

Deportations and Crime: UK Court of Appeal decides

By Vitalis Madanhi

No one wants to be in trouble with the law particularly if this leads to deportation. A number of people have been arrested for traffic offences. These could range from driving without a licence, driving without insurance or offences of driving with excess alcohol and other motoring offences. Others are arrested whilst working without the requisite status documents. Those offences tend to give rise to a whole range of matters including immigration status and some long forgotten minor or major offences are dug out. When that happens one needs friends and family to turn to for help. In the majority of cases the family becomes paramount not only in terms of support but also in terms of preventing deportation.

The case of *SS (India) and the Secretary of State* highlights how the family, some traffic offences and a serious offence all got interwoven in a deportation appeal. The Court of Appeal dissected and ventilated the whole case and ushered in a new chapter for a distressed family man whose imminent deportation had to be halted. The facts of this case can be summarised as follows:

Mr S, an Indian national entered the UK unlawfully in 1984 and he remained in the UK for a long time without leave. In 1988 this man committed a crime of rape. The victim had wanted to purchase a pair of jeans from a market stall where Mr. S worked. He told her that she could safely try on the jeans in a lorry to which he took the victim. The rape was reported at the time and swabs were taken and DNA samples kept. However Mr. S was not arrested and tried for the crime until 2006. Meanwhile, Mr. S got married in 1991 to a fellow Indian national who was resident in the UK. When he got married, as could be expected, he did not disclose the rape he had committed. She was unaware of this offence until Mr. S was arrested in 2006. The parties meanwhile had two children together. The wife and the children had status in the UK and by then had become British citizens.

In 2005 Mr. S attempted to regularise his immigration status in the UK. He submitted an application for indefinite leave to remain on the ground of long residence. Before his application for indefinite leave to remain was decided, he was arrested in respect of offences of driving with excess alcohol and other motoring offences. On arrest DNA samples were taken. In due course a match was made in relation to the rape offence in February 1988. It was at that stage that Mr. S was arrested for that offence in 2006. He pleaded guilty to the charge of rape and he was sentenced to 4 years and six months imprisonment and was also registered on a sex register for life.

In 2008 his application for indefinite leave was refused and he was duly given a notice of intention to deport. His application for indefinite leave was refused on the grounds of his conviction of the rape offence. This became a suitable case for deportation in the eyes of the Secretary of State for the Home Department. This was so due to many negative factors against Mr. S, such as rape, traffic offences, criminal convictions, term of imprisonment and the fact that he had spent his youth and formative years in India he was expected to go to India and settle with his family. He was expected to go to India and live there with his two children and wife.

The deportation appeal came before the courts. The Immigration and Asylum Tribunal concluded that deportation was necessary because of the seriousness of the offences irrespective of the family life established. The case was heard by Senior Immigration Judges

and the High court and it all appeared that the fate of Mr. S was sealed. When the matter came before the Court of Appeal, issues relating to the well being of Mr. S family and children took centre stage. The best interests and well being of the children, in particular the seriousness of the difficulties which the children of the applicant were likely to encounter in India were examined in favour of Mr. S. The solidity of social, cultural and family ties with the host country were taken on board. The repugnancy of banishing children settled in the UK into exile not of their choice was considered.

The Court of Appeal made a detailed and anxious consideration of whether it was reasonable and proportionate for the children of Mr. S and his wife who had lived all their lives in the UK, to immigrate to India in order that there be a family life with all the parties physically together in India. The court of appeal ruled that the Tribunal court had erred by concluding somewhat lamely that there could be some degree of family life through "modern means of communication" and possibly visits to India. The court took note of the fact that the children were extremely close to their father and would need his guidance in all big decisions in their life. The Judges emphasised that it will rarely be proportionate to uphold an order for removal where it severs a genuine relationship with a spouse or child. In that case the court made it clear that in deportation cases the legitimate aim is the prevention of crime and disorder and whereas in removal cases it is the maintenance of effective immigration control. Thus in the case of Mr. S the correct test in relation to the effect of a possible family breakdown in a deportation case and the legitimate aim of deportation for the prevention of crime and disorder was properly applied. The Court of Appeal emphasised the effect of the deportation of Mr. S to India on his children.

In this matter the Court of appeal ruled that it was not convinced that when the balance is struck it would inevitably be on the side of deportation. The Tribunal had erred to sanction deportation without considering the impact to his family. The court was critical of the Tribunal's cursory examination of the question of whether it is reasonable to expect British citizens and long term residents (both spouses and children) to relocate to a "foreign" country if a family is to be deported. The courts should analyse the social effect on the children of being "wrenched from their social milieu in the UK".

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