



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004589
First-tier Tribunal No: **HU/53750/2021**
IA/09802/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 11 September 2023

Before:

UPPER TRIBUNAL JUDGE GILL
DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

Syed Izhar
(ANONYMITY ORDER NOT MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr R Ahmed, of Counsel, instructed by Hussain Immigration Law Ltd.
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 18 August 2023

DECISION AND REASONS

1. The appellant, a national of Pakistan, born on 30 November 1979, appeals against a decision of Judge of the First-tier Tribunal Wood (hereafter the “judge”) who, in a decision promulgated on 21 April 2022 following a hearing on 11 March 2022, dismissed his appeal against a decision of the respondent of 6 July 2021 to refuse his representations dated 7 November 2019 made on human rights grounds as to why he should not be deported. In the same decision, the respondent also refused the appellant's application of 4 June 2014 for indefinite leave to remain (“ILR”) on the basis of 10 years' continuous lawful residence under para 322 of the Immigration Rules based on his criminal conduct.
2. A deportation order was made against the appellant on 2 July 2021 under s.32(5) of the UK Borders Act 2007 on the ground that he was a foreign criminal who had been

sentenced to a period of imprisonment of at least 12 months and that as such his deportation was deemed to be conducive to the public good for the purposes of s.3(5)(a) of the Immigration Act 1971.

3. The appellant entered the UK on 4 April 2004, aged 24 years, on a student visa. He made a number of immigration applications as a result of which he had continuous leave from the date of entry until 12th August 2015. On 4th June 2014, he made the application for ILR referred to **at para 1 above**. On 3rd October 2019, the appellant was convicted at Kingston-Upon-Thames Crown Court of fraud offences (that is, taking steps to evade duty, conspiracy to convert criminal property and conspiracy to remove criminal property) for which he was sentenced to a total sentence of 3 years' imprisonment and disqualified from being a company director for 5 years. He did not appeal against the conviction or sentence.
4. The appellant's human rights claim was made on the basis of his family life with his wife, Ms Zareen Shahid (a national of Pakistan), and three children who were born (respectively) on 10 January 2009, 20 August 2013 and 8 September 2016. As at the date of the hearing before the judge, the children were aged (respectively) 13 years, 8 years and 5 years. They were all at school in the UK. The two youngest were born in the United Kingdom but they were not British citizens. The eldest child (who arrived in the United Kingdom at the age of 4 years) and the appellant's wife had leave to remain in the United Kingdom until 6th August 2022. The appellant's wife came to the United Kingdom in December 2012, aged 19 years.
5. The sole issue in this appeal to the Upper Tribunal is whether the judge materially erred in law in reaching his finding that it would not be unduly harsh for the appellant's children to remain in the United Kingdom without him. No other aspect of the judge's decision in relation to the appellant's family life claim was raised in the grounds or at the hearing before us.
6. In relation to the appellant's private life claim, para 22 of the grounds in support of the application to the Upper Tribunal for permission to appeal and para 37 of the grounds in support of the application to the First-tier Tribunal for permission to appeal contended, in bare terms, that the judge "*erred in law to his approach to private at [58]*". No explanation was given as to the error that the judge was said to have made nor was any reasoned criticism provided of the judge's reasoning and findings in relation to the appellant's private life claim. At the hearing before us, Mr Ahmed did not mention the appellant's private life claim or the judge's reasoning or findings in relation to his private life claim.

The judge's decision

7. The judge noted that the respondent accepted that the appellant had a genuine and subsisting relationship with both his wife and his children (para 4).
8. At para 33, the judge said:
 - “33. My decision has been undertaken following careful consideration of all material evidence presented in this appeal, whether expressly detailed in the body of this decision or not.”
9. The judge directed himself on the relevant legal principles and case-law in detail, at paras 30-44 and 46-47, including (we note in particular) the following:

- (i) At para 43, the judge reminded himself of the guidance in KO (Nigeria) v SSHD [2018] UKSC 53 at para 23 and IT (Jamaica) v SSHD [2017] 1 WLR 230 at paras 55 and 64 as to the meaning of 'unduly harsh', the hurdle for which he noted was higher than that of 'reasonableness' and which could not be equated to "very compelling reasons".
- (ii) At para 46, the judge quoted paras 19-21 of the Court of Appeal's judgment in MI (Pakistan) v SSHD [2021] EWCA Civ 1711 which read:

19. At [27] Lord Carnwath also endorsed guidance given by the Upper Tribunal (McCloskey J President and UT Judge Perkins) in MK (Sierra Leone) v Secretary of State for the Home Department [2015] INLR 563 as to the meaning of the words "unduly harsh", referring to their description of the "evaluative assessment" required of the tribunal in the following terms:

"... 'unduly harsh' does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. 'Harsh' in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb 'unduly' raises an already elevated standard still higher."

20. The "unduly harsh" test was considered again by this court in HA (Iraq). In relation to the Supreme Court's decision in KO (Nigeria) Underhill LJ made a number of important observations with which I respectfully agree.

21. First, he said that Lord Carnwath's reference to "a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent" could not be read entirely literally since it was difficult to see how one would define the level of harshness that would "necessarily" be suffered by "any" child: see [44]. I agree. The cohort of children encompassed by this provision will all have a genuine and subsisting relationship with the parent in question but there will inevitably be a spectrum of infinitely differing relationships within that cohort. For example, as Underhill LJ said, the deportee parent might be living separately from the children (while still retaining a genuine and subsisting relationship with them), the child might be on the verge of leaving (or have left) the family home, or there might be a baby who does not know the parent. It simply cannot be assumed that the majority have a close bond with the deportee parent or that there is some objectively identifiable standard of closeness (reflecting an "ordinary degree of closeness") against which comparison might be made. As Peter Jackson LJ put it in his supporting judgment in HA (Iraq) at [157]:

"For some children the deportation of a largely absent parent may be a matter of little or no real significance. For others, the deportation of a close caregiver parent whose face-to-face contact cannot continue may be akin to a bereavement."

10. At para 47, the judge reminded himself of s.55 of the Borders, Citizenship and Immigration Act 2009 and that the best interests of minor children are a primary consideration although they could be outweighed by other factors, as explained in ZH (Tanzania) v SSHD [2011] UKSC 4.

11. The judge then assessed the evidence before him at paras 48-56 which read:

"48. I then look at the likely impact of his deportation on his children if they remain in the UK if their father is removed. Both the appellant and his wife made some general observations with which I agree. I accept that if removed, that there will be a significant impact on the children, and in particular the two eldest. They are old enough to appreciate the implications of their father leaving the UK on a permanent [*sic*] basis. In just the same way that they missed their father when he was in prison, they will be upset by his deportation to Pakistan. I find that the appellant plays a role in their upbringing and consequently has a

genuine and persisting parental relationship with all three. This is accepted by the respondent. I also find that Mrs Shahid will find coping with child care responsibilities in his absence demanding. In effect, she will be a single parent. Of course, she will have to cope with the significant emotional and psychological impact on her of losing her husband at the same time. It will clearly be a demanding time for the family, as it was when the appellant was in prison. I also agree that it is quite a different proposition to cope with his absence on a permanent basis as opposed to the 18 month period of the prison sentence.

49. However, when one drills down into the detail of the appellant's evidence in this case, it is difficult to find support for the proposition that the circumstances will be *[sic]* will be unduly harsh as opposed to simply harsh. I find that the appellant lived with his family both before and after his sentence. However, when asked about the extent of his involvement in day to day life, the appellant and his wife became vague. Both explained that the appellant was the only one with a driving licence and that he therefore played an important part in getting the children to appointments, school, and after school activities. I accept this is true. However, Mrs Shahid could add nothing to the driving issue. As practically important as driving may be in family life, it is not the material likely the *[sic]* establish undue harshness in this context.
50. For his part, the appellant added that he had a close relationship with his 8 year old, helped to do her home work, and to get his son to sleep. As evidence of an impact which might be described as unduly harsh, I find the testimony of the appellant and Mrs Shahid has serious limitations. I have not heard from the children themselves. I accept that the two youngest may well have struggled to express themselves, but the eldest could have been asked to provide her thoughts on the matter, beyond being upset.
51. There is no suggestion that any of the children have additional needs. There is no suggestion of ill health, of either a physical or psychological nature. There are no medical reports suggesting any health implications attributable to either the appellant's absence in prison, or to his impending deportation. I also note that there are no social work reports (or similar). During his sentence, Mrs Shahid looked after the children on her own. She asked for some help getting to appointments and with filling out forms. She got this from friends and others in the community. In my view, it is significant to *[sic]* she did not approach the local authority for any more help than a reduction in her Council tax and making a claim for social security benefits. She did not request help looking after her children, and no care issues arose. From this information, I infer that Mrs Shahid was able to manage in the absence of her husband, with some help from friends and the local community, albeit no doubt in challenging circumstances. Of course, there are many families who are able to cope adequately with a single parent.
52. It is suggested that Mrs Shahid experienced health issues during this time, prompted by the the *[sic]* appellant's conviction and prison sentence. She says that she experienced the symptoms of vertigo such as pain and nausea, along with dizziness. She stated that this still causes her to be incapacitated for hours at a time, and that she struggles to manage these episodes in the absence of the appellant. There is only limited independent medical evidence to support this part of the appeal. At page 79/561 of the bundle, there is a very brief extract from Mrs Shahid's medical records which suggest *[sic]* that she had an episode of vertigo in November 2019, and then for a month in August 2020. She was prescribed medication. However, the document does not go into *[sic]* as to the frequency or severity of the attacks, or whether they persisted beyond August 2020. Also, the fact remains that she was able to cope with her medical issues during the appellant's absence. I find that this aspect of the appeal does not give rise to evidence of undue harshness so far as the children are concerned.
53. The appellant also relied on the educational aspect of the children's welfare. In essence, he asserts that the childrens' *[sic]* performance at school deteriorated whilst he was in prison, and improved again when he was released, as a direct result of his involvement on a day today basis. It was not entirely clear to me how he was quantifying the impact on the children's performance at school, or what it was he did upon his return which caused such a profound and rapid reversal. I find this aspect of both his and his wife's testimony to be rather vague and unconvincing.

54. In this regard, the appellant placed reliance on the documents from the various schools, which appear at pages 59-74. They relate to the two eldest children. Predominantly, they are end of year reports for the 13 and 8 years *[sic]*, for year 2020-2021. I have read them very carefully. In general terms, they present a positive picture of the childrens' *[sic]* performance. They appear to be performing at expected levels. The reports did not demonstrate a dropping away of performance, and not one which coincided with their father's absence. Neither did the *[sic]* seem to be evidence of an improvement which corresponded with his return to the home. In fact (as one would expect), the reports do not mention the appellant, or his period of imprisonment. Accordingly, I find that the appellant has not made out this aspect of the appeal. Of course, I am prepared to accept that there would be a limited effect, of short duration, if he was removed, but that this falls short of constituting undue harshness.
55. This is not even a case where one can say that the appellant is the sole breadwinner. Mrs Shahid is a teacher and works about 25 hours a week, engaged in remote learning. In my judgement, she may well be able to support the family financially, perhaps with some help from the appellant, or other friends and family in the UK and/or Pakistan. She may also need to take advantage of social security benefits. No doubt it will put added pressure on Mrs Shahid and the children, but which was not unduly harsh.
56. I have regard to the fact that all three children will be old enough to comprehend that their father is leaving the family, albeit they will understand in different ways. **As I have already stated, this will be a very upsetting and destabilising experience.** However, I cannot agree that in the circumstances of this appeal, looking at the facts in the round, that the impact will be unduly harsh as defined. I find that the mother, together with her wider support structure, will be able to fill the vacuum left by the appellant without reaching the 'unduly harsh' threshold, which is a high one. Moreover, it will be possible for the children to maintain some sort of relationship with their father, albeit by remote means and/or by personal visits to Pakistan. I do not pretend that this is, in any way, a substitute for living as a family in the UK. However, the possibility does, to some extent, mitigate the harshness of the proposed deportation."

(Our emphasis)

The grounds, the grant to permission and submissions

12. In granting permission to appeal, Upper Tribunal Judge Lindsley noted that the grounds argued that the judge had failed to apply HA (Iraq) [2022] UKSC 22 as there was a failure to focus on the reality for the appellant's children and their best interests if he were deported. Judge Lindsley said
- "4. ... It arguable ... that the unduly *[sic]* test was not properly applied as at paragraph 56 it is found that the appellant's deportation would be "a very upsetting and destabilising experience" to the children, and it is therefore arguable that a test beyond unduly harsh has therefore be applied in determining the appeal especially as the appellant is a cohabiting parent, and it is concluded that it would undoubtedly be in the best interest of the children for the appellant to remain in the UK, and continue to have day to day contact, at paragraph 66 of the decision."
13. At the hearing before us, Mr Ahmed focused entirely on the above extract from para 4 of the grant of permission. He addressed us very briefly. He submitted that, given that the judge had found that the appellant's deportation would be "*a very upsetting and destabilising experience*" to the appellant's children, it was not clear what test he (the judge) had applied. In his submission, the judge had applied a test that was beyond the 'unduly harsh' test.
14. Mr Ahmed did not address us on the grounds as advanced in the appellant's application for permission to appeal. He informed that he had taken '*a realistic view*' of the case.

ASSESSMENT

15. We have had more time to consider the decision of the judge than Judge Lindsley would have had when she decided to grant permission to appeal. Furthermore, Judge Lindsley was considering the question whether it was *arguable* that the judge materially erred in law, whereas we are considering whether he did materially err in law.
16. We are satisfied that the fact that the judge found that the appellant's deportation will be a "*a very upsetting and destabilising experience*" does not show that he erred in law by applying too high a threshold or a test beyond that of undue hardship, whether this finding is taken on its own or considered together with the fact that the appellant is a cohabiting parent who has day to day contact with his children and that the judge had found that it would undoubtedly be in the best interests of his children for the appellant to remain in the United Kingdom. Our reasons are as follows:
17. It is necessary to read the judge's decision as a whole. At paras 30-44 and 46-47, the judge reminded himself of the relevant principles and guidance from relevant case-law, including KO (Nigeria) v SSHD and paras 19-21 of MI (Pakistan) v SSHD which quoted the meaning of 'unduly harsh' as explained in MK (Sierra Leone) v SSHD. In the first sentence of para 49, he distinguished between "*unduly harsh*" and "*harsh*" and said that, "*when one drills down into the detail of the appellant's evidence in this case, it is difficult to find support for the proposition that the circumstances will be ... unduly harsh as opposed to simply harsh*".
18. These observations need to be considered in the context of the judge's reasoning at para 49 onwards where the judge said, in summary, as follows:
 - (i) The appellant and his wife were vague in their evidence about the extent of the appellant's involvement in day to day life and that the wife could add nothing more to the "*driving issue*", that is, that the appellant was the only one with a driving licence and that he therefore played an important part in getting the children to appointments, school, and after school activities (para 49).
 - (ii) The testimony of the appellant and his wife had serious limitations. There was no evidence from the eldest child who (the judge considered) could have been asked to provide her thoughts on the impact of the appellant's deportation beyond being upset (para 50).
 - (iii) There was no suggestion that any of the children had additional needs, no suggestion of ill-health of either a physical or psychological nature; no medical reports suggesting any health implications attributable to either the appellant's absence in prison or to his impending deportation and no reports from a social worker or similar (para 51).
 - (iv) During the appellant's imprisonment, his wife had looked after the children on her own and had received some help from friends and others in the community getting to appointments and with filling out forms. The judge considered it significant that she did not approach the local authority for any more help than a reduction in her Council tax and making a claim for social security benefits. He therefore inferred that the appellant's wife was able to manage in the absence of

her husband with some help from friends and the local community, albeit no doubt in challenging circumstances (para 51) .

- (v) There was only limited independent medical evidence in support of the suggestion that the appellant's wife had experienced health problems prompted by the appellant's conviction and prison sentence. The "*very brief extract*" from the wife's medical records suggested that she had had an episode of vertigo in November 2019 and then for a month in August 2020 for which she was prescribed medication but there was no medical evidence to show the frequency or severity of the attacks or whether they had persisted beyond August 2020 (para 52).
 - (vi) The evidence of the appellant and his wife of the impact on the educational aspect of the children's welfare as a result of his absence whilst serving his sentence and after his release from prison was "*rather vague and unconvincing*" (para 53) and that the documentary evidence submitted in respect of the two elder children "*did not demonstrate a dropping away of performance, and not one which coincided with their father's absence*", nor did there "*seem to be evidence of an improvement which corresponded with his return to the home*" (para 54). The judge noted that the reports did not mention the appellant or his period of imprisonment.
 - (vii) This is not even a case where one could say that the appellant was the sole breadwinner given that his wife was a teacher who worked about 25 hours a week (para 55).
19. We are satisfied that there is nothing about the circumstances of the appellant's children as found by the judge at para 49 onwards, which taken cumulatively show that, in using the phrase "*this will be a very upsetting and destabilising experience*", the judge applied a higher threshold than that which is applicable to the question whether the impact of the appellant's deportation on his children will be unduly harsh, as explained in MK (Sierra Leone). To the contrary, his finding that the impact will not be unduly harsh is entirely consistent with an application of the correct threshold.
 20. Accordingly, the specific issue upon which permission was granted is not established.
 21. As we have said at para 14 above, Mr Ahmed did not address us on the grounds as advanced in the appellant's application for permission to appeal. We have nevertheless considered these grounds.
 22. Para 15 of the grounds contends that the judge's consideration of the evidence did not include all of factors; that he had omitted, for example, "*any proper reference to the adverse impact of the appellant's absence on the relationship between the three children, to which the [judge] attached insignificant weight*" and that there was "*an inadequate evaluative judgement [by the judge] on the basis of the full evidence before him*".
 23. However, this ground is not supported by any reasoned criticism of the judge's reasoning. It is evident, in our judgment, that this ground amounts to no more than a disagreement with the judge's decision and an attempt to re-argue.

24. Likewise, the remainder of the written grounds assert that the judge made one or more errors of law but fail to provide any reasoned criticism of the judge's reasoning or findings.
25. In the absence of any reasoned explanation of any error in the judge's decision on the appellant's private life claim, that aspect of the grounds is not established either.
26. For all of the reasons given above, we are satisfied that the judge did not err in law.
27. The appellant's appeal to the Upper Tribunal is therefore dismissed.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of any error of law.

Accordingly, the decision of the First-tier Tribunal to dismiss the appellant's appeal against the respondent decision stands.

Signed
Upper Tribunal Judge Gill

Date: 31 August 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email