



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/09724/2017

THE IMMIGRATION ACTS

At: Birmingham, City Tower
On: 6th April 2018

Decision and Reasons Promulgated
On: 3rd July 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Pawitar Singh
(no anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: -

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of India born on the 6th March 1958. He has lived in this country since at least 1999. He was granted Indefinite Leave to Remain in 2001, but on the 3rd August 2017 the Respondent made a decision to deport him, on the grounds that his removal from the United Kingdom would be conducive to the public good. On the 23rd November 2017 the First-tier Tribunal (Judge Telford) dismissed the Appellant's appeal against that decision. The Appellant

now has permission to appeal, granted by Upper Tribunal Judge Perkins on the 25th January 2018.

The Decision to Deport

2. The Appellant has been convicted of the following criminal offences:
 - i) 11th August 2006 – driving with excess alcohol. Disqualified for 16 months, fined and £400 fine.
 - ii) 13th August 2012 – driving with excess alcohol. Later sentenced to 6 weeks imprisonment to be served concurrently.
 - iii) 20th September 2012 – 2 counts of battery. 24 weeks imprisonment.
 - iv) 6th August 2013 – breach of a non-molestation order. 26 weeks imprisonment.
 - v) 3rd February 2015 – breach of non-molestation order. Supervision and community order.
 - vi) 14th August 2015 – breach of non-molestation order.
 - vii) 3rd November 2015 – battery. 18 weeks imprisonment, restraining order.
3. The offences of battery, and the breaches of non-molestation orders, all arise from assaults by the Appellant on his former partner and the mother of his children.
4. The Respondent concluded that the Appellant is a persistent offender who has shown a particular disregard for the law. As such his deportation is conducive to the public good.

The Appeal to the First-tier Tribunal

5. The Appellant was unrepresented before the First-tier Tribunal, as he is before me.
6. He told Judge Telford that he should not be deported because he enjoys an Article 8 family life in the UK, with his partner [GK], and their two children.
7. Judge Telford was not satisfied that the relationship with Ms [K] was subsisting. He found that the crimes for which the Appellant has been convicted are “allied to his other reprehensible actions towards her during an unhappy marriage in which he regularly maltreated her and assaulted her both

physically and mentally". The Judge found no support for the Appellant's claims that the marriage was subsisting, and found the Appellant's insistence of referring to her as "his" wife to be chilling, given the clear indication that Ms [K] was now his ex-wife and wanted nothing more to do with him. Judge Telford was evidently unimpressed by the Appellant's claim that he continues to "go around to see" his wife: "in reality he is peeved at the UK marriage provisions which provide for wife and children to have a roof over their heads. The house they purchased together he thinks is entirely his. She lives in it. He cannot contemplate her enjoying it as he sees matters, at his expense".

8. As to his 'children' there was no evidence that either, now in fact both adults, were prepared to support the appeal. Those children had grown up witnessing their father's violent and abusive attitude towards their mother.
9. Judge Telford added for good measure that the Appellant had shown no remorse or insight into his offending, denying before the Tribunal that he had been guilty of offences which the record plainly showed he had been convicted of, and in fact had pleaded guilty to. Judge Telford found that the Appellant had shown no understanding of the dangers of drink driving or the carnage that this offence can cause.
10. The clear import of these findings is that the Judge did not accept that the Appellant had the remotest chance of succeeding in his appeal with reference to either 'exception' in paragraph 399 of the Immigration Rules. Nor, it is implicit in his findings, did he believe there to be any exceptional circumstances such that deportation would nevertheless be contrary to the UK's obligations under the ECHR.
11. I say 'implicit' because having made those clear and robust findings, the First-tier Tribunal does not go on to reach conclusions on this case. From paragraphs 24 to 30 the determination relates to a completely different case, one apparently involving a female Tier 4 Migrant who had not passed her English language test. It was for this reason, and this reason alone, that Judge Perkins was prepared to grant permission to appeal.

Error of Law

12. Before me Mr Mills agreed that the inclusion of these paragraphs in the decision was an error. He invited me to re-make the decision, leaving the reasoning at paragraphs 1-23 of the decision intact and replacing the conclusions on Article 8 with my own assessment, drawn from Judge Telford's clear findings. I agree that to be the appropriate disposal.

The Re-Made Decision

13. The Appellant has been convicted on 7 occasions of 8 offences, including 3 convictions for battery against his wife for which he was sent to prison. He has two convictions for driving whilst drunk. His flagrant disregard for the work of the police and courts has seen him repeatedly breach non-molestation orders, with the result that he had to be returned to prison. By any measure the Appellant is a “persistent offender” within the meaning of the Rules.
14. The operative rules for consideration of the Appellant’s human rights appeal are paragraphs 398 and 399:

398. Where a person claims that their deportation would be contrary to the UK’s obligations under Article 8 of the Human Rights Convention, and

(a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;

(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or

(c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law, the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

399. This paragraph applies where paragraph 398 (b) or (c) applies if –

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i) the child is a British Citizen; or

(ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case

(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and

(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or

(b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and

(i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and

(ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and

(iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.

399A. This paragraph applies where paragraph 398(b) or (c) applies if -

(a) **the person has been lawfully resident in the UK for most of his life;** and

(b) **he is socially and culturally integrated in the UK;** and

(c) **there would be very significant obstacles to his integration into the country to which it is proposed he is deported.**

15. The first two 'exceptions' set out in these provisions are concerned with any Article 8 family life that the Appellant might enjoy with a partner or minor children. The Appellant does not currently have a partner. Nor does he have any minor children. He cannot therefore resist deportation on either of these grounds.

16. The third 'exception' is concerned with private life and the first requirement under paragraph 399A is that the Appellant has been lawfully resident in the UK for most of his life. The Appellant has just turned 60. He claims to have arrived in this country in 1986. If that is true that would mean that he has spent the first 28 years of his life in India, and the next 32 in the UK. Was it with lawful leave? Mr Mills confirmed the Home Office position remains that the Appellant only had lawful leave from 1999. Prior to that he was living in the UK unlawfully. Before me Mr Singh acknowledged that he had no evidence to show that he had any leave prior to that date. He was working, but candidly admitted that he had "paid someone" for the National Insurance number he used to obtain that work. I am not therefore satisfied that Mr Singh could meet the requirement at paragraph 399A(a). I would note for the sake of completeness that Mr Singh has, on his own admission, his parents and six siblings living in India¹. He lived there well into adulthood. Notwithstanding his very long residence in this country on his own evidence he is not able to speak even basic English, informing me that he could only say "a little" and requiring the services of the court interpreter. He told me that he had not managed to learn English because everyone where he worked spoke Punjabi. On these facts I am satisfied that the Appellant would further be unable to meet the requirement at 399A(c). As to whether he could meet the requirements at (b)

¹ OASys report page 16

this is therefore moot, but given his offences, the attitude displayed in his evidence before Judge Telford and his very limited ability to speak English, it may also have been difficult for him to show cultural and social integration in the UK.

17. Unable to show that he falls under any of the 'exceptions' in paragraphs 399 or 399A it is for the Appellant to show that there are in his case some very compelling circumstances over and above those described in those rules. Mr Singh emphasised that he has been in this country a very long time and that he has worked very hard. His wife never worked and he always did. He has bought homes for his family and has always paid tax and provided for them. He continues to have relationships with family members in the UK and he wants to be here for his children. He has not committed any other criminal offences. He has not been to India for a long time. I have taken all of those factors into account but cannot be satisfied that even taken cumulatively they amount to the kind of exceptional circumstances capable of outweighing the public interest in deportation in this case. His private life will undergo substantial disruption, and he will need to re-establish himself in India, but that level of interference cannot be said to be disproportionate in the circumstances where the Appellant has repeatedly offended in the manner that he has.

Decisions

- ~~18. The decision of the First-tier Tribunal contains an error of law such that the decision must be set aside to the extent identified above.~~
- ~~19. The decision will be remade following a resumed hearing.~~
- ~~20. There is an order for anonymity.~~
21. Paragraphs 18-20 above, included in error in the decision of the 25th May 2018, are deleted pursuant to Rule 42 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
22. The decision of the First-tier Tribunal contains an error of law and it is set aside.
23. The decision in the appeal is re-made as follows: the appeal is dismissed
24. There is no order for anonymity.



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Upper Tribunal Judge Bruce
2nd July 2018