



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/08884/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Royal Courts of Justice**

**On 18 December 2017**

**Decision & Reasons  
Promulgated**

**On 11 January 2018**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**AK**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Not Represented

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision dated 5 October 2017 of First-tier Tribunal Judge Owens which refused the human rights claim of the appellant brought in the context of a decision to deport him made on 14 September 2016.
2. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings. The order

is made to prevent serious harm arising to the minors involved in this appeal.

3. The background to this matter is the respondent's records show the appellant came to the UK from Pakistan with his mother in 1975 when he was 11 years old. Existing records held by the respondent do not confirm when he was granted with indefinite leave to remain (ILR) but a "No Time Limit" stamp was placed in his Pakistani passport on 1 December 1994. The appellant remained in the UK thereafter. The appellant married a British national and had one child from that marriage in 1986. That son now has a family of his own and so the appellant also has two British grandchildren. The appellant and his first wife divorced in 1992.
4. The appellant formed a relationship with another British national, SH, approximately 27 years ago and that they have been married for eighteen years. The appellant and SH have four children together. Their details are as follows:
  - SK born on 14 November 1998
  - ASK born on 11 November 2000
  - SAK born on 11 November 2004
  - ZK born on 16 January 2006
5. The appellant has an offending history going back to 1977. Between November 1977 and August 2016 the appellant amassed 51 convictions and 22 offences. This prolific history is connected to his drug addiction.
6. The appellant continued to offend notwithstanding letters from the respondent dated 15 June 2007 and 1 April 2010 informing him that the Criminal Casework team would not be pursuing deportation against him but giving him warning that he could face deportation if he continued to offend.
7. On 4 July 2016 the appellant was convicted of dangerous driving for which he was sentenced to twelve months' imprisonment, of theft for which he was sentenced to four months' imprisonment and for failing to surrender at a point in time for which he was sentenced to fourteen days' imprisonment. As the sentences were set to run consecutively his total sentence was for sixteen months' fourteen days' imprisonment.
8. These offences in 2016 led the respondent to commence deportation proceedings on 15 September 2016 with service of notice of a decision to deport. On 18 July 2017 a deportation order was made under Section 32(5) of the UK Borders Act 2007.
9. The appellant brought his appeal in front of the first-tier Tribunal on 26 September 2017 on the basis of his private and family life under Article 8 ECHR. The appellant was unrepresented at the hearing. The First-tier

Tribunal Judge considered the issue of the appellant being unrepresented at [5]-[8] of the decision:

- “5. The appellant was unrepresented and did not produce any documents in support of his appeal. Nor did any witnesses attend the appeal hearing to give evidence on his behalf. In the interest of justice and given the important consequences of a decision for the appellant, I considered whether to adjourn the appeal in order for the appellant to seek representation or arrange for his wife to attend the hearing. The appellant himself did not request an adjournment.
  6. As far as representation is concerned, the appellant has never been represented. His evidence is that he does not wish to pay money for a representative and has not made any efforts to seek a representative. He is able to speak good English and has access to a telephone. In these circumstances, I found that there was no realistic prospect of him obtaining a representative.
  7. The appellant also indicated that his wife and children were not aware of his convictions and he does not wish them to attend the hearing because he does not want them to know about the full extent of his offending. In these circumstances I was satisfied that the appellant did not intend to call any further witnesses.
  8. The appellant had not prepared an appeal statement but I considered that the Tribunal could take the appropriate evidence from him during the appeal hearing. Having considered all of the relevant factors including avoiding further delay in determining the appeal and the length of time the appellant has been in detention as well as the unlikely prospect that any further witnesses would attend the appeal, I decided that it was fair and in the interest of justice to proceed with the appeal. I took into account Rules 2 and 4 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 when making this decision”.
10. At [9]-[13] the judge set out the correct law applicable to the appeal. At [14]-[17] the judge set out the materials that were before her. At [18]-[22] she set out the respondent’s decision. At [25]-[30] she set out the appellant’s case.
  11. The First-tier Tribunal went on in [35]-[45] to give reasons for finding that the appellant had not shown that he had a genuine and subsisting relationship with his wife or children. The reasons given for finding that there was no genuine and subsisting relationship was the absence of any evidence from any of the family members bar two brief letters from two of the children. In addition, the appellant’s evidence about the role he played in his family was “very confused”; see [39].
  12. At [46] the judge accepted that the appellant had established a private life in the 42 years that he had been living in the UK.
  13. At [48] to [76] the judge conducted an assessment outside of the Immigration Rules following the *Razgar* questions and applying the

relevant provisions of the Immigration Rules and Sections 117B and 117C of the Nationality, Immigration and Asylum Act 2002.

14. The First-tier Tribunal concluded that where there was no genuine and subsisting relationship with either the wife or the children the appellant could not succeed under paragraphs 399(a) or 399(b) of the Immigration Rules. At [67] the judge assessed the best interest of the children being as remaining with their mother and there not being any “serious detriment to their wellbeing” if the appellant were deported given the lack of evidence of a genuine and subsisting relationship with them and the absence of “any positive role in their lives thus far”.
15. Paragraph 399A was also not found to have been met. The judge accepted at [64] that notwithstanding the appellant’s serious drug habit and prolific offending and not working for many years but he was “socially and culturally integrated”. At [65], however, she did not find that there would be “very significant obstacles to his integration if he were returned to Pakistan”. This was for the following reasons:

“65. I next turn to whether there would be very significant obstacles to his integration if he were returned to Pakistan. I find that he has been absent from Pakistan for a very long period - 43 years which is a significant period of time. I accept that he has only returned on one occasion when his father died and that he has been in the UK since the age of 11. I find that his two brothers are in the UK and his parents are deceased. Although I find that it will not be easy for him to find employment in Pakistan given his lengthy absence and his likely probable future drug use, I find he is likely to have extended family members in Pakistan who will be able to assist him at least at the outset. His eldest brother who manages a clothing factory is also in a position to send remittances to him in Pakistan to enable him to live independently. The appellant does have work experience in running a business in the past. The appellant has health problems. He suffers from zero positive CCP positive rheumatoid arthritis. He takes methotrexate and his symptoms include tender joints and morning sickness. I find that treatment is likely to be available in Pakistan. I do not find that this condition will preclude him from finding work. The appellant can speak Punjabi and has friends and associates in the UK. I find that he will be able to similarly find friends in Pakistan. He has cultural ties wit Pakistan through his brothers and wife who has Pakistani heritage. On balance considering all of the factors, I find that he does not satisfy paragraph 399A of the Immigration Rules which is reflected in Exception 1 at 117C(4) Nationality, Immigration and Asylum Act 2002.”

16. The judge also did not find “very compelling circumstances” that could lead to the appeal being allowed.
17. The application for permission to appeal to the Upper Tribunal was made on very lengthy grounds set out over sixteen pages. Permission was granted in a decision dated 2 November 2017 on a limited basis. That limited basis was as follows:

“At paragraph 65 of her decision the judge indeed considered the appellant’s circumstances upon return to Pakistan and whether there would be very significant obstacles to his integration if he was returned to Pakistan. The judge found that it was likely that the appellant had extended family members in Pakistan who would be able to assist him at least at the outset and that an elder brother who manages a clothing factory would be in a position to remit money to Pakistan in order to enable the appellant to live independently. A careful scrutiny of the judge’s decision did not reveal the evidence which fairly generated such findings and the judge’s findings were arguably to be characterised as speculative as being unsupported by evidence. To this extent only the grounds disclosed an arguable error of law but for which the outcome of the appeal might have been different”.

18. The appeal before me is therefore limited to this aspect of the grounds which challenges the findings at [65], set out above. The appellant objection to those findings is set out in paragraphs 7 and 8 on page 5 of grounds. He states as follows:

**“7. Paragraph 65;**

In one example to prove that the Learned Judge’s failure and malicious intent to certify the *admissibility of key information* is indicated in this paragraph in itself. How she concluded that AK has extended family members without any references? Similarly on what grounds she believes that his brother is financially stable and will support him when AK is deported? How sure she is that his brother will financially support him? Logically when his brothers, if financially stable and had means, why they could not support AK on private funding to deal his legal case now when his brothers are local let alone when he is 8,000 miles distant apart.

8. The Learned Judge concluded in the same paragraph that *his eldest brother manages a clothing factory – a false information* and her belief that *his brother will send him remittances to him in Pakistan to enable him to live independently* is a careful and manipulative tactic for persuasion where in fact .....is to transparently and impartially consider the information and should have acquired information from the respondent, if not sure could had then explored from the appellant. In both aspects the Learned Judge failed to test information as well as a slanderous attempt to discredit character and credibility of the appellant”.

19. There is no basis for any of the more emotive aspects of the grounds, for example the First-tier Tribunal judge acting with “malicious intent”. Nothing in the materials begins to support such allegations, the careful consideration of the appellant being unrepresented and whether to adjourn showing a fair-minded approach to the appeal.
20. The judge’s comments on the existence of family in Pakistan and the brothers in the UK being able to assist the appellant on return must be viewed within the wider assessment of the proportionality of deportation. There is no challenge to the finding that the appellant retained cultural ties with Pakistan because of his family environment in the UK, his wife also being of Pakistani heritage. The finding that the appellant has work

experience from running a business in the past also stands. The judge had already found at [49]-[50] that the presumption in favour of deportation was present here, arising not just from the index offences but “a pattern of persistent offending”. The offending in the face of two warning letters from the respondent and failure to cease offending even after repeated drug rehabilitation courses was found to further weigh against the appellant in the balance. The appellant was found “likely to reoffend”; see [61].


21. The appellant maintains that the evidence did not permit the First-tier Tribunal to conclude that his brothers in the UK would assist him. The burden was on the appellant to set out his circumstances if deported. Nothing indicates that he told the First-tier Tribunal that he would not be assisted at all by his brothers. At G5 of the respondent’s bundle in a letter which appears to have been written in 2010, he referred to having “added support from extended family also in this country.” My conclusion is that the First-tier Tribunal was entitled to make the finding concerning the appellants brothers on the basis of the evidence before her and no error of law arises.
22. The same letter from 2010 at G5 of the respondent’s bundle states, however, “I have absolutely no one in Pakistan”. That statement was addressed by the respondent on page 9 of the refusal letter:

“Although you have stated that you have no family in Pakistan and that you have not been back there in almost 43 years, it is noted that you spent your earlier childhood years in Pakistan and, notwithstanding the length of time that you have lived away from Pakistan, there will be people in your home district, be they extended family, family friends, or former neighbours, who you would be able to draw on the help and support of, should the need arise, until such time as you are able to re-establish your life and support yourself independently in Pakistan.”

23. The appellant was not found credible regarding other significant aspects of the appellant’s evidence were not reliable, for example his involvement with his children. Where that was so and the parties had set out opposing views on the issue of support on return to Pakistan, it is my reading of [65] that the judge was entitled to take the view put forward by respondent and that it was open to her conclude that the appellant “was likely to have extended family members in Pakistan who will be able to assist him at least at the outset”. Given the weighty factors against the appellant in the proportionality assessment, even if the finding of initial support from extended family in Pakistan could be shown to wholly incorrect, it also not my view that this factor alone could have made a material difference to the outcome of this appeal.
24. It is therefore my conclusion that the decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

### **Notice of Decision**

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed:   
Upper Tribunal Judge Pitt

Date: 10 January 2018