CASE HISTORY:
Court of Appeal (Civil Division) decision
Upper Tribunal (Immigration and Asylum Chamber) decision

MM (UGANDA) v SECRETARY OF STATE FOR THE HOME DEPARTMENT (2016)

CA (Civ Div) (Laws LJ, Vos LJ, Hamblen LJ) 20/04/2016

IMMIGRATION - HUMAN RIGHTS

DEPORTATION : FOREIGN CRIMINALS : IMMIGRATION POLICY : PROPORTIONALITY : RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE : NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002 s.117C(5), s.117C(1), s.117C(2), s.117C(4) : EUROPEAN CONVENTION ON HUMAN RIGHTS 1950 art.8

A court or tribunal considering whether deportation would be "unduly harsh" under the Immigration Rules r.399 and Nationality, Immigration and Asylum Act 2002 s.117C(5) had to have regard to all of the circumstances, including the deportee's criminal and immigration history. The more pressing the public interest in removal, the harder it was to show that the effects of deportation would be unduly harsh.

The Court of Appeal was required to determine the meaning of "unduly harsh" in the Immigration Rules r.399 and the Nationality, Immigration and Asylum Act 2002 s.117C(5) in two conjoined appeals concerning the deportation of foreign criminals.

Under the Immigration Rules r.399 and s.117C(5), of the 2002 Act the public interest required a foreign criminal's deportation unless, where he had been sentenced to prison for between one and four years and had a genuine and subsisting relationship with a partner or child, the effect of deportation would be unduly harsh. In the first appeal, the secretary of state appealed against the Upper Tribunal's finding that the respondent Ugandan national (M) should not be deported. M had arrived in the UK in 1990, and had a daughter. He was convicted of supplying Class A drugs and received a 22-month prison sentence. He appealed against deportation to the First-tier tribunal. The FTT applied the old Immigration Rules in error, and placed great weight on M's daughter's emotional development, concluding that deportation would breach ECHR art.8. The UT dismissed the secretary of state's appeal, finding that although the FTT had applied the wrong Rules, the error was not material given that the FTT's standout finding was the devastating impact that deportation would have on the daughter's emotional development. In the second appeal, the appellant Nigerian national (K) appealed against his deportation. He had been living in the UK illegally, and had a wife and five dependents. In 2011 he was convicted of fraud and sentenced to 20 months' imprisonment. He appealed against his deportation to the FTT, which found that it was in the public interest not to take away the family's stability. The UT allowed the secretary of state's appeal, holding that the seriousness of a foreign criminal's offence should be taken into account in an assessment of whether deporting him would be unduly harsh for his wife and children.

The issue was whether the seriousness of the offence was relevant when deciding if deportation was "unduly harsh", or whether MAB (para 399: Unduly Harsh: US) [2015] UKUT 435 (IAC) had been correct to find that the phrase did not import a balancing exercise between the public interest in deportation and the effect on the child/ partner, and that the focus should be exclusively on the effect of the innocent child/partner.

HELD: The Immigration Rules were a complete code for assessment of an art.8 claim with regard to deportation, LC (China) v Secretary of State for the Home Department [2014] EWCA Civ 1310, [2015] Imm. A.R. 227 followed. In both appeals, the issue was the meaning of "unduly harsh". The reference to "unduly harsh" in s.117C(5) and r.399 had the same interpretation. It was an ordinary English expression, and its meaning was coloured by its context. That context invited emphasis on two factors: the public interest in removal of foreign criminals, and the need for a proportionality art.8 assessment. The importance of removing a foreign criminal in the public interest was emphasised in s.117C(1). Under s.117C(2), it was clear that the more serious the offence committed by a foreign criminal, the greater the public interest in deportation. That steered the court towards a proportionality assessment. Accordingly, the more pressing the public interest in removal, the harder it was to show its effects would be unduly harsh. The relevant circumstances included the deportee's criminal and immigration history. The UT had wrongly decided MAB, MAB overruled. In determining whether deportation was unduly harsh, a court or tribunal had to have regard to all the circumstances, including the deportee's criminal and immigration history. Further, in M's case, the tribunals had not considered s.117C(4), namely whether M had been lawfully resident in the UK for most of his life and was socially and culturally integrated in the UK. The secretary of state's appeal with regard to M was allowed and remitted to the UT. K's appeal was dismissed.

Appeals allowed in part

Counsel:
For the secretary of state: Lord Keen of Elie~ QC, Marcus Pilgerstorfer
For M and K: Ian Macdonald QC

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