**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: IA/05060/2015**

**THE IMMIGRATION ACTS**

| **Heard at Manchester** | **Decision & Reasons Promulgated** |
|---|---|
| **On 23 October 2017** | **On 24 October 2017** |

**Before**

**Deputy Upper Tribunal Judge Pickup**

**Between**

**NM**
[Anonymity direction made]

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the appellant: Mr B Bundock, instructed by Bail for Immigration Detainees
For the respondent: Mr C Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Lloyd promulgated 17.1.17, dismissing his appeal against the decision of the Secretary of State, dated 28.1.15, to refuse his protection claim.

2. The Judge heard the appeal on 5.1.17.

3. First-tier Tribunal Judge Gillespie granted permission to appeal on 12.7.17.

4. Thus the matter came before me on 23.10.17 as an appeal in the Upper Tribunal.

**Error of Law**

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision of Judge Lloyd should be set aside.

6. In granting permission to appeal, Judge Gillespie considered that the first ground of appeal was arguable, namely that the judge erred in law in considering and addressing evidence of the appellant's mental ill-health. However, permission was not restricted and the second ground is that the article 8 assessment was flawed.

7. The Rule 24 response, date 3.8.17, submits that the grounds amount to a mere disagreement with the weight given to the medical evidence. Whilst the judge accepted at [49] that the appellant had a genuine and subsisting relationship with his children, at [60] he found that it would not be unduly harsh for the children to continue in the UK without the appellant.

8. The main focus of the grounds is the treatment of the medical evidence. However, this has to be seen in the context of the evidence as a whole and the fact that the appellant was appealing against a deportation decision, made after his sentence of 7 years' imprisonment for wounding with intent to do grievous bodily harm. There were strong public interest factors in favour of deportation. For his part, the appellant complained that he would lose contact with his three children, resident in the UK.

9. The judge properly had regard to the Immigration Rules and that the appellant's removal is conducive to the public good. Outwith the considerations under paragraph 398 and 399, deportation will only be outweighed where there are very compelling circumstances. Within 399, the judge considered whether it would be unduly harsh for the children to live in the UK without their father. As far as private life is concerned the issue was whether there were very significant obstacles to his integration in the country of return. The judge also considered s117C of the 2002 Act, when applying the public interest.

10. The judge addressed the medical evidence from [71] onwards. The fact is that the appellant was in remission and doing well, was not under the care of a psychiatrist and was being treated by his GP with a low dose of anti-psychotic medication, so that his mental disorder is well-controlled. The judge took into account Dr Bell's evidence, but regarded some of the evidence speculative as to what might happen on return. Even if the precise medication is not available, the appellant had failed to show that other treatment would not be available and effective; there was no evidence to that effect. The Judge concluded that the appellant failed to show that his mental health problems could not be treated in the DRC, and thus that there are no very significant obstacles to his integration in the DRC. Those were all findings open to the judge.

11. Of the appellant's three children, one is in foster care and the other two are with their mother, with whom he is no longer in a relationship. The appellant has only supervised access to the children for 12 hours a year and they had already been

without his involvement for a number of years. His contact is primarily by social media, which could be pursued outside the UK. The judge also accepted that having been in the UK since the age of 14, and agreed that he had both private and family life which would be interfered with by his deportation. However, their best interests would be to remain in the UK. Given the very limited contact, the judge found that it would not be unduly harsh for them to remain in the UK without his very limited involvement in their lives.

12. Mr Bundock complained that there was no consideration of the mental health issues when considering the appellant's article 8 private life. He submitted that it should have been considered not under the head of very compelling circumstances, but in relation to article 3 and 8 ECHR. However, I am not satisfied that the order in which it was considered is material. Taken as a whole and looking at the circumstances of the appellant in the round, it is obvious that these were insufficient to defeat deportation, either on the basis of a human rights claim, or on a consideration of very compelling circumstances to outweigh the public interest in deportation, in effect a proportionality assessment. Perhaps the decision could have been better structured, but I am reminded of the recent decision of the Court of Appeal in In AS (Iran) [2017] EWCA Civ 1539: "In approaching criticism of reasons given by a First-tier Tribunal, the Respondent correctly reminds us to avoid a requirement of perfection. As Brooke LJ observed in the course of his decision in *R (Iran) v The Secretary of State for the Home Department* [2005] EWCA Civ 982, "unjustified complaints" as to an alleged failure to give adequate reasons are all too frequent. The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. If a Tribunal has not expressly addressed an argument, but if there are grounds on which the argument could properly have been rejected, it should be assumed that the Tribunal acted on such grounds. It is sufficient that the critical reasons to the decision are recorded. In respect of each of these grounds of complaint, the Secretary of State submits that perfectly acceptable reasoning was set out in the First-tier Tribunal decision."

13. The reality of this case is that the appellant faced a very high threshold to defeat the public interest in deportation, such that unless it would be unduly harsh for a child or partner to continue living in the UK without the appellant, only very compelling circumstances over and above those described in 399 would prevail. As it happens, it would appear that because of the length of sentence, paragraph 399A in relation to private life and very significant obstacles to integration did not apply to a person subject to deportation following a sentence of 4 or more years.

14. However, it is clear from the decision read as a whole that the judge has given anxious consideration to all of the appellant's circumstances, including his private life and his mental health issues. The grounds essentially disagree with the form or structure of the decision and the judge's treatment of the mental health evidence. To that extent it is little more than a disagreement with the judge's findings on the mental health evidence, which were open to the judge and for which cogent reasons have been provided. I cannot accept a submission that the decision is irrational or

perverse. In short, on any realistic assessment of the evidence, the appellant failed to demonstrate circumstances sufficient to establish a human rights claim or very compelling circumstances other than those in addressed relation to private and family life to outweigh the very significant public interest in deportation. As Mr Bates pointed out, the medical evidence could not meet the high threshold for article 3 and it is only rarely that a medical condition that does not meet article 3 can result in success under article 8.

**Conclusion & Decision**

15. For the reasons summarised above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I continue the anonymity order.

**Fee Award** **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I make no fee award.

Reasons: No fee is payable.

**Signed**

**Deputy Upper Tribunal Judge Pickup**