



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000428
First-tier Tribunal No:
HU/05151/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 20 August 2024

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

Satish Kumar Kotinadhuni
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr S Karim, counsel instructed by Venkateshwara Solicitors
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 16 February 2024

DECISION AND REASONS

Introduction

1. Tribunal Judge Burnett promulgated on 30 November 2022.

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Factual Background

4. during 2005 on a student visa. His leave was extended under the International Graduate Scheme and Tier 1 of the Points Based System, His last period of leave

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expired on 30 March 2013. The appellant's application for further leave to remain under Tier 1 was refused on 10 March 2014 because he had obtained his previous leave to remain by deception. In short, the appellant had falsely claimed to be working for a company. He received a police caution in relation to this offence. The appellant's attempts to challenge the 10 March 2014 immigration decision were ultimately unsuccessful and he became appeal rights exhausted as of 22 June 2018. He was subsequently granted leave to remain until 12 May 2021.

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money laundering and sentenced to terms of 6 years and five years' imprisonment, to run concurrently. The appellant made a human rights' claim in response to a decision to make a deportation order dated 8 October 2020, based on his family life with his wife and their two children as well as his private life. That claim was refused by way of a letter dated 2 December 2021 in which it was stated that while it would be unduly harsh for the appellant's wife and children to accompany him to India, this would not be the case were they to remain in the United Kingdom without him. Furthermore, there were no very compelling circumstances which outweighed the public interest in the appellant's deportation.

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The decision of the First-tier Tribunal

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and his wife attended and gave evidence. There was evidence before the judge that the appellant had a mental health condition, albeit no Article 3 medical claim was advanced. The judge concluded that it would not be unduly harsh for the children and their mother to remain in the UK without the appellant, there were no very significant obstacles to the appellant's re-integration in India and that there were no very compelling circumstances.

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The grounds of appeal

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the hearing and the writing of the judge's decision, and the factual matrix had changed in the intervening period. Secondly, there had been an absence of findings regarding the mental health of the appellant's wife. Thirdly, the judge failed to make any findings as to the credibility of the wife's evidence and inadequate reasons were given for rejecting the OASys report. Fourthly, a failure to consider relevant authorities and to assess the appellant's rehabilitation.

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with the judge granting permission making the following remarks.

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The appellant's wife's mental health in the event of the appellant's deportation fell to be considered in the very compelling circumstances assessment and it is arguable, just, that the failure to address this evidence shows an error of law. Ground 2 is arguable.

It is arguable that it was not open to the First-tier Tribunal to go behind the conclusion in the OASys report that the appellant showed a low risk of reoffending. Ground 3 is arguable.

Paragraph 26 of Ground 4 is arguable where the courts have found that "positive evidence of rehabilitation, and thus of a reduced risk of re-offending, cannot be excluded from the overall proportionality exercise"; HA (Iraq) v SSHD [2020] EWCA Civ 1176 applied.

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opposed, with the following comments being made.

At paragraph 78, unchallenged in the grounds, the FTTJ notes that the children have evidently coped with the absence of their father. In that time rather than being severely and adversely affected by his incarceration, of which they were unaware, they have in fact flourished.

There was no evidence that the Appellant's wife was unable to care for her own and her children's needs whilst the Appellant was in prison as is clearly evidenced by the fact she has been able to work earning a salary that is significantly above the average in the UK and the fact her children are flourishing at school (paragraphs 70-73 of the determination) It is submitted the FTTJ was entitled to find that the unchallenged facts of the case evidently do not point to a parent unable to cope in the absence of the father.

The medical evidence pointed to potential issues regarding her ability to cope if she was to return to India with the children, but as this was not something the Secretary of State envisaged in her refusal letter, it is of no relevance to the FTTJ decision that the Appellant can be removed and the children remain in the UK.

In respect of Ground 3 & 4 the Respondent respectfully submits that the credibility of an account and the assessment of any future risk is a matter for the FTTJ to make. The fact the OASYS report concluded that the Appellant was at a low risk of re-offending does not mean the FTTJ is bound by that report as the FTTJ notes considerable concerns regarding the Appellant's previous criminal history at paragraphs 92 & 94.

It is however respectfully submitted that Respondent is unable to see how an assessment of a lower risk of re-offending by itself would amount to a compelling factor over and above the rules that renders any deportation disproportionate.

The error of law hearing

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the appeal. Mr Karim continued to rely upon the grounds on which permission was granted. Thereafter I heard detailed submissions from both representatives which I consider further below. At the end of the hearing, I reserved my decision.

Decision on error of law

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partially on ground four and Mr Karim relied upon those grounds.

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regarding the mental health of the appellant's wife. That evidence consisted of an account to that effect given by the wife in her witness statement as well as a brief letter from a practice mental health nurse dated 17 June 2022. That letter included references to the appellant's wife being seen by the nurse on three occasions, that the wife was experiencing stress regarding her husband's appeal and the family's future which was impacting on her sleep. The wife's witness statement is highly detailed and is set out over 8 pages. The reference to mental health amounts to a single sentence on the seventh page of the statement of the appellant's supplementary bundle, as follows.

Consequently, my health has also taken a beating and I am now being treated for insomnia and clinical depression.

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Ground

13. Nonetheless, I am satisfied that the judge was cognisant of the evidence relating to the mental health of the wife and took it into consideration in reaching his conclusions for the following reasons. At [20] the judge specifically referred to the entirety of the appellant's evidence, saying, 'I do not propose to set out a list of the documents but will refer to them in stating my decision. If I do not make specific reference to a document it does not mean that I have not taken it into account.'

It was a

14. recording,

'There were reasons that it was said that the appellant's wife had not managed and had serious health issues. There was a letter from a nurse and this had taken a toll on her life. There would be an increasing impact if the appellant were deported.'

Further

15. were very compelling circumstances at [17] made no reference to the wife's mental health. Lastly, at [73] the judge considers the report of a chartered psychologist, noting that the reference in that report to the 'health conditions of the appellant's wife and that these had caused her concern in the ability to cope if she was forced to go to India.' Of course, this was not the case advanced on behalf of the Secretary of State before the First-tier Tribunal, as it was conceded that it would be unduly harsh to expect her to go.

Mr Kari

16. albeit he did not explicitly mention it. I find that there was no need for him to do so given that the nurse's letter does not indicate that a mental health diagnosis has been made, gives no dates for the three occasions when the appellant's wife attended the surgery and nor does it refer to any treatment being given. Direct reference to this evidence could have had no material impact on the outcome of the appeal.

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17. findings in respect of the evidence of the appellant's wife. The grounds rightly point out that the appellant's wife was subject to questioning, however from the summary of the representative's submissions there does not appear to have been any challenge on behalf of the Secretary of State to the wife's evidence. At [68] onwards the judge sets out the 'Appellant's family life and background situation.' It is implicit in these paragraphs that the judge accepted the evidence of the wife. For instance, at [69], the judge said, inter alia, that the 'two children are at school and doing well. They have not been told that their father is in prison...' At [7] the judge notes that she 'informed me at the hearing that she was now earning around £60,000 and works from home.' It is plainly obvious that the judge accepted the evidence of the wife and a sentence stating this would have made no material difference.

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18. [94] for rejecting the evidence in the OASys report to the effect that the appellant was at low risk of re-offending. It is contended that the judge in stating that he was 'not so convinced' about the risk indicates that that a higher standard of proof was employed. I do not accept that contention. The judge's findings on the risk of offending were as follows.

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It is stated in the OASys that the appellant is unlikely to offend again. I am not so convinced of the appellant's attitude and behaviour. He should have learned a lesson from his previous caution and refusal of permission to remain in the UK and that it put his situation in jeopardy (immigration status) and the plans of his family. I consider that the appellant may offend again if he finds himself in a difficult position.

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as satisfied as the Offender Manager about the risk of reoffending. It is inaccurate to say that the judge failed to give reasons. As is apparent from [94], in making his findings the judge rightly took into consideration the appellant's criminal record before the index offence. Given the repeated references in the OASys report to the appellant's motivation being purely for financial gain, the judge was entitled to take a cautious view.

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judge to have accepted the OASys conclusion on risk of re-offending, it would have had little effect on the decision on the appeal given the endorsement of what was said by Underhill LJ at [141] of HA (Iraq) EWCA Civ 1176.

Lastly,

Where a tribunal is able to make an assessment that the foreign criminal is unlikely to re-offend, that is a factor which can carry some weight in the balance when considering very compelling circumstances. The weight which it will bear will vary from case to case, but it will rarely be of great weight bearing in mind that, as Moore-Bick LJ says in *Danso*, the public interest in the deportation of criminals is not based only on the need to protect the public from further offending by the foreign criminal in question but also on wider policy considerations of deterrence and public concern. I would add that tribunals will properly be cautious about their ability to make findings on the risk of re-offending, and will usually be unable to do so with any confidence based on no more than the undertaking of prison courses or mere assertions of reform by the offender or the absence of subsequent offending for what will typically be a relatively short period.

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rehabilitation and to consider the relevant authorities. Mr Karim stated that he was not arguing that there was an error in the judge not referring to the Supreme Court judgment in *HA* which had been handed down after the appellant's hearing. Mr Karim told me that the evidence of rehabilitation not referred to by the judge related solely to the courses attended by the appellant while serving his sentence. There was no reliance on the length of time since the last offences as the appellant had been released on licence only a week before his appeal hearing. The certificates contained in the appellant's bundle related to awards for cleaning skills, catering, health and safety and IT User skills. There was no argument put forward as to how these basic skills contributed to the appellant's rehabilitation. While the judge did not comment on these certificates, it is not remotely arguable that they amount to evidence of positive rehabilitation which was likely to reduce the risk of further offending or that they could have had a positive influence on the outcome of this appeal.

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law. The decision therefore stands.

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Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 February 2024

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**