



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/13310/2018**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Royal Courts of Justice  
On 18 November 2019**

**Decision & Reasons Promulgated  
On 26 November 2019**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

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

Appellant

**and**

**MR GURSHINDER DEOL (AKA SINGH)  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer  
For the Respondent: Mr T D C Jowett, Counsel, instructed by N C Brothers &  
Co Solicitors

**DECISION AND REASONS**

1. This is an appeal against the decision issued on 23 August 2019 of First-tier Tribunal Judge Cockerill which allowed the appeal of Mr Deol on Article 8 ECHR grounds in the context of deportation.
2. For the purposes of this decision I refer to Mr Deol as the appellant and to the Secretary of State for the Home Department as the respondent, reflecting their positions before the First-tier Tribunal.
3. Mr Deol is a citizen of India, born on 16 November 1963.

4. Mr Deol came to the UK on 18 April 1987 with entry clearance as a spouse. He was granted further leave to remain until 10 September 1988 and on 13 December 1988 he was granted indefinite leave to remain (ILR).
5. Mainly because of his alcoholism, Mr Deol has an extensive history of offending. The offences led, in the main, although not exclusively, to non-custodial sentences. The most serious offence was one for which on 22 August 2008 he was sentenced to a term of eight months' imprisonment for harassment and breach of a civil injunction against his ex-wife. These offences led to previous deportation proceedings in which the appellant was successful, his appeal being allowed on 26 February 2009.
6. Mr Deol continued to offend notwithstanding those previous deportation proceedings. Again, the offences were relatively minor and led to non-custodial sentences or suspended custodial sentences. However, on 15 November 2017 he was convicted of putting a person in fear of violence and was sentenced to two years in imprisonment. He was also convicted of assault by beating and sentenced to a six months' imprisonment to run concurrently with the sentence of two years. A very distressing aspect of the offences was that they were committed against his elderly and frail mother with whom he was living. The sentencing judge remarked on the appellant's "appalling behaviour" towards his mother who was nearly 80 years old.
7. A deportation order was made against the appellant on 29 May 2018 and in a letter of the same date the respondent refused his human rights claim, giving full reasons for so doing. The appellant appealed against that decision to the First-tier Tribunal.
8. The hearing before Judge Cockerill took place on 7 August 2019. The First-tier Tribunal heard evidence from the appellant, his cousin, his mother and his two sons. A summary of their evidence is contained in paragraphs 15 to 25 of the decision.
9. In paragraphs 31 to 33 of the decision the judge sets out the relevant provisions of the Immigration Rules and identified that where the appellant had a sentence of 2 years, an assessment had to be carried out in line with the provisions of paragraph 399A of the Immigration Rules, there being no relationship with a partner or child that could qualify for consideration under paragraph 399.
10. The judge found that the appellant had lived in the UK lawfully for more than half of his life, that he was socially and culturally integrated and that he would face very significant obstacles to integration in India. He found that the appeal had to be allowed where the provisions of paragraph 399A were met and outweighed the public interest. The judge's reasons are set out in paragraphs 33 to 36 of the decision:

"33. ... I make it clear that the first element, namely that the person has been lawfully resident in this country for most of his life, has plainly been made out by the Appellant, he has been here for over 30 years. As regards the second element, as to whether he is socially and culturally integrated, although that was queried by the Respondent it

seems to me that it is clear that the Appellant is precisely that, namely socially and culturally integrated. He is Sikh. He has had a serious problem with alcohol and that has affected his life dramatically. However, as I have already indicated, he was married, he has two adult sons with whom he maintains a relationship. He has had a close relationship with his mother and sadly, because of his abuse of alcohol and some strain in their relationship, he committed criminal acts towards her for which he has been punished. I do not see that it can really be said that he is not socially and culturally integrated, notwithstanding the fact that he has committed offences.

34. The acid test is really whether there are very significant obstacles to his integration. Miss Khan is right to say that there is no evidence that the Appellant would be unemployable in India. He has not worked for some appreciable time in this country really because he has some physical health difficulties that have been documented and, perhaps most importantly, he has had a serious drink problem. He declares he has been sober for some two years now and is determined to turn over the proverbial new leaf. In analysing whether that particular test is met, I note that the Appellant does not have close family members in India. By contrast, of course, his sons are in the United Kingdom and are working actively in a restaurant business. They are ready and willing to support the Appellant by providing him with employment. That picture could not be mirrored in India where there is no-one to help him. He has no capital. He is indeed part of a minority in India by being Sikh. He would not have the day-to-day contact with immediate family which of course can exist here. Given his health difficulties, and taking account of his previous problems when he has turned to alcohol, it does seem to be perfectly arguable that there would be more than major obstacles for this particular Appellant and what could rightly be described as very significant obstacles to his integration.
35. He would be someone who would be expected to live on his own. It is plain that his marriage broke down and that led to a host of problems for the Appellant. He has run into serious difficulties with his mother and that, of course, led to the imposition of the two year prison sentence. In India, however, there is no support network available to him and I would be very concerned as to what would happen to the Appellant, given his vulnerabilities, if he were sent there.
36. I conclude, therefore although it is not by any significant margin, that the Appellant succeeds in relation to the Rules by showing 'very significant obstacles to integration ...'

11. The First-tier Tribunal then proceeded to consider the "very significant obstacles test" in the event that his assessment of paragraph 399A was incorrect:

"36. ... However, if for any reason I am wrong in that analysis, and held to be so, then I take full account of all the evidence which I have heard from the witnesses who attended Taylor House on 7 August 2019. They were perfectly straightforward and reliable in the way in which they gave their evidence to me. What is striking about this appeal, and this has particular relevance for consideration of the matter outside the framework of the Rules and on Article 8 grounds, is that the very victim of this criminal conduct, the Appellant's mother, is really the first

person to be coming to the Tribunal and saying that she wants her son to be permitted to remain here so that he can provide care and support for her. He is her only son. Culturally it is extremely important that the Appellant plays a practical role in relation to this mother, caring for her and looking after her. He has the capacity to do that and so it is arguable what real public interest would be served by removing this Appellant and thereby depriving his mother of not only love and affection from her son, but also practical support.

37. I have noted already how Counsel put the matter to me that the Appellant's mother had indeed come to this country as an adult dependent relative and so indeed it would be a most peculiar twist of fate if she, having gained permission to stay in this country because of her son, should find that by her actions, or indirectly by her actions, that her son is now removed. I also give very significant weight to the length of time that the Appellant has been in the United Kingdom. That really cannot be downplayed. He has been here for more than 30 years. He does not know India in any meaningful sense because he has, for all practical purposes, made this country his home. I recognise, of course, that he can speak the language and he is of course very familiar with Sikh custom and practice, however, there is a wealth of difference between speaking the language and really being part of Indian culture.
39. I am mindful also that the Appellant has a number of health needs. None is of sufficient gravity in and of itself, or indeed collectively, to prevent his removal but they are a factor that needs to be given some weight, the Appellant is not in the best of health. Patently, he has had a serious drink problem in the past.
40. I am mindful, of course, of the provisions of Section 117 to the Nationality, Immigration and Asylum Act 2002, as amended, particularly at Section 117C which requires additional consideration in cases involving foreign criminals.
41. It is trite perhaps to say that the more serious the offence committed by the foreign criminal the greater is the public interest in the deportation of that criminal. This Appellant did receive a sentence of two years' imprisonment and that does mark the gravity of the matter. However, and I think this is important to stress, the victim of that set of offences was his mother and of course she came to Taylor House to speak strongly in favour of mercy being shown so that the Appellant could be permitted to remain in this country to be reunited with her.
42. The way in which Section 117C is drafted is that it really mirrors the provisions of paragraphs 399A and so again I look at very significant obstacles to integration. I can repeat my reasoning that as I find that the Appellant would face such very significant obstacles, given his own history, his personality and character and the fact that he will be removed from the only close and loving relatives that he has, namely his sons and his mother. In my overall assessment in judgment that decision to remove the Appellant by deportation would be a disproportionate one. It would be placing him far too great a distance from his immediate family and in all the circumstances, in my judgment, it is not warranted. Public interest, when looked at in a broad way, is not served by removing the Appellant from the life of his

mother. When one hears that his sons can offer him employment that is highly positive action that may well settle the Appellant in life and enable him to act in a constructive and helpful manner towards his mother in the future. In that sense and in my judgment the public interest is truly served.

43. The Appellant, in my judgment, has succeeded in his appeal based upon Section 33 to the 2007 Act by showing that his deportation would result in a breach of his protected human rights under Article 8.”

12. The respondent’s grounds of appeal challenge the findings that the appellant was socially and culturally integrated into the UK and that he would face very significant obstacles to integration in India.
13. The respondent maintained that the extent of the appellant’s criminal history showed “scant regard” for social norms and meant that he could not be found to be socially and culturally integrated, with reliance being placed on the cases of Bossade (ss.117A-D interrelationship with Rules) [2015] UKUT 00415 and on Binbuga v SSHD [2019] EWCA Civ 551.
14. The grounds also challenged the finding that there were very significant obstacles where there was no evidence that the appellant would be unemployable in India, his history showed that he had been a talented chef and he would have no language difficulties as he was fluent in Punjabi. The respondent maintained that the judge took an incorrect approach in comparing the appellant’s life in India with the life he would have in the UK, in particular comparing the daily contact he has with family here to having no family in India. The respondent contended that it was the norm for someone who is deported to have to live on their own and that this was an expected consequence of deportation. The judge also speculated in finding that the appellant might return to alcohol given that he had been abstinent for two years. The respondent maintained that the evidence before the First-tier Tribunal did not show a lawful approach to the assessment of very significant obstacles to reintegration, relying on the case of SSHD v Kamara [2016] EWCA Civ 813 which states at paragraph 14:

“The idea of ‘integration’ calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and the capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual’s private or family life.”


15. In my view the respondent’s grounds can best be characterised as arguing that the First-tier Tribunal took an irrational approach to the evidence concerning social and cultural integration and very significant obstacles to reintegration. The grounds are really, therefore, maintaining that the judge reached a decision that on the evidence that was before him was not one that a reasonable decision maker could reach.

16. It is not my conclusion that the decision shows that the judge took an irrational approach in the assessment of either social and cultural integration or very significant obstacles to reintegration in India.
17. It is clear from the decision that the judge placed significant weight on the evidence of the appellant, his cousin, his mother and his two sons. Their evidence was that the appellant was socially and culturally integrated and that the appellant deeply regretted his offending and had addressed his alcohol problem that lay behind it. They also considered that he would face very significant difficulties on his own in India. The First-tier Tribunal was entitled to place weight on their evidence and take it at its highest. In paragraph 33 the judge shows that he considered the respondent's position on social and cultural integration, having already set out the respondent's case in more detail in paragraphs 8 to 10 and 26. The judge refers specifically at the end of paragraph 33 to the appellant's offences as a relevant factor when considering social and cultural integration. It is not arguable that the First-tier Tribunal failed to have proper regard to the extent and seriousness of the offending as his understanding of this is set out in various parts of the decision, for example in paragraphs 4 to 8. The FTTJ provides a number of rational reasons in paragraph 33 for finding that the appellant was socially and culturally integrated, in particular his very long residence, having married and had a family in the UK and his ongoing and close relationships with his adult sons and his mother. The case of Binbuga does not indicate that a criminal history has to break integrative ties and the appellant's profile here was very different to that of Mr Binbuga who was a member of a criminal gang with a much shorter period of residence. Albeit another judge might have reached a different conclusion, there was material here which allowed this judge to reach the decision he did, notwithstanding the criminal offending and the grounds amount to a disagreement with the conclusion reached rather than showing an error of law in this part of the assessment.
18. My conclusion is also that the judge's findings on very significant obstacles to reintegration in India are sound for very similar reasons. The judge acknowledges that there was no specific evidence that the appellant would be unemployed in India. He was entitled to reach a conclusion that the appellant would not be able to find work, reasoning that he had a limited employment history in the UK, would be isolated in India with no funds, had health problems and that his difficulties there would make a relapse into alcoholism more likely. It is correct that the assessment of very significant obstacles to reintegration is not one of comparison with a private life in the UK but my reading is that all that the judge does in paragraph 34 is to find that the appellant would struggle additionally in India because of the distress of separation from his family in the UK and together with his isolation there he would experience "more than major" obstacles. The assessment appears to me to be in line with the "broad evaluative judgment" required by the guidance in Kamara and is a sufficiently clear and well-reasoned finding that this appellant will not be "enough of an insider" and would not be able to re-establish himself. Again, it is not my view that the grounds show that the assessment contains either a legal misdirection or irrationality.

19. It therefore follows, that the First-tier Tribunal was entitled to allow the appeal where paragraph 399A was met.
20. For all of these reasons, I find that the decision of the First-tier Tribunal does not disclose an error on a point of law.

**Notice of Decision**

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

Signed:   
2019  
Upper Tribunal Judge Pitt

Date: 21 November