



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

Appeal Number: HU/11430/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 October 2017**

**Decision & Reasons  
Promulgated  
On 10 January 2018**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**[A H]**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer

For the Respondent: Mr D Balroop of Counsel, instructed by Malik Law  
Chambers Solicitors

**DECISION AND REASONS**

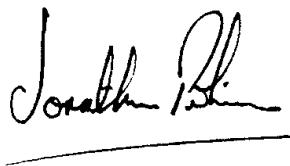
1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the respondent. Breach of this order can be punished as a contempt of court. I make this order because this case concerns the welfare of a child and the First-tier Tribunal made a similar order. The First-tier Tribunal might want to consider if such an order is necessary when it rehears the appeal.

2. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant”, against a decision of the Secretary of State on 19 April 2016 refusing him leave to remain on human rights grounds. The application that was thus refused was prompted by the Secretary of State notifying the claimant that he was the subject of a deportation order because she regarded him as a persistent offender whose deportation was in the public good.
3. Once it was established that the claimant is indeed a “foreign criminal” within the meaning of Section 117 of the Nationality, Immigration and Asylum Act 2002 it would probably have been more helpful if the judge had focused her attentions on the provisions of that Section, and in particular the provisions of Section 117C. The judge was aware of this provision but I find allowed herself to be sidetracked by consideration of the Rules, in a way which was not necessarily erroneous but was not particularly helpful. The prospects of rehabilitation and re-offending are not particularly relevant considerations in a deportation appeal that does not involve an EU national or, possibly, a young offender. The rules illuminate policy and article 8 balancing exercises require *some* weight to be given to a wide range of factors but statute is, and should be seen to be, binding on the Tribunal.
4. The claimant has not been sentenced to a period of imprisonment of four years or more and so although his deportation is in the public interest, because that is what Parliament says, the public interest will not require deportation if his circumstances come within either of the two statutory exceptions labelled, helpfully, as “Exception 1”, or “Exception 2”, that are explained under Section 117C of the Act. For the avoidance of doubt the exceptions are not exclusive and it is by no means unlikely that some appellants will be able to take advantage of both exceptions and indeed this claimant may be such a person.
5. To come within the scope of Exception 1 a claimant has to have been lawfully resident in the United Kingdom for most of his life (this claimant plainly has), to be “socially and culturally integrated in the United Kingdom” and to have shown that “there would be very significant obstacles” to his integration into the country to which he would be removed, in this case Bangladesh.
6. That the claimant has been in the United Kingdom for most of his life is uncontroversial but it is not clear to me if the judge decided if the claimant was “socially and culturally integrated” in the United Kingdom. She acknowledged at paragraph 5 of her decision that it was the Secretary of State’s case that the claimant was not socially and culturally integrated. If there is a finding on this point that I have missed I apologise, but I cannot see it in the decision.
7. The judge has decided quite clearly that there are “very significant obstacles” to the claimant’s integration. She says as much at paragraph 24 of her decision. However, like the Secretary of State, I have difficulty in ascertaining how she has reached that conclusion. Clearly the claimant’s long residence in the United Kingdom is a relevant factor. There is some equivocation in the judge’s finding about the support the claimant would get in Bangladesh. The judge notes that he has not lived there since 1979 and he has “little ties or

connections” to the country and also that he has an uncle and grandmother living there. However at paragraph 11 of her decision the judge said that the claimant “has an uncle and grandmother living in Bangladesh and I find he has not shown that he could not join one or both of them”.

8. I appreciate the ability to join either of them is not the same as saying that there are no “very significant obstacles to his integration” but there is a tension between the findings that should be resolved. That is not necessarily fatal to the determination on its own but there is really no explanation for the conclusion of the points I have indicated, and I do not find them to be sufficient. I am not saying that the judge was not entitled to reach this conclusion. My finding is that the explanation is too thin to amount to a meaningful explanation at all.
9. It follows that even if there is a finding that the claimant is “socially and culturally integrated in the United Kingdom” a finding that there would be very significant obstacles is not reasoned adequately and so it has not been shown the claimant comes within the terms of Exception 1.
10. Exception 2 applies where there is a “genuine and subsisting relationship with a qualifying partner or a genuine and subsisting parental relationship with a qualifying child” and the effect of deportation on either of them would be unduly harsh. Again, the judge has made clear conclusions that the effect would be unduly harsh. The judge has found that it would be “unduly harsh for them to remain in the UK without the presence and assistance of the [claimant]”. I do not follow that conclusion. The wording of the Section implies that some harshness is due in the case of deportation. The claimant and his partner and child do not appear to be living together as a nuclear family. The reasons for that might have to be investigated. I am not saying that a person has to be living in a nuclear family to take advantage of Exception 2 but it is harder to come within the scope of the section when they do not. Again, although the conclusion is clear the reasons are not.
11. Neither is any consideration of why it would be unduly harsh for the partner and child to remove to Bangladesh. I am very aware of the reasons why that conclusion might be reached. Many people in Bangladesh are desperately poor and I note that the claimant’s partner has no experience of life in Bangladesh but these strands have not been drawn together. The judge should have considered when the relationship started as far as the partner was concerned as that might illuminate whether the harshness is undue. Clear findings about the nature of the parental relationship and the importance in the life of the child might also have been helpful.
12. I am also concerned by the weight the judge has given to rehabilitation. Prospects of rehabilitation do not feature very prominently, if at all, under Section 117. Whilst I am not suggesting they are irrelevant matters the prospects of rehabilitation or minimal risk of future offending are not weighty considerations. It might be perfectly lawful and proper to deport a person who is a reformed character because public interest in removing a foreign offender extends beyond preventing him committing further offences in the jurisdiction.

13. I therefore conclude that the decision of the First-tier Tribunal is entirely unsatisfactory and I set it aside.
14. I have looked carefully at the papers to see if I can make a decision without a further hearing but I find that I cannot. There are too many points or findings here that are nuanced and depend on argument and possibly on impressions made in oral evidence.
15. This is a case that needs to be decided again with the benefit of argument and such evidence as the parties may wish to call and I am satisfied the fairest way to bring about a disposal is to allow the Secretary of State's appeal and set aside the findings and direct the case be heard again in the First-tier Tribunal, which is what I do.

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Signed

Jonathan Perkins, Upper Tribunal Judge

Dated: 9 January 2018