



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

Appeal Numbers: HU/02451/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 12th October 2018**

**Decision & Reasons
Promulgated
On 17th October 2018**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**RIABIAZ [K]
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer
For the Respondent: Mr F Khan, instructed by Khokhar Solicitors

DECISION AND DIRECTIONS

1. Although this is an appeal by the Secretary of State, I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Iran born on 2 January 1990. His appeal against deportation was allowed by First-tier Tribunal Judge Monson on 18 June 2018.
2. The Secretary of State appealed on the ground that the judge failed to identify why it would be unduly harsh for the Appellant's British citizen partner and child to remain in UK without him following AJ (Zimbabwe) [2016] EWCA Civ 1012. The judge relied only on the separation of the

Appellant from his partner and child from an emotional perspective. The Appellant's low-risk of re-offending was not relevant in this respect.

3. Permission to appeal was granted by Upper Tribunal Judge Kekic on the grounds that it was arguable that the judge failed to identify the basis upon which he concluded that it was unduly harsh to separate the Appellant from his partner and child and misdirected himself when assessing the public interest.
4. Mr Bramble relied on the grounds and submitted that the judge had not properly dealt with the issue of 'unduly harsh'. The test was a high one and the impact on the Appellant's child did not reach the required level. The judge failed to identify factors which took the case above the ordinary. The low-risk of re-offending did not impact on this situation. The judge failed to identify the factors which lead to a finding that the Appellant's deportation would have unduly harsh consequences over and above separation.
5. Mr Khan submitted that the Appellant was not present at the hearing which proceeded on submissions only. The facts were agreed and the decision was a balanced one. The Appellant's criminality was at the lower end of the scale and the judge correctly attached less weight to the public interest. The Appellant came to the UK as an unaccompanied minor seeking asylum and had been living in the UK for 13 years. He had been working and was integrated. He had a genuine relationship with his British citizen partner and child. Prior to his entry to the UK he lived in a refugee camp in Iraqi Kurdistan. The judge was entitled to come to the decision he did on the information before him.
6. The judge found that the Appellant had been in a relationship with his British citizen partner since January 2016 and his son was born on 12 July 2017. On 3 November 2017 the Appellant was sentenced to eight months' imprisonment for assault occasioning actual bodily harm, in which he repeatedly attacked the victim with a weapon. The Appellant's actions were out of character, he had shown remorse and there was a low risk of re-offending. The child's best interests were for the Appellant to remain in the UK. He was a joint carer and financial provider. His deportation would result in his partner having to bring up their son as a single parent and his son would lose daily contact with his father which would be detrimental in his formative years.
7. I find that the judge erred in law in failing to identify some additional feature, other than separation, affecting the nature and quality of the relationship between the Appellant and his partner and child. On the facts found by the judge the effect of the Appellant's deportation on his partner and child would not result in unduly harsh consequences over and above separation. Maintaining a close and immediate relationship with a British citizen partner and child would not outweigh the public interest in the normal course of events. I find that the judge erred in law in finding that

the effect of the Appellant's deportation on his partner and child would be unduly harsh. I set aside this finding and the judge's decision to allow the appeal. The judge's findings at paragraphs 43 to 66 are preserved.

8. The following findings are preserved: The Appellant was a foreign criminal under section 117D(2)(c)(ii) and he could not satisfy paragraph 399A of the Immigration Rules. The Appellant was in a genuine and subsisting relationship with his British citizen partner and child and it would be unduly harsh for them to go to Iran. The issue is whether the effect of the Appellant's deportation on his partner and child would be unduly harsh.
9. The Appellant did not attend the hearing before the First-tier Tribunal because he was unwell. There was insufficient medical evidence before the judge and an application for an adjournment was properly refused. The Appellant has provided medical evidence to show that he had surgery on his back on 27 May 2018. The hearing took place on 14 May 2018. I am satisfied that the Applicant did not have an opportunity to put his case before the First-tier Tribunal and that the nature of the judicial fact finding is such that, in the interests of the overriding objective, it is appropriate to remit the case.
10. I have decided in accordance with paragraph 7.2 of the Practice Statements of 25 September 2012 that the decision dated 18 June 2018 should be set aside and the appeal remitted to the First-tier Tribunal.

DIRECTIONS

- (i) The Tribunal is directed pursuant to section 12(3) of the Tribunals, Courts and Enforcement Act 2007 to reconsider the appeal at a hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Monson.
- (iii) The Appellant to file and serve, on the Respondent and the Tribunal, any further evidence and submissions, including expert evidence, at least 14 days before the hearing.
- (iv) The appeal to be listed, for two hours, before a First-tier Tribunal judge at Taylor House, London on the first available date. No interpreter is required.

J Frances

Signed
Upper Tribunal Judge Frances

Date 12 October 2018