



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

Appeal Number: DA/02407/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 20 October 2014**

**Decision & Reasons Promulgated
On 23 October 2014**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**S A
(Anonymity Order In Force)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T D H Hodson, Counsel acting for Elder Rahimi Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

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 appellant. Breach of this order can be punished as a contempt of court. I make this order because it is the appellant's case that he is a refugee. He has been disbelieved but it might be thought that identifying him in a report could enhance the risk of his being ill treated in the event of his return. Such a fear may not be justified but I see no reason why I should run any risk of an otherwise unmeritorious appellant being able to remain in the United Kingdom just because he has been identified in a public report. The order is to prevent the identification of the appellant and not to restrict public comments on the nature of the case or this decision where they can be made without incurring a risk of identifying the appellant.
2. The appellant is a citizen of Iran who was born in April 1979 (or thereabouts, the date has been disputed) and so is now about 35 years old. He appealed to the

First-tier Tribunal a decision of the respondent on 18 November 2013 to refuse to revoke a deportation order. The deportation order had been made on 27 January 2011 but the appellant said that he could not be returned to Iran because he was a refugee or otherwise entitled to international protection and that removing him would interfere disproportionately with the private and family life of the appellant and his immediate associates. The First-tier Tribunal dismissed the appeal on all grounds.

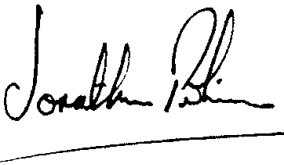
3. Permission to appeal was granted but I find it more helpful to look at the grounds than at the reasons for giving permission.
4. The first point taken is that the appellant is married to a British citizen and their child, "R" was born on March 2013 and so is now roughly 1½ years old and there is another child of the family, "L" who was born on August 2008 and so is now just over 6 years old. The grounds complain that the First-tier Tribunal did not have proper regard for the interests of the children and particularly not for the interests of R.
5. Ground 2 complains that the Tribunal did not have any regard to the appellant's wife's right to private and family life and did not consider if the appellant's removal was a disproportionate interference with her rights.
6. Ground 3 complains that the Tribunal had no regard to "the so-called *Boultif* criteria as expanded upon in Maslov v Austria [2008] ECHR 546." The panel thereby gives no consideration to "the nature and seriousness of the offence" "the time elapsed since the offence was committed and the applicant's conduct during that period" to name but two of eight factors or criteria to which were added "the best interests and wellbeing of children" and "the solidity of social, cultural and family ties with the host country".
7. Ground 4 complains that the Tribunal wholly failed to decide if the decision was "proportionate to the legitimate aim of preventing disorder and crime and particularly the very low risk of reoffending".
8. Against that background I look to see exactly what the Tribunal did decide about the private and family life of the appellant and those close to him.
9. At paragraph 67 of the determination the Tribunal noted that the appellant met his current wife in September 2011 and that he moved into his wife's household in June 2012. His wife said that she was employed and that the appellant had to shoulder most of the care for his daughter R. She did not want R to be away from her father. However, this is not a case where there was any independent evidence such as might be found from a social worker or sometimes a school teacher commenting on the involvement of the appellant with his daughter and stepchildren.
10. At paragraph 77 of the determination the Tribunal found that R "is very young and is not reliant on her father". The Tribunal was unclear about the extent of his involvement in her care and opined that she was of an age when she would be able to adapt to living with an absent father. The Tribunal noted that her mother would remain in the United Kingdom and there were other family members who would support her. The Tribunal decided there was "no dependency between L and the appellant.

11. The Tribunal decided there were no exceptional circumstances and it was lawful and proportionate to deport the appellant.
12. Whilst I agree with many of Mr Hodson's criticisms I am not persuaded that I should reach the conclusion he urges.
13. It is an unsatisfactory feature of the determination that although at paragraph 75 the Tribunal referred to several cases about the approach to Section 55 of the Borders, Citizenship and Immigration Act 2009 the Tribunal did not manage to tell us in terms what it considered to be the best interests of the children. I do not know why it did not do that. It would have been an easy thing to do. However, it is also plain from paragraph 77 that the Tribunal was not persuaded that the appellant was as involved in the lives of the children as he made out. R is young and her knowledge of her father is limited. L is older and will understand that the appellant is not her natural father and indeed she sees her natural father regularly (paragraph 45 of the determination).
14. Whilst it may well be in the best interests of both the children to preserve the status quo because it is very often in the best interests of both children to preserve the status quo the Tribunal clearly did not give that need great weight in the balancing exercise. This was not because of a misdirection of law but because they did not consider it sufficiently important to weigh heavily against the need to deport.
15. There was some criticism of the Tribunal for not investigating further or commenting on the appellant's propensity to reoffend. I do not see any merit in that criticism at all. The evidence before the Tribunal was that there was "a low risk of future offending" (paragraph 43) and the Tribunal proceeded on that basis. This is not an important point. That deportation is in the public good has been established by reason of his conviction. Clearly the appellant could compound his situation by further offending and it may be the case that however badly a person has behaved his removal might no longer seem to be in the public good if he has not been removed but has continued to live in the United Kingdom and lived industriously and peacefully for many years. That situation has not yet come about. Certainly in SU (Bangladesh) v Secretary of State for the Home Department [2013] EWCA Civ 427 the Court of Appeal signaled that delay in removal that was not the fault of the respondent was not normally a significant factor when considering revocation of a deportation order.
16. I have reminded myself of Mr Hodson's submissions and reflected carefully on the consequences of the legitimate criticisms he has made. I also remind myself that the determination was written after the Tribunal formed an extremely poor view of the appellant's credibility saying at different places that he had claimed wrongly to have been granted asylum (which assertion was described by the Tribunal as "a blatant lie"), that he did not tell his wife that he had been sent to prison until shortly before an appeal hearing and had not told his wife "until relatively recently that he was subject to immigration bail" and the relationship was well-established before he told her that he was the subject of a deportation order. The Tribunal refers to the appellant being able to "influence others by deception and lies" and said at paragraph 74 that "all facets of the appellant's private life have been built upon lies and deceit".

17. It is not the function of the Tribunal to be rude but when the evidence supports such emphatic findings the Tribunal should not shy away from making them. These findings have not been criticised and there is no reason to think they could be criticised in law. They were at the very least a legitimate view of the appellant supported by the evidence. Against this background the rather skimpy explanation of their finding about the appellant's role in family life not being established is much easier to understand.

15. Putting everything together, although there were proper reasons to be concerned about the determination, which is why permission to appeal was given, none of the grounds persuade me that there has been any material error here and I dismiss the appellant's appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

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

Dated 22 October 2014