



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002739
First-tier Tribunal No:
HU/01396/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 09 November 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MOHAMMAD WAHEED SHEIKH
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ali instructed by WA Law Ltd.
For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 8 November 2023

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Jepson ('the Judge'), promulgated on 14 April 2023, following a hearing at Manchester, in which the Judge dismissed the appellant's appeal against the refusal of his application for leave to remain on human rights grounds, relied upon as an exception to the power of the Secretary of State to deport him from the United Kingdom.
2. The appellant is a citizen of Pakistan born on 20 August 1966. The Judge notes at [6] of the decision under challenge the following agreed facts:
 - a. The appellant is a national of Pakistan.
 - b. The appellant was granted indefinite leave to remain in the UK in 1986.
 - c. On 21 September 2020 the appellant was sentenced to 4 years imprisonment at Bolton Crown Court for an offence of robbery, and a concurrent sentence of one month for shop theft.
 - d. A notice of intention to deport was served on 26 June 2022.
 - e. The appellant made written representations against that on 14 July 2022.

- f. The deportation decision was signed on 7 September 2022.
3. Having considered the documentary and oral evidence the Judge sets out fact findings of fact from [46] of the decision under challenge.
 4. The Judge accepts the appellant meets the definition of a 'foreign criminal' set out in section 32 UK Borders Act 2007 which is a sustainable finding [47].
 5. The Judge finds that the offence committed by the appellant was serious with the term being imposed in the middle of the applicable bracket of available sentences [48]. That is a sustainable finding.
 6. The jury at the appellant's criminal trial rejected his claims of being unaware there was a knife to hand, as the appellant told his co-accused to reveal it. The Judge notes in the OASys report it is stated that it was hard to accept the appellant did not know the knife was there if he made that request at the scene [52].
 7. The Judge finds the appellant's continued denial in relation to the robbery undercut his assertions relating to his rehabilitation [53].
 8. The Judge accepts the appellant had never been in trouble before the offence [54].
 9. The Judge found a degree of inconsistency in relation to the evidence concerning the appellant's drug use [55].
 10. The appellant's wife did not attend the hearing with no attempt being made for her to appear remotely. The Judge finds that reduced the weight he could place on her statement as it had not been tested in court. The Judge notes in the OASys it is stated the Offender Manager was unable to speak to the appellant's wife as part of the assessment. That means there has been no objective assessment of what the appellant's wife says in her letter [57].
 11. The Judge did not find the appellant had been "entirely truthful" in relation to his drug use [58] and [59].
 12. There was no challenge to the appellant's claim to have suffered a back injury although no medical evidence was presented. The appellant accepted problems had reduced over time, there is reference to his receiving disability living allowance, but no details given, the appellant did not assert the issue amounted to very significant obstacles on return to Pakistan and he had not sought to suggest healthcare there was inadequate [61].
 13. The appellant's representative emphasised lack of remaining ties to Pakistan. It was stated no relatives remained there. The Judge found the appellant's evidence in relation to visits was somewhat inconsistent. The Judge is cautious about claims every family member in Pakistan had passed away. There was reference made in the OASys report dated June 2002 to family remaining there. The Judge did not have details about family that might have passed since that report [62].
 14. Whilst it was accepted by the Secretary of State that the appellant had been in the UK for most of his life it was argued he failed to show were very compelling circumstances beyond those set out in the exceptions to his deportation.
 15. The Judge finds no barriers to family members visiting the appellant in Pakistan [67].
 16. The Judge agrees with the suggestion hardship would flow from the appellant's wife returning to Pakistan although could not find a complete lack of familiarity with society there. There is no language barrier. It was found living in Pakistan would have a significant impact upon the appellant's wife's life [68].
 17. The Judge finds similar could be said regarding the appellant's other family members although none would be compelled to move to Pakistan. This is not a case involving young children who would have to leave the country if the deportation occurred [69].

18. The appellant's family home is in the state described in court [70].
19. When assessing the various factors Judge concludes to being just about persuaded there will be insurmountable obstacles such that it would be unduly harsh for the appellant's wife to move to Pakistan [83].
20. The Judge concludes that is not what is proposed here as there is nothing to indicate the appellant's wife will feel compelled to move to Pakistan [84].
21. The Judge notes if the appellant is deported his wife and their son would remain in the UK where there are other close relatives. There is no suggestion the appellant's wife is financially dependent upon him. The appellant's wife is employed. There is no evidence of specific hardship when the appellant was in prison, beyond expected distress. The house is owned by the appellant. His departure would not render anyone homeless. His wife can travel to Pakistan for visits, or they can maintain communication in a manner similar to that which they did during his imprisonment.
22. Drawing together the threads of the Judge's findings it is written:
 - 108.) The length of this judgment hopefully reflects the care that has been taken in preparing it. The potential deportation of anyone, perhaps especially someone who has been in this country lawfully for decades with a wife and family is never an easy matter. That said, this was a serious offence as reflected in the sentence imposed. A strong public interest must apply to matters of such gravity.
 - 109.) When taken together, I cannot find there are very compelling circumstances here. The Appellant points to the impact on his wife, his relatives and barriers which exist in returning to a country in which he has not lived in approaching forty years. All of those factors weigh in the Appellant's favour. Some impact would result from deportation, both in terms of the effect on the Appellant but also his relatives in the UK. He has been here the majority (though far from all) of his life ; a significant amount of social integration has occurred. Against that is the seriousness of the offences and a general backdrop of drug-taking for some time. Having a family does not seem to have prevented that happening. I note again the apparent prevarication which continues as to the Appellant's culpability and overall guilt in respect of the offences.
 - 110.) If returned, the Appellant will face some barriers. That said, Pakistan is not alien to him. The evidence demonstrates an ability on the part of family to both visit and provide support. Both would mitigate the obstacles involved to an extent. The family were, albeit I acknowledge upset was caused, able to continue without him during the relatively long period spent in custody. It seems to me they can maintain that, especially given the Appellant is not long released. Perhaps the greatest impact here is in relation to the Appellant's relationship with his wife. I agree some damage would be done to that upon his removal. That does not, given my findings about visits, support and communication, amount to very compelling circumstances.
 - 111.) I have considered Article 8 outside of the Rules, specifically through the prism of Razgar. Although a different set of criteria to that already discussed, I reach the same conclusion for the same reasons. There is a clear public interest in maintenance of an effective immigration system. As I have found, the Rules cannot be met – a significant, though determinative factor. There is nothing in my judgment disproportionate about removal of the Appellant in these circumstances. In saying that, I accept entirely in his time in the UK sufficient family and private life has been amassed whereby Article 8 is triggered.
 - 112.) I have, both within and outside of the Rules taken into account the best interests of the (grand)children involved. That clearly involves remaining with their parents. The Appellant's absence will not change that. Though he may, as suggested, play a part in their lives he does not act as a parent. The (grand) childrens' welfare will not be significantly impacted were the Appellant in Pakistan. As with the adults involved, communication and visits can be maintained.

23. The appellant sought permission to appeal.
24. Ground 1 asserts an undue focus on the Sentencing Judge's remarks without proper consideration of the evidence before the Immigration Judge, -leading to unfairness. Ground 2 a failure to consider relevant witness evidence, speculation as to plausibility. Ground 3, OASYS report, incorrect assessment - failure to consider the report in its entirety. Ground 4 - failure to apply the correct test for exceptions to deportation - failure to provide adequate reasons and failure to take into account the appellant's evidence. Ground 5, relevance of Article 8 and failing to consider article 8 claim adequately - inadequate reasons. Ground 6, failure to consider Exceptional circumstances within the determination - leading to material error in law and procedural unfairness to the appellant.
25. Permission to appeal was refused by another judge of the First-tier Tribunal granted on a renewed application by Upper Tribunal Judge Owens, the operative part of the grant being in the following terms:
1. It is at least arguable that the judge has misapplied the law in respect of Exception 1 of 117C of the Nationality, Immigration and Asylum Act 1971.
 2. Further, arguably the judge has failed to make clear findings on whether the appellant is socially and culturally integrated into the UK and to what extent he meets this Exception.
 3. Ground 1 is also potentially arguable.
 4. The other grounds are weaker, but I do not limit the grounds of appeal.

Directions

- a) Both parties are, no later than 7 days prior to the error of law hearing, to file at the Tribunal and serve on the other party copies of their record of proceedings, particularly in relation to the appellant's evidence in relation to his offending and remorse.
- b) Both parties are in the same timeframe to file and serve further succinct submissions on Grounds 1 & 4.

26. In her rule 24 response dated 3 November 2023 the Secretary of State writes:

2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.
3. This response is to address the directions of UTJ Owen in respect of Grounds 1 & 4. The SSHD apologises for late service. At time of writing the author is still trying to locate a copy of the HOPO's Record of Proceedings and shall forward these separately once received. The SSHD has yet to receive the same from the Appellant.
4. Ground 1- the SSHD respectfully contends amounts to mere disagreement over judicial weight. If an Appellant refuses to accept an aspect of their criminality for which they were found guilty e.g. that he encouraged a co-defendant to brandish a knife, that is always materially relevant to whether they are truly rehabilitated.
5. The weight the FTTJ elected to give to that evidence in contrast to the assertions of remorse was a judicial matter. There is no error at [48-53]. The FTTJ acknowledged balancing elements in the Apps favour [54], see also [58/59] where the assertions of family support are weighed against inconsistent evidence on the extent of the 'problem' known by the family vs admitted by the Appellant. Again, this is a matter of judicial weight and is not irrational.
6. The FTTJ understandably considers the duration of drug use and abstinence whilst in a controlled prison environment [59-60] when assessing rehabilitation and ongoing risk of harm. See also [93] where the FTTJ notes his claimed abstinence means it cannot now be said his thinking is clouded in maintaining denial of the full offence for which he was convicted. This is not a question of plausibility but of cogently noting that the maintenance of the denial of full culpability for the offence for which

they were convicted, beyond all reasonable doubt, runs contrary to a claim of being rehabilitated.

7. Ground 4- the suggestion that the FTTJ failed to apply the correct tests in a deportation appeal (notwithstanding Ground 6* appearing to suggest they should have done exactly that) are wholly without merit and amount to no more than a challenge of style over substance.
8. There is no material difference between s117C considerations and those replicated within the IRs; as noted by the FTTJ [107]- "the contents of S.117C have already been effectively been discussed by reference to the corresponding parts of the Immigration Rules". The FTTJ correctly identified the potential exceptions to deportation [77-78, 80-81. 89] also referencing s.117C [97]. It is clear why the exceptions to deportation were not met [83 vs 87] as regards the unduly harsh test applicable to the spousal relationship, and the failure of the Appellant to demonstrate insurmountable obstacles to integration in Pakistan [67-70, 74, 89, 102- 106].
9. The FTTJ in considering a case to which s117C(6) 'very compelling circumstances' was applicable was only legally required to apply the correct threshold test to a proportionality balancing exercise. The SSHD contends they cogently did precisely that [108-112]; see also (nonexhaustively) [97, 99-107].
10. Grounds 2, 3, and 5: The SSHD shall address these grounds orally at the hearing.
11. Ground 6: The SSHD expresses considerable surprise at Ground 6. This ground in essence contends that the FTTJ materially erred in failing to apply the SSHD's policy in respect of non-deportation applications via Appendix FM to a deportation appeal! The fallacy of such a position would hopefully be self-evident given the former is subject to an 'unjustifiably harsh consequences' threshold test, the later given a 4-yr prison sentence to a 'very compelling circumstances' threshold test. The two tests are entirely distinct. Fortunately the FTTJ did not fall into such an error.

Discussion and analysis

27. The sentencing remarks of His Honour Judge Stead, sitting at the Law Courts in Bolton, dated 21 September 2020, for both the appellant and his co-accused K, read:

... The two of you went to Asda in Farnworth in October, 2018 initially intent on stealing. You, K, were there to keep an eye on things in case Sheikh got into trouble. Sheikh did get into trouble. He had difficulty in getting out with the goods. It cannot be said that the goods were enormously valuable, but they were not trivial either. You tried to impede and distract the store security man. Outside, between you there was a tussle over possession of the bag in which the items were being kept. The items fell to the floor and at that point you, Sheikh, told K to produce the knife. That tells me two things. Firstly, you, Sheikh, knew K had a knife. Secondly, you K were only too willing to use it to threaten, it has to be said, in the circumstances. You did produce the knife. The threat had the desired effect. It enabled the two of you to escape with two of the items stolen. The theft was completed after the production of the knife, I am completely satisfied and, in all the circumstances, this is plainly, as all counsel agree, a category A culpability case and, as far as the categorisation is concerned of harm, it is a category 3 case. That produces a starting point, according to sentencing guidelines, of four years imprisonment with a range of 3 to 6 years. Although each of you have relevant convictions or events subsequent to this, I am not going to allow that to aggravate the sentence upon either of you. You could have had a substantial discount (each of you) from the sentence had you pleaded guilty, but you did not. As it is, I see no reason to depart from the starting point of the guidelines and the sentencing each of your cases will be four years imprisonment for robbery. Statutory surcharge imposed according to law. No other orders. You may both go. 2 has already been dealt with by the jury.

28. In relation to likelihood of serious harm to others, the Offending Manager in the OASys report assesses the appellant to be at low risk in relation to children, know adults and staff, but medium risk to the public.
29. Ground 1 refers to the Judge focusing on the Sentencing Remarks, but the Judge did so as an issue in relation to the criminal proceedings and extent of the appellant's culpability was raised before him.
30. No error is made out in relation to the Judge's comments in relation to the appellant's conviction, including the issue of the appellant's knowledge of his co-accused possessing a knife that had been brought to the shop in question.
31. The assertion the Judge focused on the sentencing remarks without proper consideration of the evidence is without merit. The appellant may have provided a witness statement detailing his addiction and drugs and giving oral evidence, as did others. Criticising the Judge for only referring to a small part of the oral evidence is not a material failing by the Judge. The assertion the Judge appeared to have totally disregarded the evidence before him is also without merit. Judges are not required to set out in detail each and every aspect of the evidence they receive. If they did determinations will be considerably longer. It is clear when reading the decision as a whole that the Judge considered the evidence with the required degree of anxious scrutiny from both the appellant and other witnesses.
32. It is necessary to read the determination in full. If one does, one can see that the Judge has considered the evidence with the required degree of anxious scrutiny, made findings of fact, which are supported by adequate reasons. Those reasons only need to be adequate, not perfect. There is no merit in the claim the Judge should have produced perfect reasons or done more because that is what the appellant wanted. What the Judge did was sufficient. The assertion that the appellant has a right to a fair hearing is accepted but it is not made out he did not in relation to this matter. No material legal error is made out in relation to Ground 1.
33. Ground 2 asserts a failure to consider relevant witness evidence. The Judge was aware that the appellant's wife did not attend, and the other witnesses were present and provided written and oral evidence. The claim the Judge failed to give due consideration to the evidence of the witnesses is without merit. Findings are made on the evidence, some of which are in the appellant's favour. No material legal error is made out in relation to Ground 2.
34. Ground 3 in relation to the OASys report, arguing the Judge failed to consider the report in its entirety, is without merit. The copy of the report in the appeal bundle before the Judge has clearly been marked at various points throughout indicating the Judge read the document in full as part of the appeal process. Again, just because the Judge did not set out the content of that document in full does not mean the Judge did not consider it. The Judge makes reference to it where appropriate. No material legal error is made out in relation to Ground 3.
35. Ground 4 asserting the Judge failed to apply the correct test for exceptions to deportation is without merit. This ground sets out details of the legal provisions it is said were brought to the Judge's attention. That may be so, but it does not establish material legal error in the findings the Judge made. The grounds do not specifically identify where in the determination the Judge refers to the wrong legal test. As recently confirmed by the Court of Appeal at [14] of ASO (Iraq) [2023] EWCA Civ 1282 - November 2023 -

"The starting point for this appeal, as for the appeal to the UT, is that the appellate courts are bound to recognise the special expertise of the F-tT. An appellate court must assume, unless it detects an express misdirection, or unless it is confident, from the express reasoning, that it must be based on an

implicit misdirection, that the specialist tribunal knows, and has applied, the relevant law. The appellate court must also bear in mind, on an appeal on a point of law, that questions of fact and of evaluation are for the specialist tribunal, unless its approach is *Wednesbury* unreasonable."

36. Disagreeing with the Judge's findings does not mean the Judge applied the wrong test. No material legal error is made out in relation to Ground 4.
37. Ground 5 asserting an error in relation to Article 8 ECHR has no merit. The Judge clearly considers article 8 at both [76] and [111] and as with the finding that exceptional circumstances had not been made out, the Judge refers to the previous findings within the determination for the reasons why the decision was found proportionate. The appellant's claim may have been set out in detail but that was considered by the Judge. Repeating that the Judge failed to consider any of that evidence has not been shown to have any merit. Claiming the Judge's findings were inadequate has no merit as an informed reader is able to understand not only the findings made by the Judge but the reasons why. The Judge applied the Razgar test and came to the conclusion that the public interest in deporting the appellant, notwithstanding what had been said in the evidence in relation to his situation, time in the UK etc, was proportionate. No material legal error is made out in relation to Ground 5.
38. No submissions were made before me in relation to Ground 6 for good reasons. The lack of merit in this pleading is amply illustrated by the 24 response set out above.
39. The grounds fail to establish the Judge's approach to, and assessment of the evidence is unreasonable or unlawful. I find the appellant fails to establish that the Judge's findings are outside the range of those reasonably open to the Judge. The findings have not been shown to be irrational or *Wednesbury* unreasonable.
40. On that basis I find the appellant has failed to establish legal error material to the decision to dismiss the appeal.

Notice of Decision

41. No material error of law has been made out in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 November 2023