



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/12698/2018**

**Appeal no:**

**THE IMMIGRATION ACTS**

**Heard At Field House**

**Decision and Reasons**

**Promulgated**

**On 26 March 2019**

**On 12 April 2019**

**Before:**

**LORD UIST (sitting as a Judge of the Upper Tribunal)  
UPPER TRIBUNAL JUDGE PITT**

**Between:**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**HASSAN AHMED  
(ANONYMITY ORDER NOT MADE)**

Respondent

**Representation:**

For the appellant: Mr Melvin, Senior Home Office Presenting Officer  
For the respondent: Miss Nicolaou of Counsel instructed by Turpin & Miller LLP

**DECISION AND REASONS**

- 1.** This is an appeal by the Secretary of State against the decision of the First-tier Tribunal (Judge M A Khan) dated 28 January 2019 to allow the appeal by the respondent, a citizen of Bangladesh born on 10 September 1996, against the decision of the appellant dated 10 October 2017 to deport the respondent as a foreign criminal whose presence in the United Kingdom is not conducive to the public good.
- 2.** The basis of the appeal is that there is no evidence within the determination that the judge considered the mandatory requirements of sections 117A to 117D of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") although he stated at paragraph 60 that he had

considered section 117A and 117B of the 2014 (*sic*) Act. He should have first ascertained whether the appellant was a foreign criminal in terms of section 117D and, if he was, whether exceptions 1 and 2 of section 117C were met. In respect of exception 1 he failed to consider whether the respondent was socially and culturally integrated in the United Kingdom and whether there were very significant obstacles to his integration in Bangladesh. In particular, he failed to apply the reasoning in the case of *Secretary of State for the Home Department v Kamara* [2016] EWCA Civ 813. In respect of exception 2 under section 117C(5) he failed to ask whether the effect of the respondent's deportation on his partner would be unduly harsh. He also erred in finding that deportation would be disproportionate in the circumstances under article 8 of the European Convention on Human Rights.

3. In reply the respondent submitted that, while it is correct to say that the judge did not explicitly make reference to the words "very significant obstacles to reintegration" that test was referred to in the respondent's skeleton argument, which the judge said at paragraph 25 of his determination that he had taken into account. In light of the evidence accepted by the judge and his findings there could be no doubt that he found the respondent to be culturally integrated in the UK and that he would find very significant obstacles to reintegration in Bangladesh. The judge had engaged with the requirements of section 117 in his determination, having made extensive reference throughout to the public interest in deportation (paragraphs 55-58) and specifically referred to section 117 at paragraph 60.
4. Further and in the alternative, if the judge did make errors in law they were not material. As stated by the Court of Appeal in *IA (Somalia) v Secretary of State for the Home Department* [2007] EWCA Civ 323, an error of law will be regarded as material unless the decision-maker must have reached the same conclusion without the error.
5. In our opinion it is plain, from a reading of the judge's decision that, for the reasons given in the submission by the appellant, the judge did make a material error of law by not carrying out the core exercise which he required to carry out under section 117C of the 2002 Act. It is not possible to read into this decision that there was an assessment of whether the appellant met the exceptions set out in section 117C and also not possible to conclude that the appeal had to be allowed notwithstanding that error of law. We shall therefore set aside his decision and remit the case to the First-tier Tribunal for a fresh hearing before a different judge.

### Decision

The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be re-made *de novo* in the First-tier Tribunal.

Signed:   
Upper Tribunal Judge Pitt

pp LORD UIST (Sitting as a Judge of the Upper Tribunal)  
10 April 2019

Dated: