

Automatic Deportation from the UK: adults, juveniles and families

Section 32 of the UK Borders Act 2007 applies to all those who have received a sentence of imprisonment of at least 12 months after 1 August 2008 or is in custody pursuant to such a sentence on that date and had not been served with a notice of deportation before then. Such a person is defined as a foreign criminal and must be made the subject of a deportation order unless an exception applies under s.33. The three most common exceptions are:

Exception 1: removal would breach a person's Convention rights within the meaning of the Human Rights Act 1998 or the Refugee Convention 1951 (s.33(2)).

Exception 2: the person is under 18 (s.33(3)).

Exception 3: removal would breach the rights of the foreign criminal under the Community Treaties (s.33(4)).

This is basically the position regarding automatic deportation from the UK. A number of people of various categories are currently facing deportation solely because they have been sentenced to a term of imprisonment of at least 12 months. This applies irrespective of the nature of the offence or whether the person who committed any such an offence is settled in the UK (has indefinite leave to remain in the UK) or not. People do commit offences without planning them and as a result this would have a great impact to the families formed in the UK and the ties established with the UK.

To understand the implications and operation of the automatic deportation provisions, it is worth considering the decision in the case of ***Sanade and others (British children - Zambrano - Dereci) [2012] UKUT 00048 (IAC)***

In the above decision the court had the opportunity to consider three cases at once and gave different decisions dependent on the nature of the offence and the individual circumstances of each case.

I will outline briefly the circumstances of each case so that people do understand the operation of automatic deportation in the UK. Mr and Mrs Sanade both originate from India. They were granted leave to enter or remain in the United Kingdom for employment as nurses in the National Health Service. The judge's sentencing remarks reveal that on 4 February 2010 at 10.00pm a distressed female patient aged 21 years came into the hospital where the appellant worked. She was concerned that she may have been suffering from breast cancer. The appellant caused her to expose her breasts to him, ran his hands over her breasts under her T shirt and over her body under the pretext of examining her. In reality he did this for his sexual gratification. This was clearly a gross breach of the trust placed in him as a member of a caring profession. The Judge recommended deportation.

The parties met here, married in 2005 and were granted indefinite leave to remain in July 2009. They have two children born in the United Kingdom: in July 2007 and in February 2010. The latter is a British citizen by birth. Mrs Sanade and the elder child have become British citizens by registration. On 24 June 2010 Mr Sanade was sentenced to twelve months imprisonment on his plea of guilty for an offence of indecent assault on a patient committed in February 2010. His sentence rendered him liable to automatic deportation. However when the case went to the court of appeal the deportation order was set aside. Accordingly, the court of appeal ruled that interference with the family life contemplated by his deportation is not necessary

in the public interest. This appellant's appeal was allowed and deportation was stopped by the court.

Mr Harrison is a Jamaican national born in 1975. He first came to the United Kingdom in 1999 as a visitor and his leave was extended first as a student and then as a spouse of a woman he married in October 2000. He was granted indefinite leave to remain on the basis of this marriage in January 2003.

In November 2003 he was arrested and remanded in custody charged with an offence of conspiracy to supply a Class A drug, namely cocaine. He pleaded guilty to this offence on 23 June 2004 and an offence of being in possession of a teaser stun gun firearm. On 23 July 2004 he was sentenced on all matters by the Kingston Crown Court to seven years imprisonment and recommended for deportation. In June 2007 whilst he was still serving his sentence he claimed asylum on the basis of gang-based persecution in Jamaica. This claim was rejected in November 2009 and his appeal against this part of the decision was dismissed without further challenge in November 2010.

Mr Harrison resisted deportation on the basis of his Article 8 family and private life. At the time of these appeals he is the unmarried partner of a British citizen by whom he has three British citizen children born in May 2002, March 2010 and May 2011. He was released on bail in November 2007.

The court of appeal refused his appeal despite his family ties and directed that he was to be deported.

The third case involved another citizen of Jamaica who was born on 12 May 1971. He entered the United Kingdom in December 1996 when he was aged 25. The appellant has four children now aged 20, 17, 13 and 4. All members of his family are British.

The two youngest children were born in the United Kingdom in December 1998 (Y) and June 2007 (Z). He had committed theft and kindred offences in 1998; in possession of cannabis in 2002 and having a bladed or sharp-pointed object in a public place in 2005. These matters were dealt with by way of cautions or warnings.

On 10 December 2007 he was convicted of possessing Class A drugs with intent to supply and was sentenced to a term of five years imprisonment. He became liable to automatic deportation. On 23 November 2009, the Secretary of State made a deportation order against him.

Deportation was considered justified in support of the legitimate aim on the facts of this appeal.

Nevertheless, the court observed that if the appellant does lead a law abiding life in the future, and if he does maintain contact with his children and this present partner, it will be open to him to apply to revoke this deportation order at some point in the future after his return to Jamaica. Further, the court ruled that there was no reason why the children would need to lose all contact with their father if he is returned to Jamaica. The prospect of return if he maintains contact within his family, supports them financially, makes a regular application for admission and ceases criminal activity is something to which they had regard in the exercise of the proportionality balance.

There are also cases of a number of young adults committing offences and being detained. In a case where the person to be expelled is a young adult who has not yet founded a family of his own, the relevant criteria are:

- the nature and seriousness of the offence committed by the applicant;
- the length of the applicant's stay in the country from which he or she is to be expelled;
- the time elapsed since the offence was committed and the applicant's conduct during that period;
- the solidity of social, cultural and family ties with the host country and with the country of destination.

The Court would also clarify that the age of the person concerned can play a role when applying some of the above criteria. For instance, when assessing the nature and seriousness of the offences committed by an applicant, it has to be taken into account whether he or she committed them as a juvenile or as an adult (see, for instance, *Moustaquim v. Belgium*)

The task in Article 8 assessments is whether interference with established family or private life that is to be respected is necessary and proportionate, that is, strikes a right balance. It is recommended that young adults and family men alike be aware that despite being settled in the UK they could be deported if they commit an offence for which they are sentenced to 12 months imprisonment. It is absolutely necessary to desist from violence and drugs as the consequences could be devastating and shattering to families and individuals. Stay safe then.

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