In particular, LX made multiple allegations of domestic abuse, including an occasion in 2017 when H18 was alleged to have imprisoned her while she was 23 weeks pregnant. The allegations include common assault, false imprisonment and controlling

and coercive behaviour. LX's's brief witness statement fails to address these matters. On each occasion the person concerned withdrew the allegation or refused to co-operate with the police investigation.

- (2) When in prison H18 arranged for a Jewish prisoner to be attacked in his cell by two other prisoners.
 - (3) In October 2019 a stun-gun was seized from H18.
 - (4) When arrested in November 2023 a number of weapons were found at H18's home address. These included: a lock-knife (found in H18's holdall, and likely to be a work-related implement); three airsoft weapons and a number of airsoft magazines (H18 does not have membership of the UKARA, and it is assessed that he has illegally obtained imitation firearms); and a number of bladed weapons including a large machete, a credit card sized piece of material which could be folded into a knife, two knives in wooden sheaths, a ceremonial knife in a frame, and two kitchen-style knives.
 - (5) In June 2022, H18 took steps to fulfil an intention to commit violence against Sheffield-based individuals. In July 2022, H18 threatened to commit an act of violence.
 - (6) In 2023 H18 has been involved with Myiah Morrison who was ultimately convicted of possession of a firearm with intent to endanger life. H18's communications with Morrison may have been in the context of obtaining genuine firearms.
 - (7) H18's volatile and unpredictable nature, and his access to weapons, make him someone who represents a risk to the public in terms of the acts of violence in which he might engage.
12. We have examined all the OPEN evidence relating to these matters. In particular we have considered very carefully the police reports dealing with the various occasions on which H18's ex-partners called the police for assistance.
 13. H18's witness statement deals with these matters at some length and in some detail. By way of summary (and here we also refer to H18's oral evidence).
 14. H18 says that he turned his life around when in prison. In 2013 he converted to Islam having been brought up as a Christian.
 15. H18 accepts that he is prone to anger and volatility. He also accepts that LX's actions in calling the police enraged him and that his reaction to having the police called out because of him was angry and wrong. H18 denies acting in a controlling and coercive manner towards LX, although he accepts that he objected to her being around other men. He states that she was already an observant Muslim before he married her. He denies locking her in her room on 15 July 2017 and also denies that there was any proper basis for the police to be involved. He accepts that he has arguments with both MW and FY but denies that these deteriorated into violence. In short:

"Some of my relationships have been immature and I have gone into them but not had any real intention to make them permanent. As I have got older I have reflected and I accept that I have had issues with anger in my relationships which I needed help to resolve."
 16. H18 does not explain what help, if any, he has received to resolve his anger issues.
 17. H18 denies being involved in the incident involving the Jewish prisoner. We have seen the open gist of the material asserting that he did arrange it. H18 was not asked about this in cross-examination and we leave the matter there.

18. H18 was asked questions about the stun gun found at his home in October 2019. Although we are able to understand the reasons for not dealing with this issue in his witness statement, we consider that the answers he gave in cross-examination were evasive. Ultimately, H18 denied owning one. We doubt whether the police could be mistaken about this.
19. In terms of the weapons found at his house in November 2023, H18 denied that anything in his house is illegal. The airsoft equipment relates to the game, Paintball, which he plays with a group of friends. We are prepared to accept his evidence about that. He claimed that the machete was an "artefact", similar to the ceremonial knife from the Yemen which is in a glass frame hanging on a wall. Although the machete appears to have been found in a sheath it is separately described in the police exhibits list from the "status knife" (i.e. the Yemeni knife) in a glass frame. Overall, although it may be an exaggeration to say that H18 has been stockpiling weapons, there were a considerable number of items found at his home address which he could not adequately explain.
20. H18 was pressed by Mr Tam on the trip to Sheffield in June 2022. His witness statement refers to an attack by "big grown men" on a number of Muslim women. A video of it was posted on social media. He accepts that it was his idea to travel up to Sheffield, and he also accepts that when he first heard about the attack the purpose of the trip was to teach the assailants a lesson. H18 further accepts that there was a "lot of anger" and that he is capable of saying stupid things in the heat of the moment.
21. H18 had been informed that it was assessed that he would have intended using a weapon in connection with his intention to commit violence in Sheffield. It was for that reason that he was asked questions in cross-examination about having weapons on the trip, and his answer was that this was "definitely untrue" and that he had no weapons.
22. In cross-examination H18 did not accept that the motive was revenge. He would have "stopped the situation" in a physical way but he would not have attacked them. H18 denied that this was an extreme reaction. He accepts that he acted foolishly and that this was a job for the police.
23. In the end H18 and his associates never made it to Sheffield. Their car broke down en route. What would or might have happened had the vehicle got to Sheffield is a matter of speculative inference. The likelihood, of course, is that the assailants would never have been found. Had they been, there could well have been some sort of physical altercation leading to violence.
24. H18's witness statement addresses another incident in July 2022. H18 lost his mobile phone but he managed to track it to one of three flats opposite IZ's house in Wembley. H18 accepts that he went to speak to the occupants and they all denied it. At that point, he lost his rag but he did not get physical with anyone. In the heat of the moment, he texted a friend to say that he was going to start a war with "these Hindus". H18 now accepts that this was a stupid thing to say "but the point is that I did not carry it out and let it go". H18 later discovered on the tracking software that the device had travelled to India. It seems that H18's anger and threats did not translate into physical violence.
25. H18's witness statement also addresses Myiah Morrison. According to H18, he is someone who does not practise religion properly and is still involved in crime. H18's last interactions with Morrison were over the stocking and sale of perfumes. They were not about firearms. Frankly, H18's evidence about Morrison was not credible and we reject it.

26. Overall, H18's self-reflection is as follows:

"This is one of the things that religion has helped me with. I still get angry, react to situations immaturely and say stupid things but then the religion always pulls me back which is why I have not got into trouble still coming out of prison. I accept that I still have a lot to learn about Islam, and I have made mistakes in the past like in my relationships with women. I am always trying to learn but I accept I have so much more to learn."

27. The second witness we heard from was IZ. She gave her evidence in person in a calm and measured fashion. IZ was asked in particular about an incident which took place in 2021 when she was pregnant with MX. She took H18's phone to check what was on it. At some stage the door to the room was locked by her. H18 demanded the return of his phone and there was a lot of shouting. H18 kicked the door down and IZ threw the phone out of the window. Whilst all this was taking place the children were in their room. We deduce that they must have heard what was going on.
28. IZ denied that H18's reaction was extreme. She accepted that she kicked H18 out of the house after the incident, that he was gone for two weeks, and that after she spoke to her mother about the incident she made a "Clare's law" request to the police. Social workers were then involved. She denied that she had been frightened by what happened. She said that H18 gets annoyed rather than angry, and that she was "concerned" by this turn of events rather than frightened. The information she received in answer to the request to the police made her cautious not fearful.
29. IZ said that she did not know anything about weapons. She was aware of the ceremonial knife.
30. In her written and oral arguments Ms Weston submitted that H18 has not been convicted of a criminal offence since 2011 and that he has put his past behind him. H18 is certainly capable of displays of anger but he tends to shout his mouth off and stops there. His anger does not translate into physical violence. Ms Weston also submitted that IZ was a credible witness who has demonstrated her ability to manage and to take appropriate action in relation to those aspects of H18's behaviour she finds unacceptable. She has a high expectation of appropriate behaviour around the children, and she is able to impose those expectations on H18.
31. Ms Weston also stressed that H18 has a strong human rights case and that these proceedings are likely to take a considerable period of time to achieve resolution.
32. Mr Tam submitted that H18 is capable of volatile, extreme and unpredictable behaviour. The triggers can involve a religious element. He submitted that IZ was "dutifully downplaying" H18's behaviour and the effect of it on her and the children. He relied in particular on the Sheffield incident, what was found at H18's address in November 2023 and on H18's communication with Myiah Morrison which may have been in relation to obtaining genuine firearms.

Conclusions

33. There is a presumption of bail in H18's favour. We are required to have regard to the matters listed in para 3(2) of Schedule 10 to the Immigration Act 2016. The categories relevant to the present case include:
- (1) The likelihood of H18 failing to comply with bail conditions.
 - (2) Whether H18 has been convicted of an offence.
 - (3) The likelihood of H18 committing an offence whilst on immigration bail.
 - (4) The likelihood of H18 presenting a threat to public order.
 - (5) Whether H18's detention is necessary for the protection of others.
 - (6) Other relevant matters such as the length of time these proceedings are likely to take and the absconding risk.
34. Although H18 has a long criminal record, too much time has elapsed since 2011 to take it into account against him. Further, although there is evidence that H18 has been involved in the procurement and sale of counterfeit driving licences, the absconding risk, in and of itself, would not justify the refusal of bail.
35. Our assessment of H18 is that he has demonstrated a *degree* of self-reflection and greater maturity. He clearly had a troubled childhood and some of that has been put behind him. We emphasise that this is still very much work in progress. Although his anger often fizzles out (e.g. in particular his reaction to the loss of his mobile phone in July 2022, but there are other examples), he was unable to control himself when it came to knocking down the door of the room in which IZ was scrolling through his phone (although there is no evidence that he physically attacked her), and in deciding to embark on that trip to Sheffield.
36. IZ's evidence provided us with a modicum of reassurance but not to the extent suggested by Ms Weston. We think that she was certainly fearful during the course of the incident involving the phone and the door, and that she was downplayed H18's violent tendencies. We are prepared to accept that IZ's relationship with H18 has improved since his relationship with LX finally ended. We are also prepared to accept that, notwithstanding the risks, IZ is content to have H18 back in the family home. Overall, we have concluded that this is not a case where bail should be refused for the protection of IZ and the children. It is a factor which weighs, by itself, quite modestly in the balance.
37. Although Mr Tam sought to hive off the issue of bail conditions, we think that we must have regard at this stage to the sort of conditions that could be imposed to address the risk. Bail cannot be envisaged purely in the abstract. IZ cannot offer a valuable surety, but we would have in mind matters such as a residence condition (i.e. living with IZ), a curfew and an electronically monitored tag. It would also be possible to devise a set of conditions which addressed the possession and use of electronic devices. The SSHD might have additional conditions in mind but they are unlikely to add much to what we have outlined.
38. The matters which continue to cause us concern are the Sheffield incident, the discovery of weapons at H18's home address in November 2023, and his association with Myiah Morrison. Although in one obvious sense the Sheffield incident could be described as a "fool's errand", because it was unlikely that the assailants would ever be found, it is relevant that it is assessed that H18 would have intended to use a weapon in relation to the Sheffield incident. Further, we cannot accept some of H18's explanations for what was found at his home address in November 2023, and we certainly cannot accept the perfume story in relation to H18's dealings with Myiah Morrison. We conclude that the SSHD is right in saying that the subject-

matter of the discussion was firearms, and that they may have been in the context of *obtaining* genuine firearms.

39. The Chair said during the course of the hearing words to the effect that H18 would have to be acting irrationally were he to breach any bail conditions by, for example, committing criminal offences or acting inappropriately towards IZ. Unfortunately, however, whether in a criminal or an immigration context people do act irrationally and impulsively, and in a fashion that could not necessarily be anticipated by the police. Given H18's character and temperament, and in the light in particular of his interest in weapons and firearms as well as the assessment that H18 would have intended to use a weapon in relation to the Sheffield incident, we have reluctantly reached the conclusion that the risk he represents to public safety cannot safely be managed by imposing the sort of bail conditions we have outlined.

40. It follows that bail must be refused.