IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001471
First-tier Tribunal No: HU/53027/2022

Extempore

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 July 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL
DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

RZA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Haywood, instructed by Farani Taylor Solicitors
For the Respondent: Mr A Basra, Senior Home Office Presenting Officer

Heard at Field House on 26 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Juss promulgated on 10 April 2023 dismissing his appeal against a decision of the Secretary of State to make a deportation order against him and that his human rights claim fell to be dismissed.

2. The background facts of this case are set out in the decision. There is no reason to repeat them here save to note that there had been a previous appeal, leading to a decision in this case by Judge Dean in 2018 to which the judge refers.

3. The core of the appellant's case is that it would be unduly harsh to expect him to go to Pakistan given the effect that this would have on his three children and his wife. The decision on that issue forms the core of the decision. The judge found that it would not be unduly harsh to expect the appellant's children to go to Pakistan with him or to remain here. It appears that he also concluded that Exception 2 as set out in section 117C of the Nationality, Immigration and Asylum Act 2002 did not apply in respect of the partner given when the marriage took place, and that little weight should be attached to that relationship. The judge also concluded that there were not in this case very compelling circumstances over and above Exceptions 1 and 2 set out in Section 117C of the 2002 Act such that removal would be disproportionate in Article 8 terms.

4. The grounds in this case are extensive but for reasons which will become clear we do not need to set them out in detail.

5. Mr Haywood very helpfully distilled the points in the grounds to a number of propositions, but, as the argument in the case progressed, it became clear that the core difficulty in this case can be found primarily at paragraphs 35 to 37 of the decision where the judge refers to a number of documents. We accept that, as Mr Haywood submitted and contrary to what the judge wrote, there was before him no letter from the primary school stating that the appellant's wife is the children's primary carer. We accept also that despite what the judge wrote in paragraph 36 there was no social work report before him, nor any OASys Report, to which he referred to in paragraph 37. Mr Basra accepted that although the judge referred to these documents, and apparently took them into account, they did not exist. That, in our view, causes significant concern and sufficient to dispose of the appeal.

6. It was incumbent on the judge to make findings as to whether deportation of the appellant would have an unduly harsh effect on the children. We note Mr Basra's acceptance that, in regard to that here there are difficulties with paragraph 36 in that the self-direction as to the law states, "Even if one finds it 'unduly harsh' to deport, the criminality still has to be factored into the balance". That is clearly a wrong statement of the law, the Supreme Court having held to the contrary in KO (Nigeria) [2018] UKSC 53. We note in passing that the judge at several places refers to the Court of Appeal's decision in HA (Iraq) v Secretary of State [2020] EWCA Civ 1178 when by the time of this decision the appeal from

that decision had been considered and decided by the Supreme Court some eight months prior to this hearing.

7. We consider that the taking into account of evidence which was not before the judge at all casts significant doubt on the findings made. We are concerned also that paragraphs 35 and 36 appear more or less to say the same thing, further confusing the decision, and there is a worry given also to references to the decision of the Upper Tribunal in **Imran** and to out of date case law that some of these passages have simply been cut and pasted into this decision.

8. Whilst we bear in mind the strictures that an appellate court should be slow to interfere with the decisions of a First-tier Tribunal, the concerns that we have already identified are so serious as to leave us no alternative but to conclude that the fact-finding here was fundamentally flawed and that the judge may have failed properly to carry out his task.

9. Accordingly for these reasons we consider that the decision of the First-tier Tribunal involved the making of an error of law and we set it aside. Given the nature of the errors identified we consider that the only course of option that we can take, bearing in mind the relevant Presidential Guidance, is to remit the case to the First-tier Tribunal for a fresh decision on all issues, to be conducted by a judge other than Judge Juss.

Notice of Decision

The decision involved the making of an error of law and we set it aside.

We remit the appeal to the First-tier Tribunal for a fresh decision on all issues.

Signed Date: 13 July 2023

Jeremy K H Rintoul

Judge of the Upper Tribunal