



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/05371/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 25 October 2018**

**Decision & Reasons Promulgated
On 14 November 2018**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SYED [A]

(anonymity direction not made)

Respondent

Representation:

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer

For the Respondent: Mr A Bandergani, Counsel instructed by Haq Hamilton Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant”, against a decision of the respondent on 27 March 2017 refusing him leave to remain on human rights grounds.
2. The claimant is subject to deportation because he is a foreign national (a citizen of Pakistan) who on 1 September 2015 was sent to prison for a total of 30 months for his part in a money laundering business. The

claimant's son was a more active participant and was sent to prison for seven years.

3. The First-tier Tribunal's decision is in some ways very thorough and certainly shows considerable regard to the mass of evidence placed before the Tribunal but does not always show the precise legal analysis that would have been desirable.
4. Certain things are clear. The claimant has spent most of his working life as a merchant seaman which he did with some success having gained respected qualifications in the United Kingdom. He was born in 1944 and so is now 74 years old. He has not lived in Pakistan since he was 17 years old. The claimant has lived in the United Kingdom with permission since January 2008 and was given indefinite leave to remain on 6 September 2012. The claimant lives with his wife, also a citizen of Pakistan. They married in January 1974.
5. The judge clearly did have regard to Section 117C of the Nationality, Immigration and Asylum Act 2002 but it would have been more helpful if he had said a little more about the operation of that section. It establishes without equivocation that the deportation of foreign criminals is in the public interest but where the foreign criminal has been sentenced to less than 4 years imprisonment although deportation remains in the public interest the public interest does not always require deportation. Section 117C(4) creates two statutory exceptions to the normal requirement of deportation. The first, identified conveniently as "Exception 1", applies when certain conditions present including the claimant having been lawfully resident in the United Kingdom for most of his life. Clearly it is not relevant to this appeal. However Exception 2 may apply and I am satisfied the judge found that it did. Section 117C(5) states that:

"Exception 2 applies where [the claimant] has a genuine and subsisting relationship with a qualifying partner, ..., and the effect of [the claimant's] deportation on the partner ... would be unduly harsh."
6. The First-tier Tribunal heard evidence and found all the witnesses including the claimant and his wife to be credible. This important finding has not been challenged and there is no reason to think it in any way unsound. The judge was satisfied that in the event of the claimant being deported his wife would go with him to Pakistan. Importantly he found at paragraph 136:

"Shamin intends to travel to Pakistan with the [claimant], if he is deported. She intends to do so because she knows she could not cope in the UK without him. The full-time [care] he provides cannot be provided by Maria. Moreover, she is not prepared to spend the rest of her life separated from him."
7. It is immaterial that the claimant's wife could choose to remain in the United Kingdom. She has chosen to go to Pakistan. The effect of the claimant's removal would be the claimant's wife going to Pakistan and that is the basis on which issues of "harshness" need to be assessed."

Nevertheless the judge also concluded that it would be unduly harsh for the claimant's wife to remain in the United Kingdom without him. This conclusion is based both on the natural desire of a married couple to live together and on the high degree of dependency she has on the claimant as her main carer.

8. The First-tier Tribunal dealt with this at paragraphs 161 and 162 where the judge said:

"161. The [claimant] is 73 years old. He has problems with his physical health. He suffered a stroke while he was in hospital. He now suffers from Major Depressive Disorder. He sometimes suffers from severe memory impairment. I have already quoted Dr Thomas's conclusions as to what effect his deportation would have on his mental state.

162. Shamim's circumstances are these. She is very ill. She is physically much older than her years would suggest. Dr Harris and Ms Ashley confirmed the [claimant] is her full-time carer. She has decided that she will return to Pakistan with the [claimant] to live with him there, should he be deported. They have been married for 43 years. Most of that time they have been living apart because the [claimant] was always at sea. They came to the United Kingdom to settle here, to be together and to be with their family. As I say, the [claimant's] conduct has destroyed that dream."

9. The judge continued to look how the couple would manage in Pakistan. He pointed out they would need money to live on and they had little and Shamin would not receive the benefits to which she is entitled in the United Kingdom in Pakistan. The judge found that they would be isolated. The judge clearly accepted evidence that the former family home was in ruins. They would have no family support and the situation made worse by the claimant's wife's ill-health. She was described as "a heavy user of the NHS, as she is entitled to be."
10. It is explained that Shamin has a very serious heart condition that could quite literally result in sudden death. She needs a knee operation because her knee is very painful but surgery is particularly difficult because of other complications.
11. The judge concluded that it is really difficult to see how they would manage on the modest income that was known to be available to them.
12. Additionally the judge accepted that Shamin has a subjective fear of returning to Pakistan. She is a Shia rather than Sunni Muslim and has experienced discrimination and harassment as a result. This is a significant point in a case involving an elderly couple establishing themselves in Pakistan with very modest means and no family support.
13. The judge said at paragraph 139 "It is far from clear how they would manage to get a roof over their heads".

14. Moreover at 168 the judge said: “I record that I am left in doubt as to whether the [claimant] and Shamin would be able to survive in Pakistan, in the circumstances I find that they would be likely to encounter”.
15. Unless that finding is perverse or otherwise ignorable it is hard to see why it does not support adequately a finding that the effects of deportation on the claimant’s wife would be unduly harsh.
16. In short the judge decided that it was wrong to deport the claimant because it would impact with undue harshness on his wife. I find that an entirely lawful decision.
17. Difficulties have come because the judge considered a vast amount of material before him and this has created room for criticism although I am not persuaded that he fell into material error.
18. I have considered the Secretary of State’s grounds. The judge did have regard to the “very harsh consequences” that the deportation would have upon the claimant’s wife and also his adult children and found that his relationship with his grandchildren was “unusually strong” and found that that disrupting it would impact adversely on them. These are points which may well have been given undue weight in the balancing exercise but they are peripheral matters and can be removed from the balance which remains tipped firmly in favour of allowing the appeal because the effect of removal on the claimant’s wife is unduly harsh. These findings are not determinative.
19. Similarly although the judge has found, rationally, that there is a low risk of reoffending it would be wrong if the judge had given much weight to that finding. The relevance of there being a low risk of reoffending is that it might make it acceptable to allow an appeal that could be allowed for other reasons. It is not itself a reason to allow an appeal but I see no justification for the implied suggestion that that is what the judge has done. The reason for allowing this appeal is the impact of deportation on the claimant’s wife. The judge was very aware of his responsibilities and it cannot be said that he gave too much regard to the risk of reoffending.
20. Mr Duffy, realistically, did not take me through all of the grounds although he continued to rely upon them. His main argument was that the harsh consequences of removal are not unduly harsh but the natural consequences of deportation. I have reflected on that. It is an important point well made. However there are factors here that make matters much worse than would ordinarily be the case. The claimant’s wife is poorly. She needs a lot of medical care. This is an element far beyond the obvious and significant difficulties of trying to establish herself in a country where she has no contacts when she has reached the age of 60 and her husband is considerably more. Additionally the claimant and his wife have little money, no home and no contact to support them. They do not have the advantages of youth. This is not a matter of simply feeling sorry for

the claimant's wife but of recognising that the effect of removal would be quite out of the ordinary and also unduly harsh.

21. Perhaps I am apt to remind myself here that the claimant was sentenced to 30 months' imprisonment. This case does not attract the very high hurdle that has to be negotiated by a person seeking to resist deportation after being sentenced to four years' imprisonment.
22. Sitting back and looking at this as a whole I am satisfied that the judge has given lawful reasons for his decision. The judge has muddied the waters a little by giving weight, possibly too much weight, to other elements of the claim but they are not even cumulatively the reason that the decision was made.
23. I am satisfied that the judge's findings that the effect on removal itself would be unduly harsh are a proper reason for allowing the appeal. The other matters in which the judge may have erred were only an attempt to support an otherwise sound decision. Ironically, they may have had the opposite effect but they are not material errors. It follows therefore that I dismiss the Secretary of State's appeal.

Decision

24. The Secretary of State's appeal is dismissed.


Jonathan Perkins

Judge of the Upper Tribunal

Dated 7 November 2018