



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-001859

First-tier Tribunal No: RP/00102/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:

15th November 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

TB
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Timson instructed by Crystal Solicitors.
For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 26 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. In a decision promulgated on 16 June 2023, following a hearing at the Manchester Civil Justice Centre, the Upper Tribunal allowed the appeal of the

Secretary of State against the decision of a judge of the First-tier Tribunal who allowed TB's appeal against the decision to revoke his refugee status dated 3 September 2019 and refusal of an application made on human rights grounds, dated 11 October 2019, by TB in support of his claim to be entitled to an exception to the provisions of the UK Borders Act 2007 requiring his deportation from the United Kingdom.

2. TB claimed he was born on 6 February 1974 in Kosovo although also claimed to be of Albanian ethnicity who originated from Mitrovica.
3. TB arrived in the UK on 16 June 1997 and claimed asylum the following day. He was granted refugee status and indefinite leave to remain in the UK on 6 May 1999 due to his family's involvement with the Kosovan Liberation Army.
4. On 17 April 2018 TB was convicted at Manchester Crown Court for conspire/supply controlled drugs, Class B, and sentenced to 6 years imprisonment.
5. On 23 August 2018 TB was served with a notice of decision to deport him under the provisions the UK Borders Act 2007.
6. On 7 November 2018 TB was served with Notification of Intention to Cease Refugee Status.
7. On 9 February 2019 a signed deportation order was obtained and served upon TB on 5 February 2019, together with the Notice of Revocation.
8. TB's challenge to the decision to revoke his refugee status was dismissed by the First-tier Tribunal on the basis the change of circumstances in Kosovo is durable and that there has been no real risk of persecutory ill-treatment since May 2019. It is recorded at [18] of the Error Law finding that there was no cross-appeal to challenge the Secretary of State's conclusion of material change in Kosovo or that TB is not entitled to a grant of refugee status.
9. The First-tier Tribunal Judges findings in relation to section 72 certificate were found to be within the range of those reasonably open to that court on the evidence.
10. Following the error of law hearing further documentary evidence has been provided by TB all of which has been considered in detail even if not specifically mentioned in the body of the determination.
11. The remaining issue for the Upper Tribunal to consider on this occasion relates to the human rights element of the appeal, both within and outside the Immigration Rules.

Legal provisions

12. Although relevant legal provisions can be found both within the Immigration Rules and section 117 of the Nationality, Immigration and Asylum Act 2002 it was found by the Upper Tribunal in Binaku (s.11 TCEA; s.117C NIAA; para 399D) [2022] UKUT 34 9IAC) that the only framework needed is that to be found in Part 5 A. The relevant sections of the head note of that judgement being:

The substantive issue: the relationship between Part 5A of the NIAA 2002 and the Immigration Rules

(1) By virtue of section 117A(1) of the 2002 Act, a tribunal is bound to apply the provisions of primary legislation, as set out in sections 117B and 117C, when determining an appeal concerning Article 8.

(2) In cases concerning the deportation of foreign criminals (as defined), it is clear from section 117A(2)(b) of the 2002 Act that the core legislative provisions are

those set out in section 117C. It is now well-established that these provisions provide a structured approach to the application of Article 8 which will produce in all cases a final result compatible with protected rights.

- (3) It is the structured approach set out in section 117C of the 2002 Act which governs the task to be undertaken by the tribunal, not the provisions of the Rules.*
- (4) A foreign criminal who has re-entered the United Kingdom in breach of an extant deportation order is subject to the same deportation regime as those who have yet to be removed or who have been removed and are seeking a revocation of a deportation order from abroad. The phrases “cases concerning the deportation of foreign criminals” in section 117A(2) and “a decision to deport a foreign criminal” in section 117C(7) are to be interpreted accordingly.*
- (5) Paragraph 399D of the Rules has no relevance to the application of the statutory criteria set out in section 117C(4), (5) and (6);*
- (6) It follows that the structured approach to be undertaken by a tribunal considering an Article 8 appeal in the context of deportation begins and ends with Part 5A of the 2002 Act.*

13. Part 5A of the Act reads.

PART 5A ARTICLE 8 OF THE ECHR: PUBLIC INTEREST CONSIDERATIONS

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.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
 - (b) it would not be reasonable to expect the child to leave the United Kingdom.

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.

117D Interpretation of this Part

- (1) In this Part—
 - “Article 8” means Article 8 of the European Convention on Human Rights;
 - “qualifying child” means a person who is under the age of 18 and who
 - (a) is a British citizen, or
 - (b) has lived in the United Kingdom for a continuous period of seven years or more;
 - “qualifying partner” means a partner who—
 - (a) is a British citizen, or
 - (b) who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 — see section 33(2A) of that Act).
- (2) In this Part, “foreign criminal” means a person—
 - (a) who is not a British citizen,
 - (b) who has been convicted in the United Kingdom of an offence, and
 - (c) who—
 - (i) has been sentenced to a period of imprisonment of at least 12 months,
 - (ii) has been convicted of an offence that has caused serious harm, or
 - (iii) is a persistent offender.
- (3) For the purposes of subsection (2)(b), a person subject to an order under—
 - (a) section 5 of the Criminal Procedure (Insanity) Act 1964 (insanity etc),
 - (b) section 57 of the Criminal Procedure (Scotland) Act 1995 (insanity etc), or
 - (c) Article 50A of the Mental Health (Northern Ireland) Order 1986 (insanity etc),has not been convicted of an offence.

- (4) In this Part, references to a person who has been sentenced to a period of imprisonment of a certain length of time—
- (a) do not include a person who has received a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect);
 - (b) do not include a person who has been sentenced to a period of imprisonment of that length of time only by virtue of being sentenced to consecutive sentences amounting in aggregate to that length of time;
 - (c) include a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders) for that length of time; and
 - (d) include a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period, provided that it may last for at least that length of time.
- (5) If any question arises for the purposes of this Part as to whether a person is a British citizen, it is for the person asserting that fact to prove it.

Discussion and analysis

14. In his opening submissions Mr Tan referred to the established principle that it was for the appellant to establish his case. He referred to the nature TB's criminal conviction and highlighted the very strong public interest arising from the deterrent effect of deportation in a case such as this.
15. In relation to his conviction, TB committed a very serious offence of the production and supply of cannabis on a commercial scale.
16. As noted by section 117C(1), the deportation of foreign criminals is in the public interest, and, at 117(2), the more serious the offence committed by a foreign criminal, the greater is the public interest in the deportation of the criminal.
17. To understand the scale of offending it is necessary to set out in detail the Crown Court sentencing remarks. TB was sentenced, along with another, by HHJ Cross QC sitting at the Manchester Crown Court on 17 April 2018.
18. In the sentencing remarks HHJ Cross QC stated:

"... It is said by the prosecution that this was a national conspiracy to produce, package and sell industrial quantities of cannabis. It is also said that at least twenty-seven people were involved from farmers to managers, quarter-master's and directors. It is important, though, to recognise that there are within the number of defendants that I have had to sentence those that do not easily sit within that definition. Many of the conspirators are Albanian nationals, who had either been over in the UK for some time before the conspiracy started or who had been brought over for the purposes of joining the conspiracy. Many had their passports and other identity documents taken off them by other members of the conspiracy higher up as a form of security. There were many false identity documents too, predominantly in Greek names to mask or disguise the operation and the true individuals involved. There was phone evidence found of Albanians being brought into the country for cash.

This was a wide ranging conspiracy. It involved at least eleven cannabis farms around the North West of England in Crumpsall, Moss Side, Wythenshawe, Stretford, Salford, Droylsden, Rochdale, Wilmslow, as well as Rotherham and Sheffield in Yorkshire. This was a conspiracy that involve not only the production of cannabis in an operation which, to adopt the words used in the guidelines, “for production of a controlled drug,” was an operation capable of producing industrial quantities on a commercial scale, but also included dealing of cannabis in kilogram amounts. This took place in areas such as Manchester and Sheffield, but also further south in Swindon.

I accept the submission made by the Crown that these farms, in houses the likes of which had not been seen before in terms of sheer size and production capacity, all available space was used up in many of the houses, right into the lofts. During the course of the trial of two conspirators, the jury and I were shown a compilation film produced by the police. The film demonstrated, in my judgement, quite how sophisticated this operation was. From the outside the houses appeared quite normal, the farms arranged in terms of the number of plants from 82 at Dawlish Avenue in Droylsden to as many as 804 plants in one single house in Moss Side.

The production capacity was massive, with evidence of previous crops and embryonic crops, as well as fully grown plants. Supporting this has been a huge ongoing business. It is important to recognise that those who organised this conspiracy were determined to ensure its longevity, this was not a conspiracy that was to last for a short period. The organisation of the conspiracy proves that aspect beyond reasonable doubt. The runners and financiers of the conspiracy made it their business to make sure that the rent was paid on time for each house so as not to attract suspicion; electricity meters were invariably bypassed, where the amount of bills evaded ran into thousands of pounds, as can be seen from the schedule which was given to the Court.

During the course of the hearing, I heard representations made as to the question of yield and the value. Yield and value are of course important factors that must be taken into account and in this regard the Crown contends through the statements and the evidence that the potential yield of the Tisdale Farms was about £5m-£6m which takes it comfortably into Category 1 in the sentencing guidelines, where the indicative amount is 200 kg of cannabis. The potential yield of each farm was worked out from the items found in them and from how long the conspirators must have been using the house. At Delorney(?)’s in Crumpsall, the one farms there had a potential yield of over £900,000.

On the other hand, the defence, through statements, claim that the yield was much lower. In this regard, though, there are a number of factors which must be taken into account: First, in my judgement, this was a case which could be distinguished from those cases where an identified amount of drug is seized, where, for example, a particular seizure has been made or a consignment intercepted. In those cases, the amount of drug is finite. Here, the circumstances of this offending, so far as those defendants concerned with production are concerned, is infinite.

In my judgement, this was an operation capable of producing industrial quantities for commercial use. These were farms which were designed to be successful. This was no amateurish escapade, where detection was inevitable. Nor was this a conspiracy of short duration. The duration of the conspiracy was over a long period of time indeed, some two-and a half years from April ‘14 to October ‘16. The production and supply was very sophisticated, with large amounts of expensive hydroponic and other equipment being installed in the houses.

Of itself this is not exceptional for such is the way of the cannabis farm. Here, though, there were examples of structural work being carried out as well to prepare the farms. For example, in the first of the farms at 12 Milnrow and Sheffield walls were knocked through. D. C. Chinnery noted that there were hallmarks by way of

some very unusual transformers and lighting equipment and overall setups, indicating that all the farms were linked. They came to be described as 'Tisdale Farms' after the name of the operation, where very many police were involved in tackling the conspiracy.

The conspirators used many different vehicles and mobile phones, several of which were disposed of after key events, such as arrests, to frustrate the investigations by the police. The phones used were invariably basic: black Nokia 105's, which were mostly prepaid unregistered, again, to frustrate the police, phone number, if not handsets, would be dropped or changed when arrests or seizures were made to frustrate the police and evade detection.

On one occasion conspirators' vehicles were driven over the Pennines in a convoy after the arrest of Denad(?) Hojur(?) to be disposed of by another conspirator, Leqaj(?), who ran a vehicle business. Another hallmark of this conspiracy was that the drugs and cash would often be backpacked and seized in Sports Direct's bags which had been obtained by some of the conspirators ostensibly for legitimate market business.

This, then, was no haphazard operation each farm ran to a prescribed method from the use of the same equipment, growing methods, farming itself and regime adopted by the farmer. This, then, was truly commercial farming and consequently commercial supply. To those that organised this conspiracy, they were able to supply large wholesale amounts into the drugs supply chain and would be able to guarantee repeat business.

In due course it is necessary for me to consider the applicability of the sentencing guidelines. In this regard, though, there are a number of factors which must be taken into account: this is a conspiracy; second, it is for some offenders an operation to which to a limited extent the rubric to both the guidelines for supply and production is applicable. In my judgement, as I have already indicated, this was an operation on the "most serious and commercial scale," and this thus in my judgement takes the sentencing exercise outside the confines of the guidance.

In addition to those factors of seriousness which I have already identified, there are other aggravating factors: first, this was a criminal enterprise carried out by and large by those who are in this country illegally; secondly, without exception, those entrusted with the farming were also illegal immigrants and I have no doubt they were actively recruited on trips to Albania, to the extent this was an international operation; the organisation thus was largely confined to trusted Albanian nationals able to communicate the one with the other in their native tongue.

I now turn to these two defendants. You [TB], have pleaded guilty to Count 1 on a limited basis and yesterday I indicated, having heard the evidence in your case, that I did not accept that basis. I am satisfied that you are involved in this conspiracy for as long as Denad(?) Hojur(?), as long as Talant(?) Hojur(?) And longer than him to the extent that you carried on the dealing thereafter, thus you played a leading role.

There are a number of factors which I have already indicated I take into account. The telephone evidence demonstrates by way of its frequency, pattern, timing, duration, location, sequence and triangulation of calls that you are at the heart of this conspiracy. Once Denad(?) Hojur(?) was arrested, you took and Talant(?) Hojur(?) you took over from him, the call pattern switches from your calling Hojur(?), Denad(?) Hojur(?), to Talant(?) Hojur(?) You were in close personal contact with Denand(?) Hojur(?), Meeting him at various locations. So, I am absolutely satisfied from the evidence that you are at the heart of this conspiracy. I am, though, not able on the evidence to come to the conclusion that you were the absolute ringleader.

On behalf of you the following submissions have been made of importance: you have good character, a family man, who had been industrious. In your case, though, I must reflect the fact that you continued the conspiracy after the arrest of others.

19. Having concluded TB played a leading role in the conspiracy, and despite his antecedents and plea of mitigation, he was still sentenced to a period of six years imprisonment. It is not disputed before me that the Secretary of State's power to deport TB under the automatic deportation provisions arises on the facts. Any leave previously granted to TB has been curtailed.
20. TB's case is that he is entitled to remain in the United Kingdom when the facts of this matter are properly considered.
21. As TB has been sentenced to a period of imprisonment in excess of four years the public interest requires his deportation unless there are very compelling circumstances over and above those described in Exceptions 1 and 2 of section 117C.
22. In relation to section 117 B, it was not disputed before me that TB's partner, KK, works full-time with TB supplementing the family income from his occasional work, it was not submitted that he is a burden on the taxpayer or that he is not integrated into UK society. His relationship with KK was formed at the time he had lawful leave to remain by way of his refugee status and indefinite leave to remain.
23. The starting point under Section 117 C is therefore to consider whether TB can succeed on the ether of the exceptions and to ascertain, if not, why.
24. In relation to Exception 1 it is recorded at [51] of the error of law finding that it had not been advanced on TB's behalf that he could meet the private life exception to be found in section 117C(4) that remains the position before me today.
25. In relation to Exception 2 it was not disputed either before the First-tier Tribunal or before me that TB has a genuine and subsisting relationship with both his partner, KK, and their son KB. That in isolation is not, however, enough. Exception 2 will only apply where (a) TB has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and (b) the effect of TB's deportation on the partner or child would be unduly harsh.
26. In HA (Iraq) v Secretary of State for the Home Department [2022] UKSC 22 the Supreme Court endorsed the formulation of 'unduly harsh' at [46] that unduly harsh "does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. 'Harsh' in this context, denote something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the verb "unduly" raises an already elevated standard still higher".
27. It was not made out before the First-tier Tribunal or me that KK would not be able to relocate with TB to Kosovo per se, despite lack of experience in living in that country, or facing insurmountable obstacles or circumstances that were unduly harsh in her own right. It was also not made out that KK, a Latvian national, would not be able to continue her family life with TB in Latvia or any other EU state, subject to the granting of necessary permits/permissions to TB which may be impacted by his criminal conviction.
28. The strongest point raised on TB's behalf is that the effect of his deportation will be unduly harsh upon their son TB in either the 'stay' or 'go' scenarios.
29. In relation to TB, it is necessary to quote extensively from the Error of Law finding where this element was discussed. In that decision it was written:
 34. The first report headed 'Initial Psychology Assessment' dated 7 April 2021 was prepared by Shazia Khwaja who is described as a Senior Practitioner and

Psychologist. The Judge does not challenge the status of the author of the report but considers as valid the 28 April 2021 criticism made of the report, that the author appears to go well beyond her remit and expertise and to have taken not only TB's narrative of past events at face value, but also the slant TB seeks to put on those past events [112]. That finding is sustainable as a reading of the report shows no legal error in the same. The reference in the report to the Education Health and Care Plan in respect of KB, reference to KB's diagnosis of Autism Spectrum Disorder (ASD) is not disputed, nor the Judge's finding that KB requires particular stability, routine and consistency in order for him to be able to cope and function properly, which is normally the situation for a child diagnosed with ASD.

35. What the Judge found particularly persuasive is the content of section 7 of the report in which it is written:

In the professional opinion of the author, TB's deportation may result in severe issues for both his son and partner. The inconsistency in care has the potential to lead to significant behavioural issues that may be both aggressive and self-inflicted. KB [the child] is comfortable with the strategies implemented by TB. He further perceives him as the constant figure present within his home. He facilitates all care, and support. His absence may lead to severe anxiety with the potential of long term mental health issues. These coupled with his diagnosis of Learning Disabilities, ADS and physical health needs, could be detrimental to both physical and psychological growth. His emotional dependency on TB is great. In addition K's [TB's partner] work schedule means that she will be unable to provide her son with the appropriate support, without it impacting on them financially. It would therefore be in the opinion of the author that great thought be given to this case, in relation to evaluating the benefits of allowing TB to remain in the United Kingdom on the grounds of mental and physical health associated with his close fully dependent relatives. He had indefinite leave to remain and had been an upstanding citizen until his unwise decision led to the custodial sentence in 2018.

TB have lived and called the United Kingdom home for in excess of 18 years, having lived, begun a family here in the United Kingdom. He has duly paid taxes into the economy and been self-reliant. The family have a significant case on the grounds of the Human Rights Act (1998), in particular article 8 (human rights protected by law); 13 (Freedom to Move); 14 (Right to seek a safe place to live); 25 (Food and Shelter for all) and 30 (No one can take away your human rights). TB should not be deported to a country from where he sought asylum on the premise of safety to his life.

36. This is clearly a report tainted by Ms Khawaja advocating the case on behalf of TB rather than providing a clearly independent view, supported by case related findings. The conclusion is also based upon supposition of what might possibly happen, conjecture, and unsupported by a demonstration of the objectivity of the author.
37. The Judge did, however, have the benefit of a second report, from Dr Sarah Whitaker, a Consultant in Child and Adolescent Psychiatry, dated 21 September 2021, which the Judge found to be of "measured and of acceptable quality", unlike that of Ms Khawaja [116].
38. The report is not extensive but confirms that Dr Whitaker did have a letter written by KB's head teacher dated 29 January 2021, a letter from the Newbury Green Medical Practice dated 29 January 2021, discussions with TB and his wife on 20 September 2021, together with being able to assess KB on the same day.
39. The purpose of the assessment is stated to be an assessment of the possible consequences on KB's mental state if his father should leave the family home.
40. The report reads as follows:

Background

KB is a 5 year old male who is the only child of Mr and Mrs B. He attends Bracknell Community Primary School.

TB describes noting that from an early age there had been concerns about KB's development with him not achieving developmental milestones at the anticipated time.

He is described as struggling with changes and requiring a routine to be in place as without this it can provoke emotional outbursts.

In a letter provided from his GP it states that KB has multiple mental and physical health needs. This is take the form of lower limb abnormalities which impairs his mobility and results in repeated falls. He is waiting for further input around this from a specialist.

He is under the care of community paediatrics also has speech and language difficulties.

A letter by Matt Thompson, Head Teacher, Bretnall Community Primary School 29 January 2021 this confirms the diagnosis of Autistic Spectrum Disorder and that KB has an Education and Healthcare Plan (EHCP) in place. It also describes the loving relationship KB has with his father who takes a very active role in his education.

Mrs B gave an account of her job. She works full-time and often has to work double shifts to a total of 24 hours. Although a devoted and caring mother due to the number of hours she has to work to provide for the family TB is the main care giver for KB. This also strengthens the relationship TB has with his son and highlights the need for the family to stay together.

TB takes a lead role in taking KB to school and takes an active role in his education. It is also highlighted the joy KB gets when he sees his father at the school gates at the end of the day.

On examination

KB was dressed in nightclothes which was appropriate for the time of the assessment. He was well kempt. He was with both his parents during the review. He avoided eye contact initially and hid his face cuddling into his father's shoulder which was appropriate to do so for his age. He looked happy and relaxed with his father. He appeared bright in mood. His interactions with his parents were warm and comfortable with KB responding well to interactions and reassurance given around being assessed by myself who he had not met previously.

Opinion

KB is a 5-year-old boy with a history of both physical and mental health difficulties. He has also been diagnosed with of Autistic Spectrum disorder.

Autistic Spectrum Disorder is a type of pervasive developmental disorder that is defined by:

- (a) The presence of abnormal or impaired development that is manifest before the age of three, and
- (b) in all the three areas of psychopathology: reciprocal social interaction, communication, and restricted, stereotyped, repetitive behaviour. In addition to these specific diagnostic features, a range of other

nonspecific problems are common, such as phobias, sleeping and eating disturbances, temper tantrum, and (selfdirected) aggression.

A prominent feature in young people with Autistic Spectrum Disorder is the need for routine becoming emotionally aroused and distressed if there are changes to circumstances, situation or routine. This is described clearly in KB's behaviour by his family.

For a young person a family member no longer being in the family home is devastating emotionally with children presenting with depression and anxiety. And can lead to mental health consequences both in the immediate term and in later life in the form of mood and behavioural disturbance.

To focus on KB, he has a caring father-son relationship. From information provided and cited above it is clear that TB provides considerable input to KB's daily routine such as taking him to school and to medical appointments. This clear constant input from a specific caregiver is comforting to KB who due to neurodevelopmental difficulties struggles with changes in circumstances and routine.

If his father was to leave the family home suddenly and in a distressing manner this would impact considerably on KB's behaviour and emotional well-being. This would impact negatively on his outgoing development and emotional maturation.

It is essential at this stage of his life that KB requires a stable caregiver who can provide consistent involvement and input in his life growing up.

It is important to note the time KB has with his father together due to his mother working full-time forms an even closer bond between father and son. This also highlights the impact it would have on KB's mental state of his father was not in his life.

Conclusion

To conclude KB is a 5-year-old male who has a diagnosis of Autistic Spectrum Disorder. He has a close loving relationship with his father who due to his mother's long working hours is the main caregiver. Young people with KB's difficulties require consistency and routine in their life. To emphasise if his father was to leave the family home it would have a marked consequence on KB's mental well-being. It would lead to distress, KB struggling to regulate his emotions and anxiety. It would impact on his future life such as him struggling with relationships, potentially academically and socially as well as lacking a strong male role model in his life.

Every effort should be made to keep the family together as a unit to maintain the consistency KB requires to develop and maintain a full and happy life.

30. It is noted in the Error of Law decision that KK's place of employment, Meadows Care, looks after children and young people who cannot remain in their family home and who need specialist therapeutic care, indicating that KK will have considerable experience of helping young people with special needs who may need a greater input than others, such as KB. Insufficient evidence has been adduced before the Upper Tribunal with the latest hearing to warrant a finding in the alternative. It was clearly accepted previously, remains the case, that KK is loving and devoted parent who shares care for her son with TB.
31. One issue that arose at the error of law stage is a failure to consider issue of the impact upon KB holistically. It is not disputed that autistic people can find any kind of change difficult. Reference is made in the Error of Law decision to guidance being provided by the National Autistic Society dealing with change which sets out strategies to deal with change including finding out about the change, such as what is involved and when they are going to take place. The guidance provides coping strategies to reduce the impact upon an individual of removal of someone who will no longer form part of the autistic person's life over a period of time, getting the autistic child familiar with the revised process. Although there was insufficient evidence on a practical level of what strategies were adopted when TB was in prison it is clear that KK was able to manage the situation such that there is no evidence of KB suffering an unduly harsh impact. I do accept, however, there was the opportunity at that time for KB to visit TB in prison.
32. The Autistic Society guidance refers the issue of official support and involving the right people. It was not made out before me that KK would not be able to reduce working hours, replacing the role undertaken by TB, or that to do so would result in unduly harsh consequences for the child if properly managed.
33. It was accepted that the error of law decision states that if TB is deported there is a possibility that KB may be faced with a situation akin to bereavement which may include expressions of anger, restlessness, changes in sleeping and eating patterns, increased dependence upon his mother, the loss of previously displayed skills and confidence, and that he may find it difficult to express his own feelings about TB not being there. It was noted in the error of law decision, however, that the National Autistic Society again provides guidance to help a child through such a situation.
34. It was therefore clear to all the parties having read the error of law decision that there were further aspects that need to be examined in detail, based on evidence that was not before the First-tier Tribunal. To that end TB has provided an addendum report written by Dr Sarah Whitaker dated 25 September 2023. At that date KB was seven years and eight months of age.
35. Dr Whitaker under the heading "Purpose of report" writes:

This is to clarify points in my previous reported dated 21 September 2023 (sic).

This is to give additional support and weight to the need for TB to remain in the country due to the impact leaving with have on his son, KB.

As stated, KB has a confirmed diagnosis of Autistic Spectrum Disorder. People with this condition struggle with several elements of their life this includes struggling to adapt to change. TB leaving the family home and the country with uncertainty about when he will see his father again (if at all) will understandably be a huge concern for KB.

There are websites and organisations which give information and suggestions on how to help people with autism adapt to change. It is essential to remember that these are suggestions and guidance, they are not individualised for the young person.

Whilst again these strategies could be attempted to or put in place it is my opinion that the loss of his father or disruption of his current routine in the UK will have long lasting damage to KB's mental state and life as a whole.

It remains of my view that KB's mental state would be impacted on greatly if his father was to leave the country.

I am mindful that KB is older than when my initial report was completed. Now that he has grown up, he will be much more aware of the loss of his father and the need for a strong role model is needed more so than ever.

36. It is accepted the reference in the report to the 21 September 2023 report is a typographical error as the addendum report has that date. It was accepted that the purpose of Dr Whitaker's addendum report is to clarify points in her earlier report which has been considered.
37. Dr Whitaker was clearly aware of the reference in the error of law decision to websites and organisations providing information and suggestions out to help people with autism to adapt to change. It is accepted that those sites are not individualised to a young person but that does not devalue the guidance that they provide from an established charity whose purpose is to deal with and assist those with autistic spectrum disorder.
38. What the report does not do is provide sufficient evidence to show that if such strategies are put in place KB would not be assisted with TB's removal or be able to adapt to the necessary change.
39. Dr Whitaker refers to the fact that KB's mental state will be impacted on greatly if his father was to leave the country. That is not disputed. When Mr Timson was asked whether there was evidence as to what degree that will be, he could not assist as there is no specific evidence to which he could refer. I do not dispute that there will be an impact upon KB and that his father's deportation will be harsh upon the child. What I do not find has been made out on the evidence is that deportation will be unduly harsh when applying the correct legal test.
40. I accept that the best interests of KB are to be able to remain in the UK with both parents present in a stable relationship to assist him, to which I have given considerable weight in relation to the impact of not being able to enjoy such an arrangement. I do not, however, find that to be determinative when assessing the impact of TB's removal.
41. The medical evidence is limited, there has been no further assessment by Dr Whitaker. Based upon the addendum report, little extra information has been provided, and as submitted by Mr Tan it appears to be based upon an assumption that the support mechanisms available to TB will not be able to assist him.
42. The view that TB's deportation would be detrimental to TB is repeated in the letter written by the Head Teacher of TB's Primary School, dated 25 September 2023, which also refers to TB being a hands-on parent, dropping the child off every day, and taking an interest in his son's education, which is not disputed. It was not made out however that KK does not take a similar interest when she is able to do so or that she could not undertake the tasks on a full-time basis if TB is deported.

43. I find in light of the available evidence that it has not been made out that it will be unduly harsh for KB to remain in the United Kingdom, the 'stay' scenario, with his mother KK, if TB is deported.
44. I therefore find it is not made out that TB is entitled to rely upon either Exception 1 or 2 section 117 C of the 2002 Act.
45. In relation to section 117C(6) it is necessary for TB to establish that even though he cannot meet the exceptions there are very compelling circumstances over and above those described in Exceptions 1 and 2 .
46. Here the test is somewhat different. In considering the Exceptions and the settled test for whether deportation is 'unduly harsh' there is no assessment of the nature of the offending or balancing exercise weighing the impact of deportation against the offending and conviction. This is particularly important in a case involving a child, as the child cannot be blamed for the action of his or her parents.
47. In relation to the public interest, it is settled law that the public interest "almost always" outweighs countervailing considerations of private or family life in a case involving a 'serious offender' - Hesham Ali at [46] and KO (Nigeria) at [34], - but the public interest is not a monolith and must be approached flexibly, recognising that there will be cases (albeit unusual) where the person's circumstances outweigh the strong public interest in removal - see Akinyemi v The Secretary of State for the Home Department [2019] EWCA Civ 2098 (04 December 2019)
48. The term "very" imports a very high threshold and "compelling" mean circumstances which have a powerful, irresistible and convincing effect - see Secretary of State for the Home Department v Garzon [2018] EWCA Civ 1225.
49. Notwithstanding that it is an extremely demanding test it is still necessary to holistically evaluate all relevant factors including those which might already have been assessed in the context of the 'exceptions'. It is settled law that the wide-ranging evaluation must include an application of principles and the Strasbourg authorities and in HA (Iraq) the Supreme Court endorsed the approach taken in UNUANE v the United Kingdom - 80343/17 (judgement: remainder inadmissible: Fourth section) [2020] ECHR 832 at [72] that following Boultif and Uner the following factors will include:

The nature and seriousness of the offence committed by the applicant.

In the current appeal TB committed very serious offence of the substantial production of illegal drugs on a commercial scale. It is accepted that drugs have a devastating effect not only on individuals but also the community, including the cost to the police, NHS, and those adversely affected by crimes committed by drug used to fund their habits.

The length of the applicant's stay in the country from which he or she is to be expelled

TB has been in the UK for a long time. That is not disputed as the chronology above demonstrates. The suggestion that the decision in Maslov creates a presumption in the migrant's favour was rejected by the Supreme Court in Sanambar v Secretary of State the Home Department [2021] UKSC 30.

The time elapsed since the offence was committed and the applicant's conduct during that period.

It was submitted on TB's behalf that he has a low risk of offending and that since he was released on licence he has not offended. There is within the bundle a letter from a Probation Officer dated 24 April 2023. This confirms that TB was released from prison in July 2020. The Offender Manager states that he has attended all appointments offered and engages well with supervision sessions and states that in the opinion of the author of the letter it will have a detrimental effect upon TB and his wife as "*...they have a great partnership and rely solely on one another to care for their child. It will be of no benefit to deport them from the countries the child was born here and his wife is not from the same country as him. Deporting them would force the whole family into poverty as it is not his wife's home country and she does not speak the language and would therefore struggle to work*".

The letter appears to go beyond reporting upon TB's conduct during the time of his supervision. It was not made out that KK could not function outside the UK, but it is accepted that it be unduly harsh for KB to have to leave the UK which means he will remain here with his mother, as a result of which the concerns expressed in the letter have no application.

Nationalities of various persons concerned

TB is a national of Albania. KK is a national of Latvia.

The applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couples family life.

TB and KK are in a genuine and subsisting relationship with each other and have been for some time. They have a very effective family life together which has only been placed under threat as a result of TB's criminality.

Whether the spouse knew of the offence at the time when he or she entered into a family relationship

It is not made out that this is relevant when considering the factual matrix of the date the parties met and its relationship to the commission of the offences.

Whether there are children of the marriage and, if so, that age

See above in relation to KB.

The seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled

It has been found it would not be unduly harsh for KK to relocate with TB to Albania. The undue harsh aspect arises in relation to KB having to relocate to Albania.

The best interests and well-being of the children, in particular the seriousness of the difficulties

See above.

50. It is known that cannabis farms are often linked to other forms of serious and organised crime and provide profits for further crime. Sometimes those working in the farms are victims of modern slavery. Drug addiction is an illness affecting thousands of people across the UK. It is a devastating illness that consumes those affected to the point where they are no longer able to think about anything else. This type of addiction affects the people taking the drugs as well as their family members and friends. Drug deaths as well as the economic cost is a serious issue supporting Submission about the strong public interest in deterring others from being involved in the wholesale production of drugs or their supply.
51. I do not find it made out that there are very compelling circumstances over and above the exceptions per se or that the case advanced by TB is sufficient to outweigh strong public interest argument relied upon by the Secretary of State. The UK Borders Act states the Secretary of State must be brought overriding that requirement is made out. On the facts of this appeal, having considered all the evidence and submissions made, and do not find the appellant has proved his case. On that basis I dismiss the appeal.

Notice of Decision

52. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 November 2023