IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001036

First-tier Tribunal No: HU/00928/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 26th of June 2024

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

SHAHNAWAZ KARAMAT

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Adam Pipe, instructed by Murria Solicitors
For the Respondent: Esen Tufan, Senior Presenting Officer

Heard at Field House on 11 March 2024

DECISION AND REASONS

1. The Upper Tribunal (Hill J and UTJ Blundell) issued its first decision in this appeal on 8 January 2024. We set aside the decision of the First-tier Tribunal and ordered that the decision on the appeal would be remade in the Upper Tribunal after a further hearing.

2. That hearing took place on 11 March 2024. In preparation for it, the appellant's solicitors had filed and served a composite bundle of 375 pages. There was also a helpful skeleton argument from Mr Pipe of counsel. I heard oral evidence from the sponsor and submissions from the advocates. I regret the delay in issuing this decision, which results from a series of time-consuming cases before and after the hearing in this matter.

Background

3. The background is set out at [3]-[7] of the Upper Tribunal's first decision. I need not repeat what is set out there. It suffices for the present to note that the

appellant appealed against the respondent's refusal to revoke a deportation order which was signed on 24 November 2014, following his conviction for a single offence of rape, which resulted in a sentence of five years' imprisonment. The appellant submits that the refusal to revoke the deportation order is in breach of Article 8 ECHR because it represents a disproportionate interference with the family life he enjoys with his wife and child.

Oral Evidence

4. The appellant's wife gave evidence before me. She adopted the statement which she had signed on 26 February 2024. She said that she wanted her husband in the UK because their son missed him. Her nephews had their fathers but her son did not. She was unable to take him to appointments because she did not drive. She struggled to control her son. They lived with other family members and she could not control the children when they fought. Her younger brother and his son sometimes came to visit. He was separated from his wife. She also saw her older brother and middle brother sometimes. She thought that the children 'listened more to dads than mothers'.

5. The appellant's wife was cross-examined by Mr Tufan. She confirmed that her son was eight years old and in school. She said that he was OK but that he was sometimes bullied by other children. She described her son as a good, kind person. The teacher was very pleased with him at parents' evening, she said. She confirmed that she had visited the appellant in Pakistan, some eight or nine years previously. Her son was not able to go to Pakistan; the social services had intervened to prevent that. She was born in England, as was her son. She had been to Pakistan two or three times. She confirmed that she was familiar with Pakistan but she felt that she could not join the appellant there. She said that it would be easy for her if the appellant came to the UK but that life was difficult in Pakistan.

6. The appellant's wife was 'not sure' whether the appellant would be permitted to live with her and her son in the event that he came to the UK. She accepted that Social Services prevented her from taking her son to Pakistan. She agreed with Mr Tufan that it was likely that there would have to be a further assessment from Social Services in the event that the appellant did come to the UK. She also agreed that the appellant had never seen his son face-to-face; all contact had been by way of 'phone calls and stuff'.

7. Re-examined by Mr Pipe, the appellant's wife said that she was not allowed to obtain a passport for her son and that social services would 'snatch' her son if she did so. Mr Pipe asked whether she knew what the concern was. She said that she was unable to leave her son behind – her mother had had a knee operation – but she had thought that she could take her son with her to Pakistan. She said that she was a 'burden' on her family, who were 'unable to afford the bills and stuff'. She added that it would be easier if her husband was allowed to come to the United Kingdom.

8. I asked the appellant's wife about a statement which appears in a document from Newcastle City Council, dated 14 December 2022. The statement is this:

> "[The appellant's wife] has advised that if she tells her husband she does not want sex, he will get angry so she will comply (Husband in Pakistan, unable to return to UK)."

9. She said that she did not know where that had come from and that the council must have 'added it up or something'. She added that the appellant is her uncle's son and that 'he has never done anything like that if I don't want it.'

10. In questions arising, Mr Pipe asked the appellant's wife how her relationship was currently. She said that it consisted of phone calls but that they had a good relationship. They talked five to ten times per day. Mr Pipe asked whether they talked about 'deeper things'. She said that they talked about normal things. She confirmed that she wanted her husband to join her because she could not drive and could not handle things without him. She was dependent on her parents for everything.

11. Mr Pipe confirmed that there were no more live witnesses, although family members were present at the hearing centre.

Submissions

12. Mr Tufan submitted that the case was to assessed within the framework provided by section 117C. Only the second statutory exception was relevant and only insofar as it comprised part of the structured and holistic evaluation under section 117C(6).

13. Mr Tufan did not accept that the appellant had a genuine and subsisting relationship with his wife. They had not seen each other for many years and it appeared that the relationship was maintained via Whatsapp only. Nor did he accept that there was a genuine and subsisting parental relationship between the appellant and his son. The appellant had never met his son in person.

14. Mr Tufan did not accept that the maintenance of the deportation order gave rise to undue harshness for the appellant's wife or son. Their life continued in a normal way. The child was living with her and her parents. He was said to be doing well at school. There would be 'zero effect' if the deportation order remained in place. The issues which the appellant's wife had described with the appellant's cousins were what one would expect with children of that age. There was no undue harshness to carry forward into the wider assessment of proportionality.

15. Mr Tufan accepted that the unexplained delay in taking a decision had an effect on the scales of proportionality. He invited me to follow MNT (Colombia) v SSHD [2016] EWCA Civ 893 rather than RLP (BAH revisited – expeditious justice) Jamaica [2017] UKUT 00330 (IAC). Against that, however, were a powerful range of considerations which rendered the appellant's continued exclusion proportionate. He did not accept his guilt and had showed no remorse. Whilst the respondent had nothing to say about the evidence from Pakistan which showed that the appellant had committed no further offences there, it was clear from the report of Ms Haque, a Probation Officer, that he was not rehabilitated. The appellant's victim was a minor and Ms Haque had spoken of the continuing risk which the appellant presented.

16. In summary, Mr Tufan submitted that there remained a cogent public interest in the appellant's exclusion.

17. Mr Pipe relied on the skeleton argument he had settled on 13 July 2023. The appellant's son is a British citizen because his mother was a British citizen at the

time of his birth. The couple had married in Pakistan and it was clearly a genuine and subsisting relationship.

18. Mr Pipe submitted that the evidence disclosed very compelling circumstances which engaged s117C(6) when it was considered cumulatively. The sponsor was a straightforward witness and it should be accepted that she and her son had genuine and subsisting relationships with the appellant. Mr Tufan had attached significance in his submissions to the absence of face to face contact but there was clearly a desire for the same, which had been frustrated by the sponsor's inability to take her son to Pakistan.

19. It was accepted that the appellant had committed a serious crime and that there had been a significant period in which he did not accept responsibility for that offence. It was clear from his most recent statement that he had come to accept what he had done, however, even if there was a 'lacuna in his narrative' regarding the facts of the offence and the lack of consent from the victim. That was also clear from the balanced expert evidence of Ms Haque. The appellant had been deported many years ago and the character certificates from Pakistan showed that he had committed no further offences. There was nothing to suggest that he represented a current risk to children. There was a low OGRS score and the risk which there was said to be flowed from the offence, and nothing more. It was to be recalled that the appellant would always be on the Sex Offenders Register, which served to reduce the risk.

20. It was common sense that the appellant would need to satisfy social services that he should be entitled to move in with his wife and child, and it was accepted that that assessment would have to take place. It was clear from the report of Mr Crisp that it would be in the best interests of the appellant's child for him to live with them. The appellant's wife was in receipt of Personal Independence Payment. It was clear that she had a learning disability. She was struggling with behavioural problems in the house and she wanted to have an opportunity to enjoy co-parenting.

21. Mr Pipe accepted that the delay did not fit squarely into any of the three EB (Kosovo) v SSHD [2008] UKHL 41; [2009] 1 AC 1159 paradigms but it must be relevant. The application for revocation had been made in October 2016 and there had been multiple 'chasers'. The family life had been affected by the respondent's delay. As Mr Tufan had accepted, there must be a reduction in the public interest as a result.

22. I reserved my decision at the end of the submissions. I wish to express my thanks to both advocates for their considered submissions and for their witness handling. It is clear that the sponsor is a vulnerable individual and she was treated as such by both advocates.

Analysis

23. The appellant appeals against the respondent's decision to refuse to revoke the deportation order which was signed against him nearly a decade ago. Although that order is in place, and the appellant has been deported pursuant to it, it is common ground (and correctly so) that my enquiry should focus on the Part 5A of the Nationality, Immigration and Asylum Act 2002, and on s117C thereof in particular.

24. The appellant is a serious offender, having been sentenced to a period of imprisonment of more than four years. He is therefore unable to meet either of the statutory exceptions to deportation. In cases such as this, there is no rule that a tribunal must consider the exceptions before turning to section 117C(6): Yalcin v SSHD [2024] EWCA Civ 74; [2024] 1 WLR 1626, at [65]. To do so helps to focus the mind, however, and I shall follow the structured approach recommended by Jackson LJ in NA (Pakistan) v SSHD [2016] EWCA Civ 662; [2017] 1 WLR 207.

25. The first of those exceptions, in s117C4), does not apply and Mr Pipe rightly said nothing about it. The second exception, in s117C(5), provides as follows:

> "Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh."

26. Mr Tufan submitted that the appellant does not have a genuine and subsisting relationship with his British wife, although he acknowledged that he made that submission somewhat tentatively. I am not able to accept the submission. The appellant and his wife have been married for a number of years. She visited him in prison, as is clear from the records at pp31-40 of the bundle. They have a child together. She has visited him in Pakistan since his deportation, albeit that she has not done so for some years. She said in evidence that she speaks to the appellant many times a day and Mr Tufan did not seek to controvert that evidence. Although there has been no face-to-face contact for some years, I accept that the relationship remains genuine and subsisting in the sense contemplated in GA ("Subsisting" marriage) Ghana * [2006] UKAIT 00046; [2006] Imm AR 543.

27. Mr Tufan also contended that the appellant does not have a genuine and subsisting parental relationship with his son. That is a rather more difficult submission to resolve. The facts are not in dispute, however. The appellant has never met his son, who was born in Newcastle on 28 January 2016. The appellant's wife conceived when she was visiting the appellant in Pakistan after his deportation in February the preceding year. As I have already recorded above, and as is clear from the papers, Newcastle Social Services have expressed concern about the appellant's son travelling to Pakistan and the appellant's wife has been told that she should not attempt to obtain a passport for him.

28. The appellant's wife stated that the appellant speaks regularly with his son. I have no reason to doubt that. She appears to be keen for the appellant to have a relationship with his son and I accept that they will speak to and see each other using video calls, as is commonplace in relationships around the world.

29. The law in this respect is appreciably clear. Whilst the Court of Appeal (McFarlane LJ, with whom Bean and Moylan LJJ agreed) stated in SSHD v VC (Sri Lanka) [2017] EWCA Civ 1967 that there must be some element of direct parental care, it was made clear at [86]-[102] of SSHD v AB (Jamaica) & Anor [2019] EWCA Civ 661; [2019] 1 WLR 4541 that those dicta related to the specific paragraph of the Immigration Rules then in issue: paragraph 399(a). In the present context, all depends on the facts.

30. There is very little evidence of the appellant playing a role in the parenting of his son. The statements provided by the appellant and his wife shed little if any

light on how he is involved from afar in the life of his son. They evidently speak regularly but there is no information, for example, about the appellant being involved in his son's education, whether by being involved in school choices or helping him with his homework. There is nothing to indicate that the appellant has any involvement in choosing his son's extra-curricular activities.

31. I note the reference in the report of Gary Crisp, the Independent Social Worker, to the appellant's son 'missing' his father and to the appellant hearing about his son's 'concerns' but his report sheds little light on the reality of the relationship. Although the appellant's son was six years old when he spoke to Mr Crisp, he only appears to have said that he is happy when he speaks to the appellant and sad that he cannot see the appellant in person: paragraph 5.10 of that report refers. The focus of the report is on the way in which the relationship might develop in the future, in the event of the appellant's re-admission, rather than on the concrete details of the relationship as it is at present. Beyond the regularity of the contact between father and son, it is difficult to discern what role the appellant plays in caring for and making decisions in relation to his son.

32. Despite the paucity of evidence in relation to these matters, I am just persuaded that the appellant enjoys a genuine and subsisting parental relationship with his son. I reach that conclusion that for the following reasons.

33. Firstly, the line of authority which culminated in SSHD v AB (Jamaica) & Anor maps inexactly onto the facts of this case. The relationships under consideration in those cases were different; either fathers who had been absent for some time from their child's lives or other people who were said to have "stepped into the shoes" of a parent. Here, however, it is the relationship between minor child and a biological parent who has been in constant contact which is in issue.

34. Secondly, I think it is to be assumed that the 'genuine and subsisting parental relationship' test in s117C of the 2002 Act is a statutory formulation of the test for the engagement of Article 8 ECHR in its family life aspect between parent and minor child. Were that not so, it is difficult to see how Part 5A would represent a complete code for the resolution of Article 8 issues.

35. Thirdly, the law in that respect is clear, and has been so for a number of years. At [21] of Berrehab v The Netherlands (App No 10730/84); (1988) 11 EHRR 322, the ECtHR said this:

> "The Court likewise does not see cohabitation as a sine qua non of family life between parents and minor children. It has held that the relationship created between the spouses by a lawful and genuine marriage - such as that contracted by Mr. and Mrs. Berrehab - has to be regarded as "family life" (see the Abdulaziz, Cabales and Balkandali judgment of 28 May 1985, Series A no. 94, p. 32, § 62). It follows from the concept of family on which Article 8 (art. 8) is based that a child born of such a union is ipso jure part of that relationship; hence, from the moment of the child's birth and by the very fact of it, there exists between him and his parents a bond amounting to "family life", even if the parents are not then living together.
>
> Subsequent events, of course, may break that tie, but this was not so in the instant case. Certainly Mr. Berrehab and Mrs. Koster, who had divorced, were no longer living together at the time of Rebecca's birth and did not resume cohabitation afterwards. That does not alter the

> fact that, until his expulsion from the Netherlands, Mr. Berrehab saw his daughter four times a week for several hours at a time; the frequency and regularity of his meetings with her (see paragraph 9 in fine above) prove that he valued them very greatly. It cannot therefore be maintained that the ties of "family life" between them had been broken."

36. The circumstances of the instant case are unusual, in that the appellant and his son have never met in person. Despite that, they have been in regular contact and the appellant's son has grown up with the appellant as a constant 'presence' in his life, and he has known him as his father throughout that time. Given the presumption in favour of a family life between parent and biological child, and given that constant contact, I come to the conclusion that there is and always has been relationship which amounts to family life and one which must, therefore, satisfy the relationship test in s117C(5).

37. It remains to consider whether the continued separation of the appellant from his wife and son is unduly harsh. The meaning of that test has now been considered twice by the Supreme Court, in KO (Nigeria) v SSHD [2018] UKSC 53; [2018] 1 WLR 5273 and SSHD v HA (Iraq) [2022] UKSC 22; [2022] 1 WLR 3784. I do not propose to set out swathes of what was said in those decisions, or of what was said by the Upper Tribunal in MK (Sierra Leone) [2015] UKUT 223 (IAC); [2015] INLR 563. I have applied the principles in those cases to the analysis which follows.

38. Insofar as Mr Tufan suggested that the appellant's wife and son could join him in Pakistan without undue harshness, I do not accept that submission. Given what has been said by Social Services about the appellant's wife obtaining a passport for their son, I cannot see any feasible way in which that hypothesis could become a reality. In any event, the appellant's son is now eight years old. He is settled in school and in his life in the UK. The appellant's wife has learning difficulties and it is clear from Mr Crisp's report that she is only able to manage in the UK with the support of her family. The nationality of the appellant's son is not a trump card but it is an important consideration in the assessment of his best interests. Taking each of these considerations into account, I conclude without much difficulty that it would be unduly harsh to expect the appellant's wife and son to join him in Pakistan.

39. I do not accept that it would be unduly harsh to maintain their separation, however. The appellant's wife misses her husband and their son misses his father. The way of life which has come into existence since the birth of the appellant's son is imperfect. The appellant's wife spoke of being a 'burden' on her family. It is clear that she cannot drive, and she is therefore dependent upon them to some extent, certainly as regards taking her son to school. She is evidently frustrated by her inability to manage some of the more challenging behaviour which is demonstrated by her son in his interactions with his cousins. But there are thankfully no diagnosed behavioural problems and neither Mr Crisp's report nor the appellant's son's school report gives any indication of unmet needs. As matters stand, neither the appellant's wife nor his son experience anything approaching the considerably elevated threshold of harshness which s117C(5) requires. Although I accept that it would be in the child's best interests to have his father in the UK, there is nothing on the facts of this case which establishes that the ongoing separation is unduly harsh.

40. The answer to that question is one facet of the wider, holistic enquiry required by s117C(6), however. I am grateful to the advocates for their considered submissions on the matters which should be assembled on either side of the balance sheet of that proportionality consideration. I begin with the public interest in the maintenance of the deportation order.

41. The appellant has been out of the United Kingdom since he was deported in February 2015. He undertook a number of courses whilst he was in prison and there are certificates from the police in Pakistan to show that he has committed no further offences since his deportation. It is said that he represents no real risk to the population of the United Kingdom and that the public interest in the maintenance of the order has reduced accordingly.

42. I do not accept that submission, and I consider Mr Tufan to be correct in his submission that the preponderance of the evidence, including the report of Rabina Haque, militates in favour of the opposite conclusion. I remain concerned, despite the terms of the appellant's most recent statement, that he has not accepted responsibility for his actions. Mr Pipe was constrained in his submissions to accept that there is something of a lacuna in that statement; whilst the appellant says that he is sorry for what he did, he fails to offer any explanation of what he did or why he did it. He seemingly accepts that he had sex with the victim, who was a minor at the time, but he says nothing about the absence of her consent, about which the jury must have been satisfied in order for him to have been convicted. The account which was recently given to Ms Haque, as recorded at 5.3 to 5.6 of her report, suggests that the appellant and the victim had consensual intercourse in the back seat of his car.

43. There is a suggestion in the papers that the appellant has given his wife a straightforward account of what happened, and that she has chosen to stand by him in full knowledge of the fact that he raped a minor he had groomed for six months whilst they worked together at a pizza shop. (The choice of the word 'groomed' in the preceding sentence is from paragraph 5.8 of Ms Haque's report.) One of the other documents tells a different story, however. There was a safeguarding meeting held on 10 January 2018. The minutes of that meeting appear at pp336-341 of the bundle. I note that one of those present reported that the appellant had told his wife that "he did not rape anyone and 'she was one of them girls and there are girls out there who do that'". The interlocutor is reported to have expressed concern that the appellant's wife did not at that stage understand the truth.

44. There is another aspect of the appellant's behaviour towards his wife which is of concern. There is a lengthy document from Newcastle Social Services in the bundle. It runs from p286 to p321. It bears a date of 14 December 2022 but that appears to be the date on which it was printed, as there are a number of sections which were plainly completed much earlier. At p307 of the bundle, the appellant's wife is recorded as having stated that the appellant 'gets angry' if she tells him that she does not want sex 'so she will comply'. The appellant's wife was asked about this during her evidence. She said that she had no idea where this had come from, and that it might have been fabricated by social services. She said that the appellant 'had not done anything like that if I don't want it'.

45. I cannot see why this would have been recorded if it was untrue, however, and I think it more likely that the appellant's wife (who is noted to be forgetful) has simply forgotten that she said this. It chimes, in my view, with the general view I have formed of the appellant from the other material which is available. He is a

man with a sense of sexual entitlement, and is capable of using grooming or spousal coercion in order to gratify his sexual urges. In that respect, I reach a similar conclusion to that of Ms Haque, the appellant's expert, who concluded that there is

> "strong evidence of manipulative, controlling behaviour, both emotional and psychological use of sexual behaviour to satisfy his gratification"

46. There are other aspects of Ms Haque's report which cause concern. She states at paragraph 5.9 that he evidently has a 'sexual interest in children', an 'inability to manage his sexual urges' and that his actions were 'premeditated, reckless and predatory'. She reports that he sought to minimise and deny his actions: paragraph 5.10.

47. Mr Pipe naturally highlights Ms Haque's conclusion that the appellant is a "Low-Medium risk of re-offending and Low-Medium risk of harm to children (colleagues). There is a low risk of serious recidivism according to the RSR tool but what is more significant, in my judgment, is the result generated by the OASys Sexual re-offending predictor (OSP). Ms Haque states that it is "specifically developed for use with adult males convicted of sexual offences" and provides "a more accurate risk production [sic] for sexual reconviction than the general offending assessment tools". When administered by Ms Haque, that tool predicted a medium risk of further sexual offending.

48. I accept that evidence. It chimes with my own assessment of the other evidence in the case. I do not consider the appellant to be a reformed individual. I accept that he has been convicted of no further offences whilst in Pakistan but I consider that he would continue to pose a risk to young females in this country. His behaviour towards his minor colleague, towards his vulnerable wife, and the assessment of Ms Haque all go to support that conclusion. Whilst the appellant would be required to sign the Sex Offenders Register if he returned to the UK, that fact alone would be insufficient to obviate that risk.

49. In my judgment, therefore, there is the most cogent public interest in the appellant's continued exclusion from the United Kingdom. Given the risk which he continues to pose, the passage of time and the respondent's absurd delay in considering his application to revoke the deportation order do little to reduce the public interest in the maintenance of the order. If anything, the evidence which is currently before me goes to show a weightier public interest in deportation than the index offence alone.

50. I weigh against that public interest the matters which Mr Pipe brought to my attention orally and in his skeleton argument of 13 July 2023. The appellant's wife is a vulnerable individual who feels that she is a burden on her family. There was a palpable sadness in her voice when she used that expression and I have no doubt that she will be very upset to learn that her husband cannot re-enter the UK. I accept that her son asks when the appellant will be allowed to join them in this country, and that he too will be upset to learn that it is not currently possible. But they will manage, as they have done for the last nine years, with the dutiful support of her family, and the circumstances to which they will be exposed will not be unduly harsh. The best interests of the appellant's son are for them to live together as a family and there is no proper reason to believe that the appellant represents a risk to a male minor like his son, but these considerations are

outweighed, and massively so, by the need to protect the public from people such as the appellant.

51. In the circumstances, the appellant's appeal against the refusal to revoke the deportation order is dismissed because the maintenance of that order is a proportionate interference with his family life.

Notice of Decision

The First-tier Tribunal's decision having been set aside, I remake the decision on the appeal by dismissing it.

Mark Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 June 2024