



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

Appeal Number: DA/00263/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 9th December 2014

**Determination
Promulgated**

On 17th December 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

AFTAB HUSSAIN AFTAB

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Nicholson of Counsel instructed by Burton & Burton Solicitors

For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Jones made following a hearing at Bradford on 18th July 2014.

Background

2. The Appellant is a citizen of Pakistan born on 29th September 1979. He entered the UK on 10th December 1998 to join his wife, a British citizen, and was granted indefinite leave to remain on 15th November 1999. They

have five children born in 1999, 2001, 2002, 2006 and 2008, who are British citizens, as is the Appellant's wife.

3. The Appellant was convicted of a conspiracy to assist unlawful immigration at Sheffield Crown Court on 4th October 2012 and, on 18th January 2013, sentenced to two years' imprisonment. On 3 February 2014 the Respondent made a Deportation Order by virtue of section 32(5) of the UK Borders Act 2007.
4. The judge was satisfied that the Appellant's risk of re-offending was low, but said that he continued to show a lack of insight into the nature of his offence. The Appellant had committed his criminal offence whilst an adult and had shown little if any remorse or insight or perception of his criminality, and was evasive in his evidence. He was not a credible witness. The combination of his criminal record and the Crown Court judge's sentencing remarks were significant in assessing and balancing the Appellant's and his family's rights and interests.
5. It was conceded that the Appellant could not succeed within the Immigration Rules. The judge rejected the submission that the Appellant could not properly be returned to Pakistan on account of any health issues and he said that he had transferable skills and a comprehensive knowledge of his country's language and culture. Whilst he accepted that the Appellant had established a private life in the UK, his wider family lives in Pakistan and would be able to welcome him back; he would be able to re-establish his life there. Deportation would be proportionate when balanced against the Appellant's and his family's right to family life in the UK.

The Grounds of Application

6. The Appellant sought permission to appeal on the grounds that the judge had failed to consider the best interests of the children as a primary consideration. In particular he had not had regard to the evidence before him of their views, the evidence of the health problems suffered by their mother and the concerns about her ability to care for them, in particular the difficulties she had had whilst he was in prison. There was also evidence of the health and educational difficulties of two of the children and the positive impact that the Appellant's presence had on their welfare.
7. The assessment of proportionality focused upon the offending behaviour of the Appellant and the availability of support for the mother in his absence, but no proper consideration of other relevant evidence and in particular the impact of the Appellant's deportation upon the quality of family life.
8. The judge's assessment under the Rules was flawed in finding that there were no insurmountable obstacles to his wife relocating to Pakistan. He failed to take into account the fact that it would be entirely unreasonable to expect the children to leave the UK particularly in light of the special

needs of two of them. Notwithstanding the concession made by Counsel, the children could not be cared for by another family member in the Appellant's absence because the care the mother provides is insufficient.

9. Permission to appeal was initially refused but granted by Upper Tribunal Judge Chalkley on 13th October 2014. However at the hearing it was accepted that the basis of the grant of permission by Upper Tribunal Judge Chalkley was misconceived.

Submissions

10. Mr Nicholson submitted that the clear submissions made by Counsel on Section 55, as recorded at paragraph 13 of the determination, were not taken into account by the judge. It was accepted that the two older children had specific behavioural needs. The finding that the wife was able to care for them was entirely unreasoned - there was significant evidence before the judge that she was unable to cope without the Appellant's assistance. There was an entire absence of a consideration of the best interests of the children, which were not referred to in the determination at all, and which should have been a primary consideration for the judge, his principal findings on Article 8 being made without any reference to them.
11. Mr Diwnycz submitted that, whilst the judge ought to have mentioned Section 55, he had in fact engaged with the underlying issues in the appeal.

Findings and conclusions

12. First, it seems to be conceded in the grounds that Counsel conceded that the Appellant could not meet the requirements of the Immigration Rules. There is a reference at paragraph 26 of the determination to a concession that the appeal had to be considered outside of them. The judge could only deal with the appeal on the basis that it was put. The Appellant's wife is a British citizen and will remain in the UK to look after the children. Whilst there was evidence before the judge that she had struggled to do so whilst he was in prison, there was also evidence that she was receiving assistance both from the wider family and from Social Services. It is not an error for the judge to conclude that the requirements of the Immigration Rules were not met.
13. Of course it would have meant that this determination was less vulnerable to appeal if the judge had mentioned Section 55 in his conclusions and reminded himself that the children's best interests were a primary consideration for him. However the Appellant has not established that the judge did not in practice have proper regard to his Section 55 duties and the requirement to give proper weight to the welfare of the children.
14. It is clear that the judge had the children at the forefront of his mind. In a lengthy and well-reasoned determination he set out all of the evidence

relating to them, recognising that two of the boys had special educational needs and recording the wife's evidence that they could not settle in Pakistan and that the Appellant's removal would have a devastating effect on them. He also recorded Counsel's submissions on Section 55 and where the best interests of the children lay.

15. When making his findings the judge quite properly started with the Appellant's offence and his concern that the Appellant still did not recognise that he had done anything wrong. He then turned to the position of the family.
16. He considered whether there would be insurmountable obstacles to them living in Pakistan and recorded that the family had been welcome visitors to her husband's home there in the past and would doubtless continue to be so. He was not without sympathy for the wife and family, and accepted that the relationships were caring and subsisting. He considered what would happen to the family if the Appellant were deported and concluded that proper support was available.
17. This is not a case where the family's interests have been disregarded. It is plain that the children would much prefer to have their father in the UK with them. However that has to be balanced against all of the other evidence and the strong interests of the Respondent in seeking to deport foreign criminals. The decision reached was one open to the judge.
18. The Appellant has not established that he failed to have regard to a relevant consideration or that the judge erred in law.

Decision

19. The original decision stands. The Appellant's appeal is dismissed.

Signed

Date **16th December 2014**

Upper Tribunal Judge Taylor