



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/21210/2018

THE IMMIGRATION ACTS

Heard at Field House
On 2 July 2021

Decision & Reasons Promulgated
On 4 August 2021

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

M A
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the appellant: Mr D Bazini, Counsel, instructed by HC395 Limited
For the respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is the re-making decision in the appeal of MA, a citizen of Pakistan, who asserts that the respondent's refusal of his human rights claim (made in the context of deportation proceedings) is a disproportionate interference with his family life under Article 8 ECHR and is therefore also unlawful under section 6 of the Human Rights Act 1998.
2. The appellant claims to have entered the United Kingdom in 1995, although this does not appear to ever have been accepted as a fact. In any event, and following a number of unsuccessful applications, the appellant was not granted any form of the leave to remain until 25 April 2016, and this only on a discretionary basis.
3. In 2007, the appellant underwent an Islamic marriage to his partner, SC, a Bangladeshi citizen, and they have been in a genuine and subsisting relationship ever since. The couple have four children, born in 2011, 2013, 2015, and 2016. The children are all Pakistani citizens.
4. In May 2017, the appellant pleaded guilty to conspiracy to assist unlawful immigration and conspiracy to possess identity documents with intent. SC pleaded guilty to possession of false identity documents. In June of that year, the appellant was sentenced to 59 months' imprisonment and SC to 13 months' imprisonment, suspended for 18 months with a requirement to undertake 120 hours of unpaid work.
5. The appellant's sentence led to deportation action by the respondent under the UK Borders Act 2007. A decision to deport was issued on 18 August 2017 and a deportation order was signed 10 October 2018. The following day the appellant's human rights claim, which had been raised in response to the 2017 decision, was refused with a right of appeal.
6. The right of appeal is under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002, as amended ("the 2002 Act") and the sole ground of appeal available to the appellant is that under section 84(2).

The decision of the First-tier Tribunal

7. First-tier Tribunal Judge Ross dismissed the appellant's appeal by a decision promulgated on 9 January 2020. His reasons for doing so, together with my conclusions as to why the decision was materially flawed, are set out in my error of law decision, annexed to this re-making decision. In short, I found that the judge had failed to deal with the question of whether SC would in fact leave the United Kingdom with the children and follow the appellant to Pakistan and, in turn, failed

to deal with the evidence of an independent social worker that a split in the family unit could lead to the children being taken into local authority care.

8. I set the judge's decision aside, preserving only the finding that the appellant's eldest child did not suffer from selective mutism.
9. My error of law decision was made without a hearing, pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and it preceded the decision of Fordham J in the JCWI case [2020] EWHC 3103 (Admin). There has been no indication from the respondent that the course of action I adopted was procedurally unfair and that my error of law decision should not stand on that basis.

The evidence

10. I have considered the following evidence when re-making the decision in this appeal:
 - (a) The appellant's first bundle, indexed and paginated E1-247 (items A-E are not included);
 - (b) The appellant's second bundle, indexed and paginated 1-35;
 - (c) The appellant's third bundle, indexed and paginated A1-G;
 - (d) The appellant's fourth bundle, indexed and paginated A-D6 (the pagination has gone awry);
 - (e) A letter from SC's GP, dated 16 December 2019;
 - (f) The respondent's original appeal bundle;
 - (g) Oral evidence from SC.
11. At the hearing, it transpired that an interpreter had not been booked for the appellant. Following a discussion, both representatives agreed that they had no questions for the appellant in any event and so this omission would not prevent the hearing from proceeding.
12. SC gave her oral evidence with the assistance of a Bengali interpreter. In examination-in-chief she adopted her latest witness statement. She clarified her employment, which consisted not of working in a kitchen, but sewing clothes/materials at home on a self-employed basis for which she earned approximately £120 a week. She also explained that the individual described as an "aunt" in her statement was not a blood relative, but simply someone she used to work with years ago whom she referred to in this manner. She no longer had contact with this person. Finally, she confirmed that her discretionary leave to remain runs until August 2021.
13. In cross-examination she stated that there was now a pending application to register her eldest child as a British citizen. She confirmed that when the appellant was in prison unidentified friends helped her "when there was an emergency". She had never sought or been provided with assistance from social services. When asked about whether she would go with the appellant to Pakistan, SC stated that this

would be very hard and she did not know how she would cope. She stated that she was taking tablets for depression. When asked about the languages spoken at home, SC told me that English was used with the children, that the appellant had spoken Urdu to them before he went to prison, that the eldest child used to speak Urdu and Punjabi, and none of the children now spoke either of these languages. SC stated that she would not go to Pakistan with the appellant.

14. In response to a couple of questions from me, SC explained that a “doctor” told her that she suffered from depression. It transpired that this individual had in fact been the Independent social worker, Mr Horrocks. SC confirmed that she spoke a little Urdu with the appellant and that he tries to speak to the children in English as much as he can.
15. In re-examination, SC stated that she takes her medication once a day and had been doing so since 2017 or 2018. When asked about other reasons why she would not go to Pakistan, she listed the following: her lengthy residence in the United Kingdom (approximately 20 years); her Bangladeshi nationality; not having relatives in Pakistan; not knowing anything about Pakistan; fears over how Pakistani people would see her; lack of opportunities for the children; her inability to work and find food and accommodation; and inadequate medical services.

Submissions

16. A full note of the parties’ submissions is contained in the record of proceedings. I summarise it only very briefly here and will deal with particular points raised when setting out my findings and conclusions, below.
17. In essence, Mr Tufan submitted that it would not be unduly harsh for the whole family unit to go to Pakistan or for that unit to be split up. In any event, the appellant could not rely on the family life exception under section 117C(5) of the 2002 Act. The very compelling circumstances threshold under section 117C(6) was demanding and no such circumstances existed in this case. As to SC’s stated intent not to leave the United Kingdom, it was submitted that this was nonetheless a choice on her part.
18. Mr Bazini focused his attention on the children, submitting that it would plainly be unduly harsh for them to go and live in Pakistan. In respect of the “stay” scenario, he submitted that SC’s history as a victim of domestic abuse, her mental health problems, and the fact that she lost twins in 2008, combined to show that she was extremely vulnerable. If the appellant was removed from the family unit, there was a strong likelihood that the children would become the subject of care proceedings, a scenario supported by the evidence of Mr Horrocks. This outcome constituted very compelling circumstances.

Relevant legal framework

19. I have taken account of the statutory considerations set out in section 117B and 117C of the 2002 Act. In addition, I have had regard to the various authorities referred to me by the parties (including those contained in the authorities bundle provided by Mr Bazini), together with other relevant case-law I have deemed it appropriate to cite.

Findings of fact and analysis

20. If it need be said, I have considered all of the evidence before me in the round, applying the balance of probabilities when assessing whether the appellant has made out his factual case. For ease of reading, I am separating out the various relevant factors which bear on the ultimate question of whether the appellant's deportation would be proportionate or not.

The appellant's relationship with SC

21. It is accepted that the appellant has a genuine and subsisting relationship with SC and I so find. I accept that the relationship began in or around 2003 and that the couple began cohabiting in 2007. There is nothing to indicate that the relationship has been anything other than strong and the couple have dealt with the separation caused by their offending and the loss of their twins.
22. I am willing to accept that the relationship was disapproved of by their respective families, as claimed. Both have provided consistent evidence on this; the appellant asserting that his family was unhappy because SC was not Pakistani and was a divorcee, whilst SC's family blamed her for the breakdown in the first marriage and did not like the idea of her then marrying a Pakistani. However unjustified one may consider these attitudes to be, I am willing to accept that they existed and were applied to the relationship. I accept that a consequence of this is that neither the appellant nor SC have meaningful relationships with their respective families.
23. By virtue of section 117A(2)(a) of the 2002 Act, I am bound to address the mandatory considerations under section 117B. Sub-section (4) of the latter provides that "little weight" should be given to a relationship formed with a "qualifying partner" established by a person when they are in the United Kingdom unlawfully. In the present case, the relationship was established at a time when not only was the appellant in this country unlawfully, but SC was not (and is not now) a "qualifying partner". As matters now stand, their status is precarious. This clearly has an impact on the weight attributable to the family life enjoyed between the appellant and SC when it comes to the overall balancing exercise.

24. Having said that, the central focus of this case is on the children, not the relationship between the appellant and SC.
25. A final point about the relationship between the appellant and SC relates to language. I am bound to say that I have concerns over this aspect of the evidence, relating as it does to the ability of the children to speak and understand a language used by their parents. Neither the appellant nor SC have provided any significant evidence to show that they speak good English. I assume they have an ability to converse at a reasonable level, this probably having developed over the course of time and through interaction with the children. However, they both met in 2003, at a time when neither had been in the United Kingdom for very long. I find it wholly improbable that they did not learn to converse in Urdu, Punjabi, Bengali, or a combination of these. I do not accept that they have been able to communicate with each other effectively in English from the beginning of their relationship onwards. It is in my view more likely than not that SC speaks and understands Urdu to a reasonable level, and that the appellant speaks and understands Bengali, albeit probably to a lesser extent.

SC's circumstances

26. It is common ground that SC is a Bangladeshi citizen and has no connection to Pakistan other than through her relationship with the appellant.
27. It has never been disputed that SC came to the United Kingdom as the spouse of a person present and settled in this country or a British citizen. I accept that she did and that this occurred in 2000.
28. I accept that SC was the victim of domestic abuse within her short-lived first marriage. There is not a great deal of detail about this issue, but it appears as though she had in effect been used as a domestic slave by her first husband's mother and that the ex-husband physically abused her as well. I find that this relationship lasted for about three months before SC was effectively abandoned in this country. She then made unsuccessful attempts to regularise her status here. I have not been provided with evidence to indicate that the respondent specifically rejected her claim to have been the victim of domestic violence. I do not have evidence which specifically considers the potential mental health consequences to SC of this abuse in 2000/2001. On what there is, I do not find their to be a direct causal link between those events and any mental health difficulties now experienced by SC. However, it is in my view more likely than not that adverse memories will still exist for SC.
29. I do accept that SC would have seen the appellant has a stabilising and supportive element in her life, given what she had experienced in her previous relationship.
30. I find that SC was pregnant with twins in 2008, but, tragically, one was stillborn and the other passed away soon after birth. I accept that the couple visit the grave on a regular basis. Again, I do not have expert evidence concerning the specific impact, if

any, of on SC's mental health over the course of time and currently. It is, though, more likely than not that this will be an event which still causes upset.

31. There is a lack of clarity as to whether SC was granted a period of discretionary leave in 2010. SC and the appellant both assert that she was. The respondent's decision letters make no reference to such a grant. However, a decision of Deputy Upper Tribunal Judge Juss, promulgated on 31 December 2015, and relating to previous linked appeals by the appellant, SC, and their eldest child, does make specific reference to SC having been granted leave in 2010 on a basis unconnected to any family life claim. I have not been provided with any documentary evidence to confirm this earlier grant of leave.
32. On balance I accept that SC was granted discretionary leave in early 2010 for a period of three years. I find that SC applied for an extension of that leave on 19 December 2012. This application was refused, but was ultimately granted following proceedings in the First-tier Tribunal and then the Upper Tribunal in 2015. It is that second grant of discretionary leave which runs until August 2021.
33. SC's status is, and always has been, either unlawful or precarious.
34. I find that SC has no family members in the United Kingdom. Her evidence does not indicate that she has any significant private life ties in this country. I am willing to accept that she is currently self-employed undertaking sewing work from home and that the reference to kitchen assistant in her latest witness statement was an error.
35. As the appellant is not working, it seems to me almost inevitable that the family must be reliant, at least to an extent, on public funds, although this particular issue was not explored in evidence before me.
36. I turn to SC's health. There is no psychological or psychiatric report on SC, nor is there any other medical evidence post-dating the GP letter of 16 December 2019.
37. On the basis of the GP letter, I accept that she has a history of depression and, at that time, suffered from insomnia. I also accept that she had been taking relevant anti-depressant medication, but had stopped this due to breastfeeding (presumably in respect of her youngest child, born in 2016). I find that as at late 2019, her mental health was stable, but she continued to take a particular medication because of insomnia. The letter goes on to say that SC had struggled to cope with caring for the children on her own (this presumably being a reference to when the appellant was in prison), and that the appellant's deportation could cause a relapse in the depression.
38. SC has stated that she continues to suffer from depression and anxiety, and that she is taking medication for this. I do not accept this to be the case. The GP patient record printout at D5 of the appellant's fourth bundle confirms that as at June 2021, SC was being prescribed amitriptyline, on a 10mg dosage, with one tablet taken at night. Both the medication and the time of day it is taken are consistent with the 2019 GP letter and what it says about ongoing insomnia. It does not materially support SC's assertion that she is currently suffering from depression and/or anxiety and has been

prescribed medication for these conditions. If there was a current diagnosis and relevant treatment in place, it is reasonable to expect that appropriate evidence would have been adduced. Her reference in evidence to what Mr Horrocks might have told her is, with respect, beside the point: he was in no position to make a diagnosis or provide any form of medical opinion.

39. The above finding does not render irrelevant SC's health as a factor which must be assessed as part of the overall proportionality exercise. The fact that she is not currently suffering from a mental health condition does not preclude the possibility that her past depression will re-emerge in the future. I note that the GP's letter was written at a time when the appellant had been released from prison for a number of months (the release date was March 2019). Whilst he was incarcerated, SC would have known that release would take place within a relatively well-defined timescale. However, were the appellant to be deported and SC remain in the United Kingdom, the situation would be different: there would be a long-term, if not indefinite, separation. On balance, I find that there is a risk that SC would suffer from depression once again as a consequence of this.
40. As to the extent of any relapse and its effect on SC's functionality in so far as care for the children is concerned, it is very difficult to say, even on the balance of probabilities. There is no detailed medical evidence as to the nature of her past depression, nor is there any more recent medical assessment of the consequences of the appellant being deported. There is no evidence of any external professional support provided to SC in the past, nor of any possible support available to her in the future. Taking what I do have in the round, I find that a further occurrence of the depression would not result in a very significant loss of overall functioning, or, if this did occur, there is no indication that it could not be materially mitigated by appropriate medical or other therapeutic treatment. In reaching this conclusion I have not left out of account the evidence from Mr Horrocks, but I will deal with his reports in more detail, below.
41. A final matter to be addressed at this stage is whether, as a matter of fact, SC would leave the United Kingdom and go with the appellant to Pakistan if he were deported. Her answer to this is "no". She has provided a number of reasons for this in her evidence, as summarised previously. From her perspective at least, these reasons are plausible. On balance, I find that SC's intention, as matters currently stand, is that she would not leave the United Kingdom with the children. That is a choice on her part, albeit no doubt a very difficult one. I confirm that the primary basis on which I approached the proportionality exercise is that SC and the children *will* remain in the United Kingdom if the appellant is deported.

The children

42. In the absence of up-to-date evidence on the children's education, I have sought to calculate their current stages at school. From eldest to youngest, they are now (as at the date of my decision) in: Year 5; Year 2; Year 1; and Reception Class.

43. I have no reason to doubt that the children are well-settled in their respective settings and are happy at school. There is no evidence from the school, particularly in relation to the eldest child, of apparent behavioural or educational difficulties as result of either the appellant's previous incarceration or in light of the family's current precarious circumstances.
44. I find that none of the children suffer from any significant health conditions. I accept that the two eldest suffer from allergies and the third has asthma. However, the evidence does not show that these materially prejudice their day-to-day lives. It is a preserved finding that the eldest does not suffer from selective mutism, and no further evidence or submissions have been provided to the contrary. I find that he does not suffer from selective mutism. I have considered the report from Dr Karim, dated 12 November 2019, notwithstanding my finding on the selective mutism diagnosis. However, in light of that finding and the absence of any recent medical evidence, I do not accept that the eldest child is suffering from any material behavioural problems/conditions at present.
45. Although I have not been provided with documentary evidence of this (the absence of relevant up to date evidence is something of a recurring theme in this appeal), I am prepared to accept that an application to register the eldest child as a British citizen has been made and a decision is awaited.
46. As to the linguistic abilities of the children, I have a concern that a fully accurate picture has not been portrayed. Although SC has said that none of the children speak or understand Urdu and that the eldest child's past comprehension disappeared once the appellant came home from prison, I find it to be somewhat unreal to suggest that the two older children in particular, have lost *all* ability to speak and/or understand the mother tongue of their father and an adopted language of their mother. I accept that the parents will have done their very best to converse in English with the children as much as possible, but it is in my view more likely than not that Urdu is still used within the home and that the two eldest children have a decent level of ability. I also find that the youngest two have a rudimentary grasp of that language.
47. There are two reports from Mr Peter Horrocks, an independent social worker whose expertise has been expressly or implicitly recognised by the Tribunal and Courts in a number of cases. In the present appeal, the respondent has not expressly challenged Mr Horrocks' general ability to provide expert evidence, although criticism has been levelled at an important conclusion reached (I will address this, below). I accept his suitability as a source of expert opinion and, in general terms, I place relatively significant weight on his evidence. Having said that, I am not bound to accept each and every conclusion provided.
48. The first report is dated 14 of February 2018. It followed a visit to the family home two weeks earlier. At this time, the appellant was still in prison. Having spoken at length to SC, Mr Horrocks reached the following core conclusions:
 - (a) SC had been struggling to cope in the appellant's absence;

- (b) She was a “very vulnerable woman” due to her overall history;
- (c) The appellant has a good relationship with all the children, in particular the eldest;
- (d) A permanent separation of the appellant from the children would cause the latter “great distress and trauma” and that the children were already vulnerable due to the separation whilst the appellant had been in prison;
- (e) It would be in the best interests of all four children for the appellant to remain with them in the United Kingdom;
- (f) For the children to move to Pakistan would be detrimental, particularly in respect of the eldest two;
- (g) A separation of the appellant from SC would run “real risks” of a “significant downturn in her functioning” as a result of which she “would no longer be able to meet the needs of the children to a good enough standard.” This, it is said, would lead to the “real risk” of intervention of social services to ensure the well-being of children.

49. Mr Horrocks’ second report is dated 14 November 2019 and followed a telephone interview with SC. The appellant was by that time back at home. Mr Horrocks confirms the conclusion stated in his 2018 report and says the following at paragraph 3.2:

“I continue to share the same opinion in respect of the implications for this family and for [SC] as a single parent and for the four children of the family, as outlined in my previous report. In my professional opinion in the event that [the appellant] was removed from the UK separated from this family, there is a very significant risk of intervention by social care services in the family and that the outcome of such an intervention, would be that some if not all of the children would come into the care of the Local Authority and that they would become Looked After Children.”

50. Unsurprisingly, Mr Bazini placed great store on that conclusion, submitting that separation would indeed have the consequence alluded to by Mr Horrocks. In turn, care proceedings would be likely to occur and the possibility of any or all of the children being removed from the family home would constitute a very compelling circumstance in this case.

51. Mr Tufan has taken issue with the conclusion. He queried what underpinned Mr Horrocks’ firm opinion that some or all of the children “would” go into care if the appellant were to be deported.

52. If the consequence of the appellant being deported to Pakistan and the rest of the family remaining United Kingdom was that it was more likely than not that the children would not be properly cared for by SC and would, as a result, be taken into care, this would, in my judgment, constitute a very compelling circumstance sufficient to outweigh the public interest and to render the respondent’s decision disproportionate.

53. However, for the following reasons, I conclude that whilst there is a risk of such a scenario, it is not, on balance, likely to occur.

54. First, I reiterate my acceptance of Mr Horrocks' relevant expertise, with the caveat that I am not bound to accept all of the conclusions reached.
55. Second, Mr Horrocks does not of course profess to have expertise in psychiatric/psychological and/or legal issues relating to mental health conditions or relevant criteria or thresholds for the intervention of social services and, in particular, the stage at which children "would" be taken into care. Mr Horrocks did not base his conclusions on medical evidence relating to SC. I do not criticise him for taking at face value what she said in interview, but it is relevant that he was unable to place his own expertise in the context of a fuller picture of her medical circumstances.
56. I have addressed SC's mental health earlier in my decision. I import what I have said there into the current discussion.
57. Third, there is in my view a difference in the evidence provided in Mr Horrocks' two reports. In his 2018 report, he was of the view that the appellant's deportation "would" lead to a "significant downturn" in SC's functioning and that she "would" no longer be able to adequately care for the children (see paragraph 4.24). This led him to conclude that there was a "real risk" that this deterioration "could" lead to a family breakdown and the intervention of social services (paragraph 5.2). At paragraph 3.2 of the 2019 report, he states that there was a "very significant risk" of intervention by social services and that this "would" lead to some or all of the children going into care. On a fair reading of the two reports, the view expressed in the second is put in materially stronger terms than in the first. It is unclear to me why, if this was intended, the conclusion was more certain than before: they do not appear to have been any material changes in SC's circumstances other than the appellant returning to the family home.
58. Fourth, the lack of familial or other close social support for SC in this country is clearly a relevant factor in respect of her ability to look after the children in the appellant's absence. This was relied on by Mr Horrocks and certainly supports Mr Bazini's central submission. The same is true of SC's history of domestic abuse and the loss of the twins. The combination of these factors makes SC vulnerable in the sense that she is likely to experience greater emotional upset as result of the appellant's deportation than might a partner without her particular history. She is also vulnerable to a relapse in her previous depression, but I have already found that this would not lead to a very significant loss of functionality.
59. I appreciate that Mr Horrocks' opinion is that she is "very" vulnerable. To the extent that this is intended to lead directly to the conclusion that one or more children would be taken into care, I disagree. There is no evidence of past neglect of the children. Everything points towards SC being dedicated to the well-being of her children., Although it was clearly a struggle, she did in fact care adequately for the children when relatively substantial period of time. There has as yet been no social services intervention with the family, requested or not. There is no suggestion that SC would refuse any assistance from relevant services. The past is obviously not

determinative of the future, but it does act as an indicator and is therefore relevant to my overall assessment of SC's vulnerability.

60. Fifth, although this is by its nature speculative on my part, I am not prepared to assume that social services would not do all they could to assist the family and to avoid the instigation of care proceedings. In the absence of clear evidence to the contrary, my speculation is, in my judgment, reasonably permissible. When this consideration is taken together with the other points discussed above, I conclude that Mr Horrocks' opinion that such proceedings "would" occur and that one or more of the children "would" be taken into care, involves too many degrees of speculation on his part. The chain of events contended for by the appellant does not of course have to be shown to be a certainty or anything approaching that. Nonetheless, in my judgment the prospect of the children being taken into care is too remote.
61. Despite what I have just said, I have no hesitation in concluding that it would be firmly in the children's best interests for them to remain in a single family unit and to continue to be brought up by both parents. I also find that it would be firmly in the children's best interests for them to remain in the United Kingdom so that they could continue with the life known to them thus far.

The public interest in general

62. By virtue of the UK Borders Act 2007, section 117C(1) of the 2002 Act, and, to a lesser extent the Immigration Rules, the public interest in deporting foreign criminals is powerful. It is not a fixity, but its reduction to the point at which it is outweighed by the protected rights of a person who has been sentenced to 4 years or more will require very strong elements of an Article 8 claim.

The offending

63. As the appellant is unable to rely on either of the two exceptions under section 117C(4) and (5), I am entitled to take account of the seriousness of the offending when undertaking the proportionality exercise.
64. I have had reference to the sentencing remarks of HHJ Kent, the Case Summary prepared by the CPS, the OASys report, and what the appellant himself has had to say.
65. The appellant and the co-conspirator had been under surveillance by the UK Border Force during the late summer and autumn of 2016. The appellant was caught in possession of a variety of passports and identity documents. In addition, he and his co-conspirator had engaged in a conspiracy to prepare counterfeit documents which were to be used to facilitate the entry of numerous individuals into the United Kingdom. There were aggravating features to the offending: the illegal entry was

intended to be facilitated for strangers and for financial gain; there was a high degree of planning and sophistication. I set out a passage from the sentencing remarks here:

“In your case, [MA] and [Mr S], you committed these offences with total disregard for the serious, immediate and long-term consequences that your criminal action would have on society, on the proper enforcement of immigration and border control, on the hidden security risks that would result, on the impact on community relations that might result, and ultimately on the long-term impact that it has on precious state resources... there were a number of individuals being facilitated, as can be seen from the agreed facts; and the sheer quantity of passports and parts of passports show that these were repeated incidents.”

66. The appellant was given credit for his plea of guilty and it was accepted that he was of previous good character. I, like the sentencing judge, have taken these mitigating factors into account.
67. This case is somewhat unusual in that SC herself was involved in the offending. She was caught in possession of 39 counterfeit or stolen passports or parts of passports, and a laptop containing several hundred images of passports and parts of passports. Her position as the mother of four very young children represented significant mitigation, and this was reflected in the sentence imposed. I confirm that I have not taken SC's offending into account, as I am concerned only with the appellant's criminality in this appeal.
68. I note from the indictment and the PNC printout that the offending took place only a matter of four months or so after the couple were granted discretionary leave to remain in April 2016. This may have been more than simple coincidence, but I do not draw that inference. Having said that, it is a simple fact that, notwithstanding their precarious position in the United Kingdom, both the appellant and SC embarked on a criminal enterprise in the knowledge that they were putting in jeopardy not only their status, but the potential stability of the children's lives as well.
69. The nature of the enterprise undertaken by the appellant and his co-conspirator went directly to undermine the integrity of the immigration control system of the United Kingdom. As the sentencing judge remarked, it also raised security risks, which must of itself engage a significant element of the public interest. For my part, the conduct must also have created a significant risk that the illegal entry into the United Kingdom using counterfeit passports could have been for the purposes of facilitating modern slavery.
70. Taking the circumstances surrounding the offending as a whole, I regard it as being very serious (albeit not of the most serious nature) and deserving of very significant weight in the balancing exercise.

Risk of reoffending

71. The appellant is currently on licence and his sentence is due to be completed on 20 October 2021 (as to this date, I prefer the information contained on the Licence and the release date notification slip to the date stated in the letter from the National Probation Service, dated 1 July 2021). He is deemed to be of low risk of reconviction within two years and low risk of serious harm towards others. I accept this to be the case as matters stand. The fact that the appellant committed the offences for financial gain must be a concern, but this does not lead me to go behind the overall assessment made by the relevant professionals.
72. A low risk of reoffending is a relevant factor in the balancing exercise. It will not normally carry significant weight and I find that to be so on the facts of this case. The offending was very serious, the appellant remains under licence and thus has an added incentive not to transgress, and there is no evidence of any additional courses or actions undertaken by him which might otherwise increase the weight attributable to the low risk assessment.

The "stay" scenario

73. The central plank of the appellant's case has been the consequences to SC and, in particular, the children, of the "stay" scenario, in which the appellant goes to Pakistan alone whilst the other family members remain in the United Kingdom.
74. For the reasons already set out when considering SC's circumstances and those of the children, and despite a separation being contrary to the latter's best interests, I conclude that it would harsh, but not unduly so, were this to occur. It would undoubtedly be a struggle for SC to cope as a single parent, but the overall impact does not reach the high threshold imposed by the exception in section 117C(5) of the 2002 Act.
75. Even if that threshold was satisfied, the appellant cannot of course rely on the exception. Taking all relevant considerations into account, I conclude that there are no particular features of the unduly harsh assessment which, taken in isolation or together with any other factor, disclose very compelling circumstances or what might otherwise be described as a very compelling case, given the strength of the public interest. Nor can I see any other factors which have not featured in my assessment thus far which would otherwise render the respondent's decision disproportionate.

The "go" scenario

76. However strong SC's intention to remain in the United Kingdom currently is, it nonetheless represents a choice on her part. I deem it appropriate to adopt a belt and braces approach and to consider the alternative, or hypothetical, "go" scenario in which SC did decide to go with the children to Pakistan.

77. Mr Bazini has submitted that it would be “plainly” unduly harsh for SC and the children if this course of action were taken.
78. On the basis of the cumulative effect of the reasons set out below, I conclude that a relocation of SC and the children to Pakistan would be very difficult, indeed harsh. However, I also conclude that it would not be unduly harsh (in respect of SC and, assessed independently or together with their mother, the children) for the family members to follow the appellant. Again, the appellant cannot rely on the statutory exception under section 117C(5) of the 2002 Act and even if it were to be said that the unduly harsh threshold had been met, I conclude that, on the basis of the reasons set out below, there are no very compelling circumstances over and above those described in the relevant exception, or any very strong additional factors, such as to render relocation disproportionate.
79. First, the children’s best interests are obviously a primary and important consideration, but they do not necessarily outweigh other significant competing factors. For the avoidance of any doubt, leaving United Kingdom would be contrary to their best interests.
80. Second, whilst not wishing to underestimate the difficulties inherent in a relocation, it is the case that this course of action would avoid separation of SC from the appellant and the children from their father, which in turn would avoid the emotional consequences of a split.
81. Third, the children are all Pakistani citizens and would be entitled to the rights attached to this status if they were to relocate. I acknowledge that the eldest child is awaiting a decision on the registration application. However, as matters stand, he is not a British citizen. Even if he were, British citizenship, whilst clearly important, would not *of itself* render a relocation to Pakistan disproportionate (see, for example, Patel (British citizen child - deportation) [2020] UKUT 45 (IAC) and the discussion of case-law contained therein). Further, as I understand it, Pakistani law allows for an individual to hold dual Pakistani-British nationality. On the facts of this case, I cannot see any specific significant prejudice to the eldest child in respect of the nationality issue.
82. There clearly would be a high level of re-adjustment to be made by the children, none of whom have experienced life in Pakistan before. I am not assuming that they will somehow have been provided with an in-depth understanding of Pakistani society simply by virtue of being the appellant’s children. Having said that, the appellant is in a position to impart at least a degree of knowledge to them.
83. Fourth, the children’s education will clearly be disrupted by a relocation to Pakistan and I have fully taken Mr Horrocks’ evidence on this issue into account. They would be removed from their current settings in which they are undoubtedly happy and well-supported. The disruption would be felt most keenly by the eldest child, as he is the furthest advanced in his educational and social ‘career’. I have found that the children have, to a greater or lesser extent, an ability to speak and understand Urdu.

This will not equate to that of native speakers of equivalent ages and there is also the relevant consideration of writing and reading, which would be an impediment to the children. I place these factors together with the impact of the upset caused by being removed from friendships at school and elsewhere. The impact of this is likely to be greatest on the eldest and second eldest of the children.

84. There are no additional factors relating specifically to the children which would render it even more difficult to integrate into a different educational environment. For example, none of the children have any developmental or other conditions and there is no evidence from their schools indicating specific concerns. There is a functioning educational system in Pakistan and, particularly in light of their Pakistani citizenship, and I am satisfied that there would not be any formal barriers to the children being able to access this. I have no doubt that both parents would be as supportive as they could, although it would be the case that the appellant's cultural and linguistic background would be of greater assistance than that of SC.
85. There is, as Mr Horrocks points out, a risk that the children would be subjected to bullying in Pakistan. Such a risk would exist in respect of any child relocating to another country. Indeed, a risk might well exist where a child moved to a different school within a country. Taking this point from the general to the specific, I do not regard this factor as carrying significant weight in relation to the appellant's children, having regard to their particular circumstances.
86. I also accept that relocation and entry into a new educational system would be likely to have an adverse impact on the children's education, at least in the short term and specifically in relation to the two older children. This is likely to be a consequence common to many, if not most, relocations of children to another country. I do not simply treat this as a "to be expected" factor, but even with the focus resting on the children in this particular case, I do not regard it as representing, alone or cumulatively, a very compelling circumstance.
87. Fifth, there is no evidence to show that SC's Bangladeshi citizenship would prevent her from being able to reside in Pakistan with the appellant. She holds the view that life would be difficult in that country because of her nationality, but there is no country information to indicate that there is in general significant official or societal discrimination against Bangladeshis. As with the children, SC has never lived in Pakistan and her relocation would involve a removal from the life she is known in this country for approximately 20 years. On my findings, she did not have family here, nor has she established particularly strong social or community ties. In one sense, she would not be leaving behind as much as an individual with different familial and/or social circumstances. I have found that she does speak and understand Urdu. This would be of at least some assistance in adjusting to a new country. Her skills in sewing could, in the absence of any evidence to the contrary, be utilised in Pakistan in terms of a potential source of income. It is true that she would not have any family support, but this pertains to her current circumstances as well.

88. SC's health is clearly relevant. I have found that she is not currently suffering from depression. The overall impact of moving to Pakistan is likely to cause her upset and anxiety. I cannot, and do not, rule out the possibility that she would face depression once again, but I weigh this against the fact that she would be part of a united family unit and would have the support of the appellant. There is no suggestion that relevant medication could not be obtained in Pakistan, if necessary. I have also considered SC's overall personal history and the potential impact this might have on her if she were to relocate. Without wishing to diminish the significance of the very difficult events she has experienced in the past, I do not consider these, alone or in combination with other factors, would render it disproportionate for SC to accompany the appellant to Pakistan.
89. Sixth, I can see no reason why, notwithstanding general difficulties in re-establishing himself and the time he has been away from the country, the appellant would not be able to find reasonable employment and accommodation in Pakistan within an appropriately limited timeframe. He is clearly able to work and would undoubtedly wish to do so in order to support his family.
90. Seventh, I have considered the travel advice issued by the Foreign and Commonwealth Office and the other country information contained in the appellant's fourth bundle. Strictly speaking, the FCO advice relates to British citizens travelling to Pakistan: none of the individuals with which I am concerned have that status. In respect of Covid-19, I note that SC has now had her second vaccination. I have no information as to the position of the appellant. The children have not received vaccinations, and would be unlikely to receive any if they remained in the United Kingdom. In my judgment, the prevalence of Covid-19 in Pakistan does not, taken alone or cumulatively, represent a significant factor in the balancing exercise. It is, by definition, a pandemic and there will be risks and restrictions in place in almost every country around the world.
91. In respect of general security advice provided by the FCO, it is clear that certain parts of Pakistan are unstable and/or subject to high levels of crime of one description or another. Having said that, the advice does not go to show that there are not numerous parts of the country which are reasonably safe for Pakistani nationals. Although SC is a Bangladeshi citizen, there is in my judgment a materially lower risk of adverse attention from criminals than might apply to a British citizen (or indeed a citizen of other Western European countries for that matter). I have not been provided with any travel advice issued by the Bangladeshi authorities.
92. The country information before me highlights the high numbers of children engaged in labour, general and specific forms of poverty (in particular, food poverty), and connections between the two. I have no reason to doubt the reliability of the information contained in the various materials. Child labour and poverty are undoubtedly significant problems in Pakistan, as in numerous other countries around the world. The question is whether it is more likely than not that the appellant and his family would find themselves in a cohort of the population subject to poverty and the consequent risks this might entail. In my judgment, they would

not. On the one hand, there would not be familial support, the appellant has been away from his home country for a fairly significant period, and SC has no experience of living in Pakistan. On the other hand, both parents would be willing and able to find reasonable employment; the appellant has significant lived experience of the country; and I am not satisfied that the parents would be unable to adequately protect the children from any risk of, for example, child labour.

93. Eighth, as discussed earlier in my decision, the public interest in this case is very strong.

Overall conclusion

94. As is apparent from the foregoing, there are a number of competing factors within the overall proportionality exercise. In this case, as with many involving children, the resolution of that exercise has not been easy (absent the children I would have had little hesitation in concluding that the appellant's deportation was entirely proportionate). Ultimately, I conclude that the balance falls in the respondent's favour. The decision under appeal does, in all the circumstances, strike a fair balance between the competing interests.
95. It follows that the appellant's appeal must be dismissed.

Anonymity

96. The First-tier Tribunal initially made an anonymity direction. I deemed it appropriate to maintain that direction at the error of law stage. There is nothing before me now to warrant a change in that position. Given the involvement of four minor children in this case, it is appropriate to maintain the anonymity direction.

Notice of Decision

97. **The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and it has been set aside.**
98. **I re-make the decision by dismissing the appeal on Article 8 ECHR grounds.**

Signed: *H Norton-Taylor*
Upper Tribunal Judge Norton-Taylor

Date: 20 July 2021

APPENDIX: ERROR OF LAW DECISION

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

Appeal Number: HU/21210 2018

(P)

THE IMMIGRATION ACTS

Decided without a hearing

Decision & Reasons Promulgated

.....

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**M A
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his/her family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

The error of law component of the Upper Tribunal's decision in this appeal has been made without a hearing, pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Ross (“the judge”), promulgated on 9 January 2020, by which he dismissed the appellant’s appeal against the respondent’s refusal of a human rights claim made in response to a deportation decision.
2. The appellant, a citizen of Pakistan, is married to a Bangladeshi citizen who has limited leave to remain in the United Kingdom. The couple have four minor children, born in February 2011, February 2013, March 2015, and August 2016, respectively. In May 2017, the appellant was convicted of conspiracy to assist unlawful immigration and conspiracy to possess identity documents with intent. In June of that year he was sentenced to 59 months’ imprisonment

Decision without a hearing

3. The appellant has submitted that there should be an oral hearing in respect of whether the First-tier Tribunal erred in law. Although specific reasons as to why this should be the case have not been set out, it is implicit that the appellant would regard a decision without a hearing as being potentially unfair. In the respondent’s rule 24 response, an oral hearing was requested, but without any explanation.
4. I have considered the following matters:
 - i. rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008;
 - ii. the Pilot Practice Direction made by the Senior President of Tribunals on 23 March 2020;
 - iii. the Presidential Guidance Note No 1 2020;
 - iv. the need to ensure fairness to both parties;
 - v. the overriding objective;
 - vi. the guidance set out by the Supreme Court in Osborn v Parole Board [2013] UKSC 61;
 - vii. the decision of the First-tier Tribunal, the grounds of appeal, and the grant of permission by Upper Tribunal Judge Blum;
 - viii. the written submissions provided by both parties.

5. Rule 34 of the Procedure Rules 2008 does not require the consent of the parties in order for a decision to be made without hearing. The relevant issue in this case, as identified in the restrictive grant of permission by Judge Blum, is narrow in scope. The content of the parties' respective do not raise any additional matters requiring further exploration.
6. Having considered all the circumstances of the case, I have concluded that the question of whether the First-tier Tribunal did err in law can fairly and justly be decided without a hearing.

The judge's decision

7. Having set out the relevant background to the appeal, the judge summarised the evidence, both written and oral. Of relevance to this appeal are [9] - [10] in which it is recorded that the appellant's wife stated that she could not go to live in Pakistan for a number of reasons, and that if husband was deported, "it would be the end of their relationship". Having gone on to direct himself to the relevant legal framework (both in respect of the Immigration Rules and section 117C NIAA 2002, the judge set out his findings at [19] - [23]. Reference was made to the "opinions" of Mr Horrocks, an Independent Social Worker, who had prepared two reports on behalf of the appellant (dated 14 February 2018 and 14 November 2019). No detailed analysis of this expert evidence is provided; the judge simply summarised it as relating to the "consequences of the family splitting up" This aspect of the evidence was predicated on the family not leaving the United Kingdom as a single family unit.
8. At [20] the judge rejected the claim made by the appellant and his wife that one of their children suffered from mutism. At [21] he addressed the claim that the appellant's wife could not live in Pakistan. The claimed difficulties in residing in Pakistan as a Bangladeshi national are rejected. So too is the assertion that the appellant's parents would not accept her. The final sentence of the paragraph states: "I therefore do not accept that because of [the wife's] nationality the family would be split up." The judge accepted that a move to Pakistan would cause disruption, but concluded that in all the circumstances the appellant had failed to show "very compelling reasons" as to why he should not be deported. The appeal was duly dismissed.

The grounds of appeal and grant of permission

9. In essence, three grounds were put forward in the application for permission: first, that the judge erred in concluding that the appellant's eldest child did not suffer from mutism; second, that the judge failed to make a finding on the appellant's wife's evidence that she *would* not go to Pakistan; third, and connected to ground 2, it is said that the judge failed to have adequate regard to the evidence of Mr Horrocks

as to the consequences of the family being split up (those consequences including the “very significant risk of intervention by social care services and of some or all of the children being taken into care).

10. Upper Tribunal Judge Blum concluded that the first ground was unarguable. He also took the view that the judge’s assessment of Mr Horrocks’ evidence was brief but essentially adequate. However, it was arguable that the judge had failed to make a finding on the wife’s evidence that she would not relocate to Pakistan and, in consequence, the judge had failed to address the relevant aspect of Mr Horrocks’ evidence as to the children’s future if the family unit was indeed split up. The grant of permission was expressly limited in scope.
11. There has been no subsequent application by the appellant to rely on ground 1.
12. I have approached this appeal purely on the basis of the limited grant of permission by Judge Blum.

The parties’ submissions

13. The written submissions, drafted by Mr Bazini of Counsel, follow the grounds upon which permission was granted. Their essence can be found in the following passage:

“The fact that she could in principle go is not the issue. If in fact she will not go and hence the children will not go then the ISW’s assessment has to be carefully considered. If in fact some or all of the children are likely to end up “in care” as a consequence this is plainly a highly relevant and material consideration in considering whether the [very compelling circumstances] test is met.”
14. For the respondent, Mr Melvin submits that the judge was entitled to take account of the fact that the appellant’s wife had engaged in dishonest criminal conduct in the past, and was entitled to reject her reasons for not wanting to go and live in Pakistan. The trust of the submissions is that, whilst the judge did not expressly make a finding on the evidence that she would not go to Pakistan, such a claim is implicitly rejected by the judge, and that this was sufficient.
15. In reply, Mr Bazini has submitted that it is wrong for a judge to simply operate on the premise that if an individual has acted dishonestly in the past then all subsequent evidence must therefore be incapable of belief.

Conclusions on the error of law issue

16. I have concluded that the judge did err in law, as contended for in grounds 2 and 3.
17. The judge was entitled to reject, on an objective basis, the appellant's wife's concerns about living in Pakistan. However, it was sufficiently clear from her evidence as a whole, that she was asserting that she *would* not in fact follow the appellant to Pakistan. Given that she had limited leave to remain in this country, that assertion was one that she was entitled to put forward without it being simply fanciful.
18. It is the case that the judge did not make a specific finding on this aspect of the wife's evidence. This evidence had taken on particular significance in light of the second report from Mr Horrocks. He concluded that if the family unit split up (i.e. if the appellant's wife did not in fact go to Pakistan with her husband), there was a serious risk of one or more of the children being taken into Local Authority care because of the wife's inability to look after them adequately. The judge was aware of this opinion, having referred to it in passing at [19]. In turn, those consequences would have been material to the question of whether the appellant could show "very compelling circumstances" in his case, with reference to section 117C(6) NIAA 2002. In my view, the judge erred in failing to address this evidence head-on, as it were, and reach a specific finding upon it.
19. The question then arises as to whether what was said at [20] - [21] was nonetheless sufficient to at least have implicitly dealt with the matter. In my view, the answer to this is "no". I agree with Mr Bazini's point, stated in his reply, that previous dishonesty is not of itself sufficient to render any and all subsequent evidence untruthful. In this regard, I note the comments of the Court of Appeal in its recent judgment in Uddin [2020] EWCA Civ 338:

"11. I note in that regard the conventional warning which judges give themselves that a person may be untruthful about one matter (in this case his history) without necessarily being untruthful about another (in this case the existence of family life with the foster mother's family), known as a 'Lucas direction' (derived in part from the judgment of the CACD in *R v Lucas* [1981] QB 720 per Lord Lane CJ at 723C). The classic formulation of the principle is said to be this: if a court concludes that a witness has lied about one matter, it does not follow that he has lied about everything. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure. That is because a person's motives may be different as respects different questions. The warning is not to be found in the judgments before this court. This is perhaps a useful opportunity to emphasise that the utility of the self-direction is of general application and not limited to family and criminal cases."

20. The examples provided in the passage quoted do not precisely reflect the facts of the present case. However, the point made is nonetheless relevant. It emphasises the need for the judge to have specifically addressed the wife's assertion that she would

not go to Pakistan, and not simply deal with the absence of objectively-justified reasons why she could not go.

21. For the reasons set out above, the judge erred in law by failing to make a finding on a relevant aspect of the evidence.
22. That error is material to the outcome of the appeal because of the expert evidence from Mr Horrocks, referred to previously. Whilst the appellant certainly faced significant obstacles in succeeding (given his lengthy sentence and the lack of other identifiable features weighing in his favour), the existence of expert evidence suggesting that a family split might lead to children being taken into care, was capable (I put it no higher) of constituting a very compelling circumstance.
23. Therefore, I conclude that the judge's decision must be set aside.

Disposal

24. I see no good reason to remit this appeal to the First-tier Tribunal. The issue relating to the family units' position, seen in the context of section 117B(6) can be considered by the Upper Tribunal.
25. There is no basis for disturbing the judge's conclusion as to the eldest child's claimed mutism. I agree with Judge Blum's view that this was unarguably open to him. I also bear in mind the fact that the appellant has not sought to rely on ground 1 notwithstanding the limited grant of permission. Having said that, there will be no other preserved findings.
26. My provisional view is that there will need to be a resumed hearing in this appeal, and that it should take place on a face-to-face basis. This is in large part because oral evidence may well be sought to be called, and it is likely that an interpreter will be required. I will issue directions to the parties asking for their respective views.

Anonymity

27. The First-tier Tribunal made an anonymity direction. Given the existence of minor children in this case and the evidence that they could potentially become the subject of care proceedings, I deem it appropriate to maintain that direction in the Upper Tribunal.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I adjourn this appeal for a resumed hearing in the Upper Tribunal in due course.

Directions to the parties

1. **No later than 5 days** after this notice of decision is sent out, the appellant is to file and serve brief submissions on the form that a resumed hearing should take (these should include reference, for example, to the need for oral evidence and an interpreter);
2. **No later than 10 days** after this notice of decision is sent out, the respondent is to file and serve brief submissions in respect of the same issue as indicated in direction 1;
3. Whether the resumed hearing is conducted remotely or on a face-to-face basis, the appellant shall, **no later than 14 days** before that hearing, file and serve in physical and electronic form, a consolidated bundle including all materials relied on (and having regard to the contents of this decision notice);
4. With liberty to apply.

Signed: *H Norton-Taylor*

Date: 12 June 2020

Upper Tribunal Judge Norton-Taylor