



**Upper Tribunal
(Immigration and Asylum Chamber)
DA/01779/2013**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester

Decision & Reasons

On 6 June 2017

Promulgated

On 20 June 2017

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

FARHAN SHABBIR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O’Ryan, instructed by Greenhall, Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Farhan Shabbir, was born on 31 December 1994 and is a male citizen of Pakistan. By a decision dated 20 August 2013, the respondent made a deportation order against the appellant pursuant to Section 3(5)(a) of the Immigration Act 1971 on the basis that his deportation would be conducive to the public good. The appellant appealed to the First-tier Tribunal (Judge Brunnen; Ms S E Singer) which, in a determination promulgated on 18 December 2013 dismissed the appeal. The appellant appealed to the Upper Tribunal. There was a hearing before Upper Tribunal Judge Chalkley (as he then was) in March 2014. Upper Tribunal Judge Chalkley set aside the First-tier Tribunal decision by way of a direction dated 25 March 2014 he also gave directions for a resumed

hearing before himself at Manchester which took place on 23 July 2014. The Upper Tribunal reserved its decision but, on 28 July 2014, issued further directions. These directions recorded the fact that on 28 July 2014 Section 19 of the Immigration Act 2014 had been brought into force; "As a result, the Tribunal will be reconvened for the purpose of hearing any further submissions the parties may wish to make on the definition as contained in Section 117D [of the amended 2002 Act] and on the application of *Maslov v Austria* if any to this appeal."

2. Unfortunately, for reasons which are not at all clear, the hearing was not reconvened until February 2015. One hearing thereafter did not take place because Judge Chalkley was unwell and a further hearing was aborted when Judge Chalkley refused to hear submissions on the appellant's behalf from any representative other than Counsel who had appeared previously.
3. Thereafter, a transfer order was made to myself and I attended the Crown Court in Manchester on three occasions. The appellant (who had, by that date, been convicted of a further offence and was serving a prison sentence) no longer had a solicitor and, frustratingly, was never produced so the hearings were unable to proceed. Eventually, I convened a *For Mention* hearing at Manchester on 6 June 2017 when I was greatly assisted by the presence of Mr McVeety, for the respondent, and Mr O'Ryan of Counsel who had been instructed by new solicitors acting for the appellant who, I understand, has now been released from detention on licence.
4. The position in this appeal is unsatisfactory. Judge Chalkley has now retired and does not sit regularly in the Upper Tribunal as a deputy in Manchester. In any event, the hearing which took place before him and at which he heard evidence from several witnesses took place several years ago and it is difficult to see how he would be able, so long after the event, to provide a proper analysis of the oral evidence which he heard. Judge Chalkley has, of course, already set aside the First-tier Tribunal decision and the Secretary of State seeks to maintain the original decision upon which these proceedings were founded. At the hearing on 6 June 2017, the representatives and I agreed that the only prudent course of action in this case is for the appeal to be remitted to the First-tier Tribunal (not Judge Brunnen; Ms Singer) for the First-tier Tribunal to remake the decision. Judge Chalkley has already directed that none of the findings of fact shall stand.

Notice of Decision

5. The decision of the First-tier Tribunal having been set aside by an order of Upper Tribunal Judge Chalkley on 25 March 2014, this appeal is returned to the First-tier Tribunal (not Judge Brunnen; Ms E Singer) for that Tribunal to remake the decision.

No anonymity direction is made.

Signed

Date 19 June 2017

Upper Tribunal Judge Clive Lane