MN-T (COLUMBIA) v SECRETARY OF STATE FOR THE HOME DEPARTMENT (2016)

CA (Civ Div) (Jackson LJ, Sales J) 17/06/2016

IMMIGRATION - HUMAN RIGHTS

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

The Upper Tribunal had been entitled to find that there were very compelling circumstances over and above the exceptions described in the Nationality, Immigration and Asylum Act 2002 s.117C(4) outweighing the strong public interest in deportation of a 48-year old Columbian woman who had lived in the UK since the age of nine and had served eight years in prison for a drugs offence. Those circumstances were the strong family ties she had built in the UK, her low risk of reoffending, her rehabilitation and the Secretary of State for the Home Department's long delay in attempting to effect deportation.

The appellant secretary of state appealed against the Upper Tribunal's decision that there were very compelling circumstances outweighing the strong public interest in the claimant foreign criminal's deportation.

The claimant, who was from Columbia, had been born in 1968 and had arrived in the UK at the age of nine. She obtained indefinite leave to remain in 1980. She became involved in drug dealing and pleaded guilty to supplying cocaine, for which she received an eight-year sentence. She was released in 2003. The secretary of state informed her that she would be deported, but made no further effort to do so. In 2012, she applied for further leave to remain. The secretary of state sought to deport her and she appealed to the First-tier tribunal. The FTT found that she had a long established private life in the UK, had worked hard since being released, had been rehabilitated, had immediate family in the UK, and could find no explanation for the secretary of state's delay. It held that her ECHR art.8 rights prevailed. The Upper Tribunal dismissed the secretary of state's appeal. It considered the Nationality, Immigration and Asylum Act 2002 s.117C, finding that the s.117C(4) exception had been met: the claimant had been lawfully resident in the UK for most of her life, she was socially and culturally integrated in the UK, and there would be very significant obstacles to her integration into Columbia. The UT also found, under s.117C(6), that such compelling reasons over and above the exceptions in s.117C(4) existed, namely the claimant's strong family ties, the low risk of her reoffending, and the long delay by the secretary of state in attempting to effect her removal, so as to outweigh the public interest in deportation.

The secretary of state submitted that the UT had (1) made a material misdirection of law with regard to its consideration of the public interest; (2) failed to give adequate reasons with regard to the claimant's family ties; (3) been wrong to consider delay as a very compelling circumstance; (4) failed to give adequate reasons in finding that there were very significant obstacles to the claimant's reintegration in Columbia.

HELD: (1) The UT had not misdirected itself. It had correctly identified the relevant statutory provisions and principles of law. The secretary of state's real complaint was that she did not believe that there had been very compelling circumstances of the kind referred to in s.117C(6). On the findings of fact, the claimant had fulfilled the conditions of the first exception as set out in s.117C(4). However, as she had received a sentence of longer than four years, she had to show very compelling circumstances over and above that exception. The secretary of state argued that at that point her family life should not have been taken into account as it already formed part of the s.117C(4) exception. If the claimant had been a person who only just satisfied the s.117C(4) exception, there would be much force in that argument. However, she satisfied the conditions by a wide margin. Since 2003 her family life in the UK had become stronger and the UT had been entitled to consider that as a circumstance over and above the matters in the s.117C(4) exception. In carrying out such an evaluative exercise, a tribunal had to have regard to the strong public interest in deporting foreign criminals. The decision maker should not only consider the 2002 Act and the Immigration Rules, but also Strasbourg jurisprudence. It was relevant whether a claimant had come to the country when young or as an adult, Maslov v Austria (1638/03) [2009] I.N.L.R. 47 considered. It was significant that the claimant had arrived in the UK at the age of nine, and was now aged 48. Rehabilitation alone would not suffice to justify the UT's decision. The lengthy delay in the secretary of state's decision to deport had made a critical difference. It had led the claimant to substantially strengthen her private life, and be able to demonstrate her rehabilitation and her industrious work ethic. The case was borderline: if the UT had decided that she should have been deported the Court of Appeal would not have reversed that decision. However, its finding in the claimant's favour was within the range of decision that it had been entitled to make.

(2) The FTT had graphically described the way that the claimant's family ties had strengthened since she had been released from prison. The UT had adopted those findings of fact.

(3) Delay was relevant in that it allowed the claimant to develop close social ties and if the authorities had intended to remove her, it was expected they would have taken steps to do so earlier, EB (Kosovo) v Secretary of State for the Home Department [2008] UKHL 41, [2009] 1 A.C. 1159 followed. The UT had been entitled to consider it a relevant factor. The rationale behind the public interest in deportation was prevention, deterrence, and to express society's revulsion at the crime. If the secretary of state delayed deportation for many years then that lessened the weight of those considerations.

(4) The secretary of state argued that the claimant could speak Spanish and had a father in Columbia and thus it could not be said she would find it difficult to integrate. The court disagreed. The UT had accepted that the claimant had very little contact with her father. She was a 48-year-old woman who had not been to Columbia for 39 years. The appeal was dismissed.

Appeal dismissed

LTL 19/6/2016

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