Jose Maria Sebastiao Fernandes v
Law Officers of the Crown
Court of Appeal
11th December, 2014

JUDGMENT
53/2014

Application for leave to appeal out of time against a recommendation for deportation.

Approved Text
11.12.2014

IN THE COURT OF APPEAL OF GUERNSEY

CRIMINAL DIVISION

Appeal No. 459

11th December 2014

Before: **Sir David Calvert-Smith, President**
Jonathan Crow QC
Robert Logan Martin QC

Between: **JOSE MARIA SEBASTIAO FERNANDES** **Applicant**

-v-

THE LAW OFFICERS OF THE CROWN **Respondent**

Advocate P F Cobb for the Applicant

Crown Advocate C Dunford for the Respondent

JUDGMENT

LOGAN MARTIN JA

This is the Judgment of the Court

Introduction

1. The applicant was convicted with a co-defendant by the Royal Court on 22 April 2013 having pleaded guilty before McMahon DB and Jurats of two Counts of being knowingly concerned in the fraudulent evasion of the prohibition on importation of goods contrary to section

77(1)(b) and (2) of the Customs and Excise (General Provisions) (Guernsey) Law 1972 as amended. The Particulars were that the goods were imported on or about 23 October 2012 and they comprised controlled drugs respectively of Class A and Class C in contravention of the prohibition on importation imposed by section 2(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974 as amended. Following conviction, the applicant was sentenced on the two Counts to terms of imprisonment respectively of five years and one year to run concurrently. The Court also granted confiscation and destruction orders which were sought by the Crown.

2. The applicant is a Portuguese national who was born in Madeira. He is a national of the European Economic Area (or "EEA") which includes all counties of the European Union such as Portugal. Following conviction, the Deputy Bailiff and Jurats recommended the deportation of the applicant under the provisions of the Immigration Act 1971 ("the 1971 Act") as extended to the Bailiwick and modified by the Immigration (Guernsey) Order 1993 ("the 1993 Order").

3. By a Notice of Application for Leave to Appeal dated 28 July 2014, the applicant has sought leave to appeal against the "Recommendation for Deportation". That Notice was given substantially later than the period of ten days after conviction within which notice of appeal is to be given as specified by section 30(1) of the Court of Appeal (Guernsey) Law 1961 ("the 1961 Law").

The statutory framework

4. The following provisions of the 1971 Act as modified by the 1993 Order are relevant. Section 3 states for present purposes:

> "(5) A person who is not a British citizen is liable to deportation from the Bailiwick of Guernsey if—
>
> (a) the Lieutenant-Governor deems his deportation to be conducive to the public good;…
>
> (6) Without prejudice to the operation of subsection (5) above, a person who is not a British citizen shall also be liable to deportation from the Bailiwick of Guernsey if, after he has attained the age of seventeen, he is convicted of an offence for which he is punishable with imprisonment and on his conviction is recommended for deportation by a court empowered by this Act to do so."

Section 6 states in part:

> "(1) Where under section 3(6) above a person convicted of an offence is liable to deportation on the recommendation of a court, he may be recommended for deportation by any court having power to sentence him for the offence."

5. The procedure for deportation is dealt with in Part 13 of the Immigration (Bailiwick of Guernsey) Rules 2008 ("the 2008 Rules") which include the following:

> "363 The circumstances in which a person, including an EEA national… is liable to deportation include:
>
> (i) where the Lieutenant Governor deems the person's deportation to be conducive to the public good;
> (ii) …
> (iii) where the court recommends deportation in the case of a person…

who has been convicted of an offence punishable with imprisonment.

364 While each case will be considered on its own merits, where a person is liable to deportation the presumption shall be that the public interest requires deportation… it will only be in the most exceptional circumstances that the public interest in deportation will be outweighed in a case where it would not be contrary to the Human Rights Convention and the Convention and Protocol relating to the Status of Refugees."

6. The "Convention rights" which are contained in the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe (the "ECHR") are secured in Guernsey by the Human Rights (Bailiwick of Guernsey) Law 2000 ("the 2000 Law"), in particular section 6(1). Schedule 1 to that Act contains the Articles of the ECHR and these include Article 8 which provides in so far as relevant:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and necessary in a democratic society in the interests of… public safety…, for the prevention of disorder or crime…"

The recommendation for deportation

7. Count 1 on the indictment to which the applicant pleaded guilty related to the importation of 4.36 grams of the Class A drug diamorphine (or heroin) and Count 2 related to the importation of twenty and one half tablets and 0.1 grams of powder of the Class C drug buprenomorphine (known as "Suboxone"). These amounts of controlled drugs had Guernsey street values respectively of between £900 and £2,640 and between £1,025 and £2,050. The applicant was a user of heroin and he arranged for his co-defendant to purchase the drugs in England and post them addressed to the applicant in two jiffy bags on which there was a false sender's address and in which the heroin was concealed within another substance secreted into a box of chocolates.

8. The applicant has been resident in Guernsey since 2007. In the period between July 2008 and October 2010, he was convicted on the Island on four occasions of offences involving three common assaults, two offences of driving with alcohol above the specified limit, and one public order offence of causing fear or provocation by words or behaviour. In the case of two of the assaults, he was sentenced to terms of two months' imprisonment and otherwise his offences were dealt with by community service orders and a fine. At the time of sentencing, the Royal Court had before it a Probation Report dated 22 April 2013 prepared by a Probation Officer in the Guernsey Probation Service. The Probation Report narrated that since 2007 the applicant had spent occasional periods back in Madeira. He was said to have moved to Guernsey to forge a new life for himself and was living at the time with his partner and one year-old son. The applicant worked as a labourer. The author of the Probation Report revealed that her previous involvement with the applicant following an earlier conviction suggested historic substance use and that he had undertaken a Suboxone treatment programme in the United Kingdom. Notwithstanding such treatment, the applicant had been assessed by a Criminal Justice Drug Worker in Guernsey as having "a substantial drug problem". In considering the applicant's likelihood of re-offending, the Probation Report concluded that the assessment of him indicated a high likelihood of re-offending related to his alcohol and substance abuse and that he required to address these issues. It was also said that it was evident from his previous convictions that he presented a risk of harm to the public when under the influence of alcohol, both in terms of violence and driving with excess

alcohol. Notwithstanding these conclusions and the seriousness of the offences for which the applicant was before the Royal Court, the Probation Officer invited the Court to consider the imposition of a period of probation supervision that included a condition that the applicant engage with the Criminal Justice Drug Service.

9. Immediately before the sentencing hearing took place, a preliminary hearing was held before the Deputy Bailiff siting alone who was informed of the fact that there had been a sexual relationship between the applicant and his co-defendant in London on occasions between July 2011 and March 2012. The advocates for all three parties then entered into a form of admission to that effect under section 2 of the Administration of Justice (Bailiwick of Guernsey) Law 1991. The reason for this procedure was that the applicant did not wish his partner who would be sitting in court to learn of this relationship and it was not mentioned at the sentencing hearing. Although a transcript of this preliminary sitting was prepared and has been provided to this Court, and whilst we understand the personal reasons as to why the procedure was adopted, we are not satisfied that such a procedure was appropriate in this case. The sentencing of an offender is a public process in the course of which all persons having an interest, including the public at large, ought ordinarily to be aware of all of the evidence and arguments which are being placed before the court. This may be said to be particularly so in this jurisdiction where Jurats participate in sentencing. Although the Deputy Bailiff indicated that he would direct the Jurats to avoid any questioning about the nature of the applicant's relationship with his co-defendant, there is no public record of the fact that the Jurats did or did not place any weight on this aspect in their sentencing of the applicant. In addition, the parties in this case entered into an admission for the purposes of section 2 of the Administration of Justice (Bailiwick of Guernsey) Law 1991, subsection (2) of which provides that such an admission is in respect of "any fact of which oral evidence may be given in any criminal proceedings". This further suggests that the subject of such an admission ought to be referred to publicly in open court in the same way as the evidence which it replaces would be.

10. Whilst this procedure has not been said to have a bearing on the matters before the Court for the purposes of the application for leave to appeal in this case, and whilst both counsel who appeared before us said that they had never experienced such a procedure before, the Court regards it as appropriate to state that the form of preliminary hearing which was adopted in this case should not be followed in the sort of circumstances which were present here. We can envisage that such a procedure may be justified in particular circumstances, such as in matters affecting the public interest, for example where there were considerations of national security, or where the life and limb of a person was at risk, or for some other compelling reason. Whilst we did not hear or invite detailed argument on this topic, we are inclined to the view that the procedure which was adopted in this case is not a procedure which could ever be appropriate to deal with matters of personal interest, however understandable, and it is a procedure which should be contemplated, if at all, only in the most exceptional circumstances.

11. At the sentencing hearing, the Deputy Bailiff stated in his sentencing remarks that the Royal Court accepted that the drugs in question had been for the applicant's personal consumption rather than for onward sale, and the Court took into account the early pleas of guilty which had been tendered by the applicant. In making the Royal Court's recommendation for deportation, the Deputy Bailiff acknowledged the need for a balancing exercise in accordance with the 1971 Act. He referred to the principles which were established by the Court of Appeal in the case of *Law Officers of the Crown* v *O'Dette and O'Dette* [2007-08 GLR 16] and to the requirement to take into account the rights afforded to the applicant by Article 8 of the ECHR which the Deputy Bailiff stated conferred "the right to respect for family life, private life and your home". In respect of the applicant, the learned Deputy Bailiff concluded:

> "In your case, Mr Fernandes, the balancing exercise is more complex. You may

> regard Guernsey as your home but the right in Article 8 relates not to territory but to the physical premises in which you live. Unlike [the co-defendant] however, you do have family in Guernsey including a child. Accordingly, a decision to recommend your deportation engages Article 8 of the European Convention. That right, however, is not absolute. Your involvement importing Class A drugs into Guernsey is, in our view, serious enough to merit deportation. The assessment in the Probation Report states that there is "A high likelihood of reoffending" and that you present "A risk of harm to the public." Accordingly, the only aspect realistically capable of tipping the balance in your favour is the family life you have here.
>
> "Our conclusion, however, is that you have abused your situation here in Guernsey and that the seriousness of your position, both in what you have now done and your overall behaviour since arriving in Guernsey in 2007, justifies the Court making a recommendation to His Excellency for your deportation at the conclusion of your sentence. We regard this as a proportionate response in all the circumstances having regard to the offence, your personal situation and your family here. Accordingly, a recommendation is… made in your case."

The grounds of appeal

12. On behalf of the applicant, Advocate Cobb contended that leave to appeal against the recommendation for deportation should be given out of time and the appeal should be allowed, and that no recommendation for deportation should be made. The position for the applicant is that he had all along wanted to pursue an appeal against the recommendation but had been unable to obtain legal representation at that time. He had been unaware of the procedure to be followed. On the merits of his appeal, it is contended that the Article 8 rights of the applicant were not given sufficient weight by the Royal Court and as a result the decision to recommend deportation was manifestly excessive. The applicant relies upon his relationship with his partner which has existed since 2009 and with their son who was born in March 2012. If a deportation order were to be made, the relationship between the applicant and his partner and son could continue only if they themselves left Guernsey. His partner had visited Madeira only once and his son never. The applicant had developed a very strong bond with his son and Advocate Cobb informed the Court that the applicant did not intend to apply for parole because were it to be granted the applicant would be deported from Guernsey at that point. The applicant has an older brother and sister and a younger sister each of whom has lived on the Island for at least six years and his relationship with them would also be affected. He had sought professional help for his drug dependency prior to the proceedings before the Royal Court but had not got it in time before he committed the offences. The applicant refers to the procedure described in *O'Dette*, which includes the requirement that the sentencing court must make preliminary enquiries as to all matters relevant to deportation. The applicant refers to the decision in England in *R* v *Nazari* [1980] 1 WLR 1366 and the decision of the European Court of Human Rights in *AW Khan* v *United Kingdom* [2010] ECHR 27. The applicant relies upon the sentencing remarks in the case of *Law Officers of the Crown* v *Pacheco* (unreported, 15 April 2010) where no recommendation for deportation was made notwithstanding convictions for unlawful importation of two amounts of Class A drugs in quantities materially greater than those for which the applicant bore responsibility, and where the defendant had only a partner and not any dependent child, although Advocate Cobb accepted that the defendant in that case had been of previous good character. The recommendation for the deportation of the applicant was manifestly excessive in this case because the same had not been done in what were analogous circumstances in *Pacheco*.

13. On behalf of the respondent, Crown Advocate Dunford noted that the Deputy Bailiff referred to the decision in *O'Dette* at the sentencing hearing. An appeal against a recommendation for deportation is to be treated as an appeal against sentence: see the 1971 Act, section 6(5). The customary test for an appeal against sentence is whether the sentence passed is manifestly excessive or wrong in principle, and in this case the applicant relies only upon the first part of

that test. The Court of Appeal has referred to the approach which is appropriate in the judgment of the Court in *De Sousa* v *Law Officers of the Crown* (unreported, 27 June 2014), in particular at paragraph 20, and that decision also acknowledged that the approach in Guernsey which is derived from *O'Dette* differs from that in England and Wales as set out in *R* v *Carmona* [2006] CLR 657. The Courts of this jurisdiction are required to undertake a more detailed consideration than is done by the English courts. The respondent refers to rule 364 of the 2008 Rules and to the approach set out in the judgment of the Court of Appeal in *Pinto, Loreto and Almeida* v *Law Officers of the Crown* [2013-14 GLR 83] at paragraphs 49 to 52, and in which Montgomery JA acknowledged that the authorities show "that the more pressing the public interest in imprisonment or deportation, the stronger must be the claim under Article 8 if it is to succeed". With respect to the application for leave having been made out of time, it is to be assumed that the applicant, who was represented by experienced counsel at the sentencing hearing, would have received advice at the time. In *Sherry* v *The Queen* [2013] UKPC 7, which is a decision of the Privy Council on an appeal from the Royal Court of Guernsey, Lady Hale stated that in considering whether to give leave to appeal out of time, a court will consider whether the delay can be excused, and where an appeal has no prospect of success, then it will be in no-one's interest to allow it to proceed. With respect to the merits of the applicant's appeal, and by reference to the approach set out in *De Sousa*, the Royal Court had approached properly the balancing exercise which is required in considering the applicant's Convention rights. The Probation Report demonstrated that the applicant's relationship with his partner had ended at one point and the notice of admission acknowledged that he had also had a relationship with his co-defendant and that information was provided to the Jurats. The conduct of the applicant whilst in prison and following sentencing is not relevant to this application but may be taken into account by the Lieutenant Governor who is obliged to follow the guidance given in *Pinto* but is not compelled to follow the recommendation made by the Royal Court. Although the Probation Report had suggested a period of probation supervision, such a disposal was not appropriate for the seriousness of offences of which the applicant had been convicted. With reference to the applicant's siblings, the judgment in *De Sousa* demonstrated that there required to be some form of dependency with a person liable to deportation, and that had not been shown in this case.

The application for leave out of time

14. The applicant has sought leave to appeal by a Notice dated and given over fifteen months after the date of his sentencing. This has been explained by the suggestion that the applicant had all along wished to appeal against the recommendation for deportation but had been unable to obtain legal representation and had not understood the process. We find this difficult to accept as an adequate explanation. The applicant was represented at the sentencing hearing and the Court has not been provided with any information as to any legal advice which was sought or given on the possibility of an appeal at that time. The process of initiating an appeal by the completion and submission of a *pro forma* Notice of Application is not an onerous or difficult one, and the Notice which was eventually given in this case was completed in handwriting either by or on behalf of the applicant and is signed by the applicant in a way which adequately gives notice of his desire to appeal. The time limit for the giving of notice of an intention to appeal which is provided by section 30(1) of the 1961 Law is a short one and that is no doubt in the interest of certainty. The final and certain conclusion of criminal proceedings is a matter which is in the public interest, in the interests of parties to the proceedings such as victims and the Crown, and in the interests of the courts. It would be against those interests to allow applicants who have not previously evinced an intention to appeal to be permitted to do so substantially after the time limit which is provided by statute except in the most compelling circumstances. We have not found such circumstances to exist in this case.

15. Further, even in a situation where the delay can be excused, the Court should consider whether the appeal has any prospects of success before giving leave out of time: see *Sherry* v *The Queen*, the guidance given in the judgment of the Board at paragraph 14. Were this

Court to judge that an appeal was bound to succeed, then it might be that we could excuse even a most serious delay. In light of this guidance, we turn to consider the merits of the applicant's grounds of appeal.

The merits of the appeal

16. The proper approach of the Royal Court to the making of a recommendation for deportation, and the approach of this Court in considering grounds of appeal against such a recommendation, have been set out by this Court in the following three previous decisions: *Law Officers of the Crown* v *O'Dette and O'Dette*; *Pinto, Loreto and Almeida* v *Law Officers of the Crown*; and *De Sousa* v *Law Officers of the Crown*. From the relevant passages in the judgments of the Court in these cases, the following considerations in an appeal of this sort may be identified.

17. The starting point is that it is in the public interest that persons who are not British citizens, and who are convicted of an offence or offences, should be deported other than in exceptional circumstances: see the 2008 Rules, rule 364. In a situation where it is open to the Royal Court to recommend under section 3(6) of the 1971 Act that a person who has been convicted should be deported, the Court must first have regard to the Convention rights of the convicted person which are secured by the ECHR: see the 2000 Law, section 6(1), and the 2008 Rules, rule 364. Secondly, the Court must have adequate information on all relevant matters upon which to make its decision and, if necessary, it should make preliminary enquiries if it does not have sufficient information: see *O'Dette*, the judgment of the Court as reported at [2007-08 GLR 16] at paragraph 68. Thirdly, a decision to recommend deportation is bound to interfere with the rights to family life of the convicted person and his family which are secured by Article 8: see *Pinto,* the judgment of the Court as reported at [2013-14 GLR 83] at paragraph 49. Fourthly, the Court should carry out the balancing exercise which is described by Montgomery JA in *Pinto* in the judgment as reported at paragraph 50 as follows:

> "The right approach to art 8 is to ask:
>
> (1) Is there an interference with family life?
> (2) Is it in accordance with law and the pursuit of a legitimate aim within art 8.2?
> (3) If so, is the interference proportionate given the balance between the various relevant factors?..."

Fifthly, the fact that a convicted person may have dependents in Guernsey, including dependent children, does not mean that deportation can never be recommended or ordered: see *Pinto*, the judgment as reported at paragraph 49. This is, of course, consistent with the fact that the Convention rights secured by Article 8.1 are qualified by Article 8.2. Sixthly, the more serious the offence or offences in question, the less likely that any interference with family life will be disproportionate: see *Pinto*, the judgment as reported at paragraph 52. Finally, the exercise to be carried out in Guernsey is to be distinguished from that which is now the approach in England and Wales as explained by Burnton J in *R v Carmona*: see *O'Dette*, the judgment as reported at paragraphs 66 to 68, and followed in *De Sousa*, the judgment at paragraphs 18 and 20. This means that the previous approach which was formerly adopted in England and Wales, and is explained in cases such as *R* v *Nazari*, may still provide assistance in Guernsey.

18. In the event of an appeal against a recommendation for deportation, such an appeal is treated as an appeal against sentence: see the 1971 Act, section 6(1), and *De Sousa*, the judgment at paragraph 17 by reference to *O'Dette* and *Pinto*. The approach of the Court of Appeal is to consider whether the decision to recommend deportation was one which was manifestly excessive or wrong in principle, and that standard is to be distinguished from the standard in judicial review: see *De Sousa*, the judgment at paragraphs 16 to 18. The Court of Appeal will not interfere in the balancing exercise carried out by the Royal Court "unless there was some

clear information which suggested either that the Court had left out of account a material factor which was in support of a person's Convention rights or had taken into account a significant factor in favour of deportation for which there was no justification": see *De Sousa*, the judgment at paragraph 20.

19. Applying these considerations to the decision of the Royal Court in this case, we cannot find any justification for the appeal. The appeal is advanced only upon the basis that the decision to recommend deportation was manifestly excessive. The sentencing remarks of the Deputy Bailiff demonstrate that the Royal Court was alive to the need to take into account the Convention rights of the applicant under Article 8. The Court had information about the applicant's relationship with his partner and their child and the effect that deportation would have on the family life of each of them. The Royal Court was aware that the applicant had been resident in Guernsey since 2007 although he had also been absent from the Island on several occasions. The Royal Court balanced these factors against the seriousness of the offences and did so by direct reference to the principles described in *O'Dette* which in turn rely upon what was said in the Court of Appeal in England in *R* v *Nazari*: see *O'Dette*, the judgment as reported at paragraph 63. The offences were significant involving consideration of a sentencing tariff of a number of years. The Royal Court had regard to the previous offending of the applicant in Guernsey and the fact that his convictions were related to drug and alcohol abuse. The Court had regard to the assessment of the applicant and his risk of re-offending which was contained in the Probation Report. In none of these respects has it been suggested that the information upon which the Royal Court proceeded was either erroneous or inadequate. In that situation, we are satisfied that the Royal Court carried out the balancing exercise which was required by *Pinto* and took into account the factors which were relevant by reference to the 2008 Rules and what was said in *O'Dette*, *Pinto* and *De Sousa*. This Court cannot find any basis for interfering with the decision of the Royal Court to find that the balance justified a recommendation for deportation having taken into account fully the Convention rights of the applicant and members of his family. The decision to recommend deportation cannot be said to have been manifestly excessive and the grounds of appeal are not made out.

20. In reaching this conclusion, we wish to add the following further observations which arise out of the particular submissions which were made in this case. The first relates to the reference in the grounds of appeal to the applicant's siblings in Guernsey. We agree with Crown Advocate Dunford that this Court was provided with no information to suggest that there was any form of dependency between the applicant and his brother and sisters. As the Court has accepted previously, family and social ties will constitute the private life which an individual has, but in the absence of dependency, less weight will be attached in the balancing exercise to be carried out under Article 8: see *De Sousa*, the judgment at paragraph 21 under reference to the decision of the European Court of Human Rights in *AW Khan* v *United Kingdom*.

21. Our second observation relates to the concept of "manifestly excessive" as it applies in appeals against recommendations for deportation. In the case of a sentence involving imprisonment or a fine, it is obvious that a specified period of time or an amount of money can be characterised as being too great and thus manifestly excessive. In the case of a recommendation for deportation, the decision to make or not to make such a recommendation is simply a straight alternative. In our judgment, what this means in the context of manifestly excessive is that a recommendation for deportation will be manifestly excessive in a particular case where it fails to achieve a proportionate balance between the convicted person's Convention rights and the aspects of the public interest which justify deportation such as the seriousness of the offence in question and the history of previous convictions. In the present case, we are satisfied that there is no basis upon which it could be said that the decision made by the Royal Court was disproportionate.

22. The third observation is that the Court has derived little assistance from a consideration of the case of *Law Officers of the Crown* v *Pacheco* in which deportation was not recommended in a

situation where the conviction concerned greater quantities of Class A drugs than in the present case. As a matter of generality, every case of this sort can be distinguished by its individual features and will be judged by the Royal Court on those features, and that is no different in the present circumstances. The fact that the defendant in *Pacheco* was of previous good character is enough to demonstrate the existence of such a distinction for present purposes.

23. Finally, and although we have found that the grounds of appeal do not succeed, the actual decision to deport the applicant will be made by His Excellency the Lieutenant Governor who will make his decision having regard to the statutory function which is conferred upon him by the 1971 Act. The Lieutenant Governor will make his decision based upon the up-to-date circumstances relating to the applicant and he will do so having regard to whether or not deportation would be "conducive to the public good": see the 1971 Act, section 3(5), and the 2008 Rules, rule 363. The Lieutenant Governor will carry out that exercise having regard to the guidance given in previous decisions of this Court. In particular, we repeat what was said by Montgomery JA in *Pinto* in the judgment as reported at paragraph 54 where she stated that:

> "The Lieutenant Governor will be required to consider with care the proportionality of any deportation at the point when the appellant is considered for release and removal since the possibility exists that, by that stage, the balance may have shifted so as to require a decision to be taken in his favour notwithstanding the recommendation of this court."

As Montgomery JA goes on to say, the interests of a child will remain a matter of substantial importance throughout the process, and we can conceive that other considerations may also play a significant part. Whilst these will be matters to be assessed by the Lieutenant Governor at the time, we can conceive that it could be material for the Lieutenant Governor to take into account the fact that a convicted person, such as the applicant, has been successfully treated for drug addiction or dependency during his time in prison if that were shown to be the case. We repeat that the standard is whether the deportation of the convicted person will be conducive to the public good and that will depend upon an assessment by the Lieutenant Governor of all of the circumstances as they exist at the point when a decision to deport is being considered.

Disposal

24. As we have found that the appeal is without merit, and because in any event we are not satisfied that there has been demonstrated any reason why leave to appeal was not sought at the appropriate time, we refuse the application for leave to appeal out of time.

