



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

**Case No: UI-2022-001725
First-tier Tribunal No:
HU/52813/2021
IA/07884/2021**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 24 March 2023**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**MA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pipe, Counsel, instructed by M & K Solicitors

For the Respondent: Mr F Gazge, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 16 January 2023

DECISION AND REASONS (R)

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

An anonymity direction was made by the First-tier Tribunal ("the FtT"). As this appeal concerns children that have previously been the subject of Care Proceedings before the Family Court it is appropriate for me continue that anonymity direction. Unless and until a Tribunal or court directs otherwise, MA is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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 Background

1. The appellant is a national of Pakistan. His appeal against the decision of the respondent of 20th May 2021 to refuse a human rights claim in the context of an application to revoke a deportation order was dismissed by First-tier Tribunal Judge Gribble (“Judge Gribble”).
2. The appellant claims Judge Gribble erred in her decision for reasons identified in paragraph [5] of the grounds of appeal that were settled by Mr Pipe dated 1st April 2022. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Brannan on 10th May 2022. He said:

“...3. The Judge’s decision deals carefully with the law and facts of the case. The material consideration is the balance that need to be struck to find if there are very compelling circumstances. Paragraph 72 shows that the judge’s misunderstanding of the length of time the children were not residing with their mother was part of that balance.

This error of fact is potentially material to the outcome of the appeal making it an arguable error of law. Ground c is therefore made out.

4. The other grounds are weaker especially when the selective quotes of the decision are read in context. However applying relevant principles I do not restrict the scope for permission.”

The decision of Judge Gribble

3. Judge Gribble noted at paragraph [3] of her decision that the background facts are not disputed. She summarised them in the following way:

“3. Mr A came to the UK as the spouse of Mrs SA in January 2003. He was granted indefinite leave to remain in 2004. He and his wife had 3 children, A, a girl, born on 23.5.04, E, a girl, born on 8.7.05 and Z M, a boy, born on 13.6.06.

4. On 23.3.07 the appellant was convicted at Huddersfield Magistrates Court of 3 counts of child cruelty. This related to an incident where he (and his wife) had left the 3 children (all under 3 at that time) alone in the home in a bedroom with the door tied shut. He was convicted of robbery on 28.11.07 and on 14.2.08 at Bradford Crown Court he was sentenced to 6 years imprisonment for 2 offences of robbery and to 6 months imprisonment

consecutively for child cruelty; one robbery committed when he was on bail for the child cruelty offences and another when he was on bail for the first robbery.

5. There were convictions prior to this for driving offences in 2005 and he had been sentenced to prison for two months in 2006 for driving whilst disqualified. There is also a past conviction for dishonesty which did not attract a custodial sentence.

6. On 22.4.08 the appellant was served with notice of liability to deportation and an Order deporting him from the UK was made on 30.12.09. An appeal was lodged and dismissed on 7.4.10. The appellant was removed from the UK on 29.10.10. By this time his marriage had ended. He and his wife were divorced in February 2009.

7. He applied to revoke the order in 2013 by which time he had reconciled with his wife, and they had remarried in Pakistan. This application was refused. An appeal was lodged and dismissed on 10.7.14. The children, who had been placed in care in 2007 with final orders made on 29.1.08, remained in care.

8. The application under appeal was made on 6.4.20 by Solicitors. It was made effectively on ground of passage of time, change of circumstances and compassionate circumstances in the context of the couple's baby son MIA (known as I) who has physical disabilities. He has thoracolumbar myelomeningocele (spina bifida) and he will need a series of surgeries as he grows."

4. At paragraph [10] of her decision, Judge Gribble noted Mrs A had also been prosecuted for neglect following the incident in 2007 and was given a probation order. She said:

"10. ... The children remained in care for some years until the Orders were discharged in 2016 (after the birth of I on 30.12.18 who has always lived with his mother) following assessment. This assessment concluded the appellant did not pose a risk to the children; Mrs A planning to take them to visit their father, and there is no current involvement from social services with the family."

5. At paragraph [14] of her decision Judge Gribble referred to the evidence before the Tribunal:

"... that the Care Orders had been discharged in 2016 and the children returned to the care of the mother. Assessment by social worker Mr Younger at that time concluded that the appellant did not pose a risk to the children, and it would be positive for them to have him return to the UK; and if he did so there would be no need for any updated assessment or involvement from social care."

6. Judge Gribble records in her decision that she heard oral evidence from Mrs A. Referring to the position of the two older girls, 'A' and 'E', Judge Gribble recorded the evidence of Mrs A, as follows:

"The older girls will not go alone to Pakistan because they do not like it and do not have any confidence. They would not go if it was not for their father, but they would go if it was an emergency, and would go alone. The children have done quite well since 2010 with her supporting them and their father helping on Skype. They could have got higher grades in their exams, but they have had a very stressful time. There are no issues with school and the children have never thought their father abandoned them."

7. Judge Gribble's findings and conclusions are set out at paragraphs [52] to [78] of her decision. She noted, at [57], the concession made by the respondent that it would be unduly harsh for I to live in Pakistan. She accepted he will need help to undertake all activities of daily living as he gets older. She said, at [57]:

"... at this point in his childhood he is dependent on others for the vast majority of his daily care needs. This task falls to his mother and to a lesser and occasional extent, to his siblings."

8. At paragraph [58], Judge Gribble noted that she had to consider whether it would be unduly harsh for I to remain in the UK without his father. She found that I has never lived with his father in the UK, and they have only spent short periods of time together in Pakistan, save for a period of 5 months in 2021. At paragraph [59] Judge Gribble said:

"Mrs A has managed admirably well to meet I's needs from 2018, at a time when the older children had only been back in her care for 2 years and they were all adjusting to life together as a family for the first time since 2007. I do not underestimate the difficulties that will have posed to her as a single parent with only 'cyber' help from the appellant, and limited direct help from her large extended family."

9. Judge Gribble found that it would not be unduly harsh for the children to remain in the UK whilst their father remains in Pakistan for reasons set out at paragraphs [59] to [65] of her decision. At paragraphs [66] to [77] of her decision, Judge Gribble went on to consider whether there are very compelling circumstances which nevertheless outweigh the pressing public interest in maintaining the appellant's deportation. She referred to the factors that weigh against the appellant at paragraphs

[67] to [69] of her decision, and the factors that weigh in favor of the appellant at paragraphs [70] to [76]. At paragraph [72] she said:

“I factor in too that **the older children spent at least 9 years in care whilst their father was in prison and then deported**. They have not had the chance to form a ‘natural’ relationship with him. **They have now been back in the care of their mother for over 5 years**. I of course has always lived with his mother. Here, the appellant has only lived with his older children for a short period in the UK, and they have all visited him in Pakistan. So, I attach significant weight to the children’s best interests.”

10. At paragraph [77] Judge Gribble said:

“In weighing these factors I am mindful of the guidance in Hesham Ali that a sentence of 4 years “almost always outweighs countervailing considerations of private or family life”. In these circumstances, I conclude that the public interest weighs heavier than the family life interests of the appellant.”

The appeal before me

11. Mr Pipe adopted the grounds of appeal but the focus of his submissions before me was upon the mistake as to fact, which he submits, amounts to a material error of law. Briefly, he submits Judge Gribble assumes the three eldest children were in the care of the local authority for the nine years between 2007 and 2016. He submits that although it is right to say that the Care Orders were discharged in 2016, the three eldest children A, E and ZM had only been separated from their mother for a period of 7 or 8 months. They had in effect, been placed in the day-to-day care of their mother, albeit under Care Orders. Mr Pipe drew my attention to the decision of the First-tier Tribunal promulgated on 7th April 2010 relating to the appellant’s appeal against the respondent’s decision of 30th December 2009 to make a deportation order and to remove him to Pakistan. In paragraph 14(3) of that decision, the Tribunal referred to the prosecution of Mrs A for child neglect that arose from the same incident. The Tribunal recorded “..*The children were initially taken into care, but have now returned to [Mrs A]...*”. At paragraph 27(1)(b) of that decision, the Tribunal addressed the appellant’s family life with his children and recorded “.. *We are aware that the children were taken into care, but were told that they have now been returned to their mother. There was no direct evidence from*

social services as to what their present involvement is with the children..”.

12. Mr Pipe submits Judge Gribble considered the appeal on the understanding that the three older children had remained in the care of the local authority between 2007 and 2016. The clear implication in what is said in paragraph [59] of her decision is that she understood that the children had only been back in the care of their mother for over 5 years (i.e. since 2016) whereas in fact, the children had been living with their mother and were in her day-to-day care for much longer.
13. Mr Pipe submits that mistake as to fact is material because it features in the judge’s consideration of whether it is unduly harsh for the children to remain in the UK whilst their father remains in Pakistan, and, whether there are very compelling circumstances over and above those described in Exceptions 1 and 2 of s117C of the Nationality, Immigration and Asylum Act 2022.
14. Mr Pipe submits Judge Gribble stated at paragraph [59] of her decision that Mrs A has managed admirably well to meet I’s needs from 2018, at a time when the older children had only been back in her care for 2 years and they were all adjusting to life together as a family for the first time since 2007. Quite apart from the misunderstanding as to the length of time that the three elder children had lived with their mother, the judge failed to adequately engage with the report of the independent social worker, Lynn Coates. In her report dated 20th November 2019, Lyn Coates refers to Mrs A struggling. Mr Pipe also drew my attention to the following passage in the report of Lynn Coates (*page 105 of the appellant’s bundle*):

“I have had discussions with Mr Neil Younger, Social Worker for Kirklees County Council, during the course of this assessment. He confirmed that the assessments of both Mr and Mrs [A] were positive and that there was no evidence that [the appellant] continues to pose a risk to his children or that he was involved in drug misuse or criminal activity. He advised that it is his professional view that should [the appellant] be granted permission to return to the UK, this would be positive for the children and afford [Mrs A] the support she so desperately needs in light of baby [I]’s chronic health problems. In

addition, he commented that in his view should [the appellant] reside with the family, there would be no need for further assessment or involvement from social care.”

15. Mr Pipe submits that although there is a superficial reference to the report of the Lynn Coates at paragraph [62] of the decision, Judge Gribble fails to adequately engage with the content of that report and the evidence before the Tribunal. Finally, Mr Pipe submits that at paragraph [61], Judge Gribble refers to the lack of any evidence that the three eldest children “..*have any other needs over and above those of every teenager.*”. He submits Judge Gribble was therefore considering a ‘notional comparator’ rather than considering each of the children individually. He submits that is also apparent from the reference at paragraph [74] of the decision to [I]’s needs being complex, but not unique.
16. Mr Pipe submits the errors are such that they amount to material errors of law and the decision of Judge Gribble should be set aside.
17. In reply, Mr Gazge accepts Judge Gribble erred in her understanding as to the length of time that the three eldest children had been living with their mother, but he submits, that mistake of fact does not amount to a material error of law capable of affecting the outcome of this appeal. He submits that on any view of the evidence the three eldest children were made the subject of Care Orders in 2007 and they remained subject to the Care Orders until they were discharged in 2016. Judge Gribble was therefore plainly aware of the ongoing involvement of the local authority in the lives of the children, albeit she appears not to have appreciated that the children had been living in the day-to-day care of her mother shortly after the Care Orders were made. Mr Gazge submits that in paragraphs [67] to [69] of her decision, when Judge Gribble was considering the factors that weigh against the appellant, she did not refer to the fact that the children had not lived with Mrs A between 2008 and 2016. Judge Gribble, had in fact noted in paragraph [70] that the appellant had been assessed over Skype by Ms Coates in 2019 and that he had been assessed in 2016 by Mr Younger as not posing a risk to the children. She noted the appellant misses his family and that all the children clearly miss their father. Mr Gazge submits Judge Gribble

properly noted that I has never lived with the appellant and has only ever spent short periods of time with the appellant in Pakistan. He submits Judge Gribble reached a decision that was open to her and whether or not the eldest children had lived with Mrs A since the care orders were discharged in 2016 or for some longer period, was immaterial to the outcome of the appeal.

Discussion

18. At paragraphs [39] to [48] of her decision Judge Gribble set out the relevant legal framework and at paragraphs [49] to [51], she outlines the issues to be decided by the Tribunal. Her findings and conclusions are set out at paragraphs [52] to [78] of the decision. The focus of the human rights claim now being made by the appellant was twofold. First, the passage of time and second, the change in circumstances following the birth of I.
19. A mistake as to fact is conceded by Mr Gazge. In setting out the background to the appeal, Judge Gribble referred at paragraph [7] to the three eldest children having been placed in care in 2007, with final orders made on 29th January 2008. At paragraph [10] she stated the children remained in care for some years until the Orders were discharged in 2016. If by those references she was referring to the children being 'in care' but placed with their mother, that was correct. If however, she meant the children were the subject of care orders made in favour of the local authority, and placed other than in the care of their mother, that was a mistake as to fact.
20. It is common ground between the parties that Judge Gribble made a mistake as to fact. Mr Gazge is in my judgement quite right to accept the mistake as to fact. It is readily apparent, as Mr Pipe submits, from what the judge said at paragraph [59] of the decision that Judge Gribble understood that the older children had only been back in the care of Mrs A for 2 years when I was born in 2018 (*i.e. since 2016*), and that they were all adjusting to life together as a family for the first time since 2007. The question for me is whether that mistake as to fact amounts to a material error of law capable of affecting the outcome of the

appeal. That necessarily involves some consideration of the various other criticisms that are made by the appellant in the grounds of appeal and so I take each criticism in turn.

21. First, the appellant claims that in paragraph [77], Judge Gribble referred to the guidance given in Hesham Ali, and erroneously raised the threshold to be applied to a level of impossibility. This ground is without merit. At paragraph [45] of her decision Judge Gribble properly referred to the decision of the Supreme Court in Hesham Ali. She referred to paragraph [38] of the judgement of Lord Reed and quoted the passage in which Lord Reed had said, “*..foreign offenders who have received sentences of at least four years, or who have received sentences of between 12 months and four years but whose private or family life does not meet the requirements of rules 399 and 399A) will be dealt with on the basis that great weight should generally be given to the public interest in the deportation of such offenders, but that it can be outweighed, applying a proportionality test, by very compelling circumstances: in other words, by a very strong claim indeed” (my emphasis). Having directed herself properly, Judge Gribble went on to carefully address the claims made by the appellant. She was entitled to have regard to the guidance given by Lord Reed that a sentence of four years almost always outweighs countervailing considerations of private or family life. There is nothing within Judge Gribble’s consideration of the evidence that even begins to suggest that she raised the threshold to a level of impossibility. It is in my judgement clear that she considered all the evidence before the Tribunal holistically and in the round before concluding that in this appeal, the public interest outweighs the family life interests of the appellant.*
22. Second, the appellant claims Judge Gribble accepted, at [71], that the childrens’ best interests lie, as with most children, in being brought up in a stable environment with both parents in the United Kingdom. The appellant claims Judge Gribble erred by making that assessment after concluding that it is not unduly harsh for the children to remain in the UK whilst the appellant remains in Pakistan. The appellant claims the best interests of the children should have featured in the consideration of whether it is unduly harsh for the children to remain in the UK without

the appellant. This ground too, has no merit. At the outset in paragraph [52] of her decision, Judge Gribble said:

“... I remind myself that their best interests must be considered as a primary consideration, but they can be outweighed by other factors...”

23. There is nothing in the judge’s consideration of the evidence and in her findings and conclusions that indicates Judge Gribble proceeds upon any basis other than it is in the best interests of the children for the family to live together in the UK, as they would wish. The fact that she does not say so at an earlier point in her reasons adds nothing. Judge Gribble referred to the way in which the relationships have endured in paragraph [56] of her decision. At paragraphs [59] to [64] Judge Gribble refers repeatedly to the impact of separation on the children and how they have coped in the absence of the appellant. The leading authority on section 55 remains ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4. In her judgment, Lady Hale confirmed that the best interests of a child are “a primary consideration”, which, she emphasised, was not the same as “the primary consideration”, still less “the paramount consideration”. Reading the decision as a whole, I am satisfied Judge Gribble had in mind the best interests of the children, and in particular, I, as a primary consideration as she was required to.
24. Third, the appellant claims Judge Gribble referred to the report of the independent social worker, Lynn Coates, but did not refer to the fact that within her report Lynn Coates referred to information provided by Mr Neil Younger, a social worker employed by Kirklees County Council whose assessment had led to the discharge of the care orders. He had expressed the view that the appellant returning to the family would be positive and afford Mrs A support she so desperately needs. This ground too is without merit. In setting out the background to the appeal, Judge Gribble recorded in paragraphs [10] and [14] that the care orders in respect of the three oldest children were discharged in 2016 after an assessment by the social worker Mr Younger concluded that the appellant did not pose a risk to the children, and it would be positive for them to have him return to the UK; and if he did so, there would be no need for any updated assessment or involvement from social care.

Further reference is made in paragraphs [15] to [17] of the decision, to the report of Lynn Coates and the views and opinions expressed. Contrary to what the appellant claims, at paragraph [70] of her decision Judge Gribble noted that the appellant had been assessed in 2016 by Mr Younger as not posing a risk to the children. That is a factor that weighed in favour of the appellant. The judge clearly had the evidence of Lynn Coates before the Tribunal in mind when reaching her decision.

25. Fourth, the appellant claims Judge Gribble repeatedly talks about the appellant's wife managing admirably, but failed to consider the evidence that the appellant's wife was struggling to cope and is prescribed medication. This ground too has no merit. The extract from the report of Lynn Coates to which Mr Pipe drew my attention is a section of the report in which Lynn Coates records what she was told by Mrs A. Mrs A spoke of struggling with getting I's buggy up and down the stairs to the second floor flat in which they reside. Lynn Coates went on in the following paragraph to refer to the concerns expressed by Mrs A for the future and how the family will cope without the day-to-day presence of the appellant in their lives. Judge Gribble confirms at paragraph [62] that she has considered the report of Ms Coates and the opinion expressed that it is very likely that the children will be emotionally harmed if separation is continued. She was prepared to accept that the children miss their father very much and have been affected by his physical absence for most of their lives. However she was satisfied that despite that evidence, the children have attended school and not come to the further attention of the authorities. She noted the children have been able to achieve, and it is in that context that she observed that Mrs A has managed admirably in the absence of her husband and that it is to their credit that the older children have all achieved in school. She quite properly acknowledged that there has been no social services involvement since 2016 and the children appear to be stable, bright young people who have achieved well, despite their adverse life experiences. The judge was not required to carry out a line-by-line analysis of the information set out in the expert's report and the views expressed whether by the appellant, Mrs A, or the children.

26. In any event, having concluded that it would not be unduly harsh for the children to remain in the UK without the appellant, the judge went on to consider whether there are any other very compelling circumstances. Judge Gribble noted, at [76], that Mrs A has depression and is receiving treatment. There was no evidence before the Tribunal that the children are not receiving good parenting or that her illness is compromising Mrs A's ability to meet the children's needs. Judge Gribble properly noted that whilst the appellant's addition to the family would assist Mrs A, that preference on its own is not a very compelling reason. Judge Gribble clearly had adequate regard to the matters set out in the report and the evidence before the Tribunal in reaching her decision. The findings and conclusions reached are rooted in the evidence.
27. Fifth, the appellant claims that at paragraph [61] Judge Gribble refers to there being no evidence that the older children have any other needs over and above those of every teenager. It is said she erred in setting up a notional comparator and the approach adopted is contrary to what was said by the Court of Appeal in HA (Iraq) v SSHD [2020] EWCA Civ 1176. This ground too has no merit.
28. The decision of the Court of Appeal in HA (Iraq) has been superseded by the decision of the Supreme Court in HA (Iraq) & Others v SSHD [2022] UKSC 22 handed down on 20th July 2022. The Supreme Court held that the reference in KO (Nigeria) v SSHD [2018] UKSC 53 to the harshness involved for "*any child*" faced with the deportation of a parent was an illustrative consideration rather than a definition or test. The Supreme Court held that in determining whether the deportation of a foreign criminal would be unduly harsh on their partner or child for the purposes of s117C(5) of the 2002 Act, the court has to follow the direction given in MK (Section 55; Tribunal Options: Sierra Leone) [2015] UKUT 223 (IAC) and approved in KO (Nigeria) v SSHD [2018] UKSC 53, and has to recognise that the threshold for the level of harshness justifiable in the context of the public interest in the deportation of foreign criminals is highly elevated.
29. Paragraphs [58] to [64] of the decision must be read as a whole to determine whether Judge Gribble fell into error. The threshold is a high

one. A Tribunal was required to make an informed evaluative assessment of whether the effect on the children would be “unduly harsh”, in the context of the strong public interest in the deportation of foreign criminals. It required a careful analysis of all relevant factors specific to the children. The question how a child will be affected by a parent’s deportation can depend on a variable range of circumstances including their age, the living arrangements and family dynamics, the degree of a child’s emotional and practical dependence on the parent and the individual characteristics of the child. In paragraph [60], Judge Gribble noted the older children do not have any physical disabilities and at paragraph [61] she referred to the absence of any evidence that any of the older children have particular struggles with their mental health that have reached a level of involvement for example from CAMHS (Child and Adolescent Mental Health Services) or that they have any other needs over and above those of every teenager. The reference to “needs over and above those of every teenager”, in context, was not setting up a comparator, but explaining the absence of evidence of the sort that one might expect to see, where it is said that the impact on a child would be unduly harsh.

30. Finally, the appellant claims that at paragraph [74], Judge Gribble noted that I’s needs are complex but not unique. He claims Judge Gribble erred in seemingly requiring some ‘unique’ factor and devalued the significant disabilities I has, on the basis that they are not ‘unique’. I reject this ground too. In paragraph [73] Judge Gribble recorded that the appellant’s appeal was put squarely on the basis that I’s needs are unique and that only the appellant’s return to the UK could ensure they are met. It was in that context, that Judge Gribble said at paragraph [74] that I’s needs are complex but not unique. She was, in effect, answering the claim made by the appellant rather than introducing or applying a test. She properly noted that I will remain entitled to the care and support of the authorities as his needs change and he gets older.
31. Having rejected the other criticisms made, I return to the misstate of fact that is conceded. In my judgement it is clear that the mistake of fact is immaterial. Whether the elder children had lived with Mrs A for

several years before the care orders were discharged, or only since 2016 would not have made a difference to the outcome of this appeal. The change of circumstances relied upon by the appellant and the focus of the evidence before the Tribunal was upon I and his disability. In considering whether there are very compelling circumstances over and above those described in Exceptions 1 and 2 of s117C Nationality, Immigration and Asylum Act 2002, Judge Gribble balanced the factors that weigh in favour of and against the appellant. Importantly in my judgement, she did not consider the living arrangements for the older children since the making of Care Orders as a factor that weighs against the appellant. She considered the fact that the children are now back in the care of their mother as a factor that quite properly weighs in favour of the appellant. Judge Gribble had noted at paragraph [56] of her decision that Mrs A and children are British Citizens. She said it is obvious that this family have held together since the appellant was deported and have maintained, as best they could in the circumstances, their bonds with each other. In my judgement when the decision is read as a whole it is clear that whether the children had lived in the day-to-day care of their mother, albeit under a care order for the five years that is referred to in paragraph [72] or some much longer period, is immaterial to the outcome of the appeal.

32. Notwithstanding the mistake as to fact, it is in my judgement clear that in reaching her decision, Judge Gribble considered all the evidence before the Tribunal in the round and reached findings and conclusions that were open to her on the evidence. A fact-sensitive analysis of the human rights claims was required and conducted by the judge. She gives adequate reasons for the findings made.
33. It follows that in my judgment the decision of the First-tier Tribunal is not vitiated by a material error of law and I dismiss the appeal.

Notice of Decision

34. The appeal is dismissed and the decision of First-tier Tribunal Judge Gribble shall stand.

Signed **V. Mandalia**

Date 18th January 2023

Upper Tribunal Judge Mandalia