



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: DA/00678/2014**

Appeal

THE IMMIGRATION ACTS

Heard at Field House

On 30th November 2015

**Decision & Reasons
Promulgated
On 18th January 2016**

Before

UPPER TRIBUNAL JUDGE CHALKLEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**HAROON ZAHEER
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

Representation:

For the Appellant: Mr T Wilding, Home Office Presenting Officer

For the Respondent: Mr I Graham, Counsel, instructed by Worldwide Solicitors

DECISION AND REASONS

1. In this appeal the Secretary of State for the Home Department is the appellant and to avoid confusion I shall refer to her as “the claimant”. The respondent, Mr Haroon Zaheer, is a national of Pakistan born on 17 September 1982. It is said that he has lived lawfully in the United Kingdom since the age of 10 in the determination of First-tier Tribunal Judge Shepherd but, for reasons which will become apparent, that does not appear to be correct.

2. On 4th April, 2014 the claimant decided to deport the respondent from the United Kingdom under the automatic deportation provisions of Section 32(5) of the UK Borders Act 2007, because he had been convicted of an offence for which he received a sentence of twelve months' imprisonment. The claimant was satisfied that the decision, which would cause an interference with the respondent's Article 8 private and family life, would be proportionate and justified in order to protect the public interest in the permissible aim of the prevention of disorder and crime and the protection of the rights and freedoms of others.
3. The respondent appealed to the First-tier Tribunal and his appeal was first heard by First-tier Tribunal Judge E B Grant at Kingston Crown Court on 9th September, 2014. In her determination promulgated on 26th September, 2014, Judge Grant dismissed the respondent's appeal. Leave was subsequently granted to appeal to the Upper Tribunal and Upper Tribunal Judge Pinkerton allowed the respondent's appeal to the extent that the matter was remitted to be heard afresh by a judge other than Judge E B Grant.
4. The appeal was heard afresh by First-tier Tribunal Judge J H L Shepherd at Taylor House on 22nd January, 2015. Her determination was promulgated on 16th February, 2015. In her determination the judge made several findings. At paragraph 8 she considered whether the respondent could bring himself within the provisions of paragraph 399A of Statement of Changes in Immigration Rules HC 395 as amended and she concluded that the issue to be determined in the appeal was whether or not the respondent had in fact no ties, whether social, cultural or family with Pakistan. She found that he had no family ties there. As to cultural ties, she noted that the claimant had sought to argue that by virtue of his retention of some spoken Urdu that was sufficient to show that he retains a cultural connection.
5. At paragraph 88 she said this:

“88. Although at first blush the matter appears finely balanced, on consideration I have concluded that such ‘ties’ as remain with Pakistan, culturally are nominal only. If it had been shown that this gentleman had visited Pakistan frequently during the time he has been here, I would have been prepared to conclude that despite denials he must have been visiting family or friends with whom he would still retain sufficient links. However his visits to Pakistan have been few, and two of these were largely in connection with the death of his father. Indeed the death of his father does seem to have extinguished his relationship with Pakistan. Once again if the [claimant] had been able to produce concrete documentary evidence to show that the [respondent] retained a sustained relationship worthy of a character reference with a family member in Pakistan, then this may well have tipped the balance. However the [claimant] has not produced this evidence and I do not take mention of it into account. I conclude that if he were deported he would return almost as a stranger to Pakistan. I conclude that the [respondent] has been able to bring himself within the provisions of paragraph 399A(a).”
6. The judge went on at paragraphs 89 and 90 to say this:

“89. However that is not an end to the matter. The public interest promotions are now contained in primary legislation and as noted in Section 117A(2) of the 2002 Act requires me to have regard to the considerations vested in Sections 117C. As I am here dealing with a question involving a foreign criminal I must have regard to the following statutory provisions. Section 117C provides that the deportation order of foreign criminals is in the public interest unless one of the Exceptions applies. In this case the potential is Exception – private life. This applies where

- (a) C has been lawfully resident in the United Kingdom for most of C’s life,
- (b) C is socially and culturally integrated in the United Kingdom, and
- (c) there would be very significant obstacles to integration into the country to which C is proposed to be deported.

90. Clearly in this case the requirements in subSections (4)(a) and (b) are met and the issue is as to whether there would be ‘very significant obstacles’ to his integration into Pakistan.”

7. The judge went on to find that there would and allowed the appeal under Article 8. The claimant, dissatisfied with that decision, sought and obtained leave to challenge it. The first ground suggests that the judge applied the wrong version of paragraph 399A in that the Rules changed on 28th June, 2014 and the version that she was required to apply required her to establish whether there would be very significant obstacles to his integration. However, it was pointed out to me by Mr Wilding who appeared on behalf of the claimant that in fact the judge noted submissions to her at paragraph 59 and 61 of the determination that there had been a change in the Rule and that the relevant test was very significant obstacles.
8. In addressing me on the second challenge, Mr Wilding told me that the judge had applied the wrong test under the Rules. It is suggested that this is not material, but he submitted, it is because, the judge’s finding that the respondent has no family ties infects what the judge goes on to discuss at paragraphs 91 and 92 of her determination.
9. The fact that the judge has applied the wrong test means that the findings she has made are wrong and for that reason the determination cannot be corrected without, he submits, a fresh de novo hearing.
10. The findings of the judge at paragraph 91 are best demonstrated by my setting out that and paragraph 92:

“91. This question is related to whether or not he retains ‘ties in Pakistan’. I have found that he retains no ties and yet I am still asked to conclude that he would not face ‘very significant obstacles’ to integration. There is as yet no judicial guidance on the interpretation of this phrase. The respondent has said that it would be difficult for him to find work, not having Urdu as his first language and that he would have nowhere to live. Neither side has provided any evidence of the current economic or socio-political environment in Pakistan and I am not assisted I do bear in mind that he is clearly an able individual and with the benefit of a UK degree, some cultural familiarity and some ability in one of the indigenous languages. The [claimant] seems to take the view that he could travel there and get some sort of job and live there and that that means he cannot meet the test in

Exception 1. I suppose that on landing he could find temporary accommodation, presumably an hotel, although it is not shown that he has savings of any order to fund this, so he would take the first job he could find and I can only speculate on what. As I say, I received no information on current levels of employment in Pakistan from the claimant. The [respondent] may spend some considerable time alone and jobless.

92. If I take into account the second element of the test in Exception 1 – it is that the obstacles are to integration in Pakistan. This I conclude is of a higher order than merely ‘living’ or ‘supporting oneself’ and on reflection therefore I further conclude that in this [respondent’s] circumstances having no remaining ties and not having lived there at all as an adult nor having been educated there, with no financial resources to ‘cushion’ him, that he falls within Exception 1.”

11. Mr Wilding suggests that at paragraph 91 the judge should have considered that the respondent had been living in the United Kingdom for most of his life and was fully integrated. The question of whether there were very significant obstacles was the only question which she needed to answer. He pointed out that in fact the respondent has not been living in the United Kingdom for half his life. He was not granted leave to remain until he was 19. Before that he was a dependant of his parents’ asylum claim and thereafter when that appeal was dismissed was an overstayer.
12. Mr Graham also suggested that there had been no real assessment of the public interest. I am not inclined to agree with him. I believe that there was an assessment of the public interest at paragraphs 93 and 94 of the determination. What is difficult to understand is what the judge meant in the first sentence of paragraph 92 where she says: “If I take into account the second element of the test in Exception 1 – it is that the obstacles are to integration in Pakistan.”
13. I believe that the determination is confused and whilst Mr Graham suggested that the determination was not materially affected by the error, I believe that it was and that I have no alternative but to remit this appeal to the First-tier Tribunal for hearing afresh by a judge other than Judge E B Grant or J H L Shepherd. As for timing, 3 hours should be sufficient. An interpreter is not required but an Urdu interpreter would be required for one of the witnesses.

Notice of Decision

The appeal is remitted to the First-tier Tribunal to be heard afresh.

No anonymity direction is made.

Upper Tribunal Judge Chalkley