



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005494
First-tier Tribunal No:
HU/53027/2022
IA/04757/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 September 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE
UPPER TRIBUNAL JUDGE RUDDICK

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RZA
(Anonymity Order made)

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondent: Mr P Haywood, instructed by Farani Taylor Solicitors

Heard at Field House on 18 September 2024

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing RZA's appeal against the respondent's decision to refuse his human rights claim and to refuse to revoke a deportation order previously made against him.
2. For the purposes of this decision, we shall hereinafter refer to the Secretary of State as the respondent and RZA as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.
3. The appellant is a citizen of Pakistan, born on 13 January 1977. He claims to have entered the UK in 2000 or alternatively 2002. He was encountered in 2008 on an enforcement visit at a restaurant and was arrested and served with illegal entry

papers. On 9 January 2009 he was convicted of intent to knowingly possess false/improperly obtained/another identity document after being found with a passport containing a counterfeit indefinite leave to remain endorsement. He was sentenced to 12 months' imprisonment. On 9 April 2009 the respondent issued a deportation order against him.

4. The appellant claimed asylum on 6 May 2009. His claim was refused on 5 October 2011. A new deportation order was signed against him on 17 October 2011, the previous one having been revoked, and he was served with a deportation decision which he appealed. His appeal was dismissed on 20 January 2012 and he became appeal rights exhausted on 6 March 2012. In response to removal directions which were subsequently deferred, the appellant made representations on 19 June 2012 which were treated as an application to revoke the deportation order. That application was refused on 5 October 2012 without a right of appeal, but further submissions were refused on 7 March 2013 with an in-country right of appeal which the appellant exercised. His appeal was dismissed in the First-tier Tribunal on 5 June 2013.

5. Following further submissions made in 2014, 2015 and 2017, and litigation by way of various judicial review claims, the appellant had a third appeal in the First-tier Tribunal against a decision of 30 March 2017 refusing to revoke the deportation order made against him. That appeal was dismissed on 22 January 2018. The appellant again made further submissions which were rejected in June 2019.

6. On 4 September 2019 the appellant submitted an application for leave to remain in the UK based on his private and family life. The respondent refused the application without a right of appeal on 21 September 2021, but then, following the commencement of judicial review proceedings, agreed to re-make the decision. The application was refused on 29 April 2022 and that is the decision under challenge in these proceedings.

7. The appellant's application was made on the basis of his family life with his British wife, TM, whom he had married on 15 April 2011, and three British children, ZA born on 25 July 2013, AA born on 18 January 2015 and EA born on 8 January 2018, as well as on the basis of his private life in the UK.

8. In refusing the appellant's application, the respondent accepted that the appellant had a genuine and subsisting relationship with his three children and with his wife, all of whom were British nationals, but concluded that it would not be unduly harsh for them to remain in the UK without him if he was deported. In so concluding the respondent had regard to findings made by the Tribunal in January 2018 which concluded that the appellant had a limited parental relationship with his children and that his wife would be able to care for their children in his absence with the assistance of her family. The respondent noted that an independent social worker's report dated 10 December 2018 which was relied upon by the appellant had been considered and addressed in the decision of June 2019 and that no new evidence had been produced to show that the support network identified by the previous Tribunal did not remain available to the appellant's wife. The respondent, further, had regard to the Tribunal's finding that it would not be unduly harsh for the appellant's wife and children to relocate to Pakistan with him and considered that there was no new evidence to displace that finding. The respondent accordingly found that the exception to deportation on the basis of family life was not met. With regard to the private life exception to deportation, the respondent noted that the appellant had not been lawfully resident in the UK for most of his life and did not accept that he met the relevant requirements. The respondent did not consider there to be any very

compelling circumstances which outweighed the public interest in the appellant's deportation and considered that his deportation would not breach Article 8 of the ECHR. The respondent found there to be no compelling or exceptional grounds on which to revoke the deportation order and therefore maintained the order.

9. The appellant appealed against that decision. His appeal was initially heard by First-tier Tribunal Judge Juss and was dismissed in a decision promulgated on 10 April 2023. That decision was, however, set aside by the Upper Tribunal on 16 July 2023 by reason of material errors of law, and the appeal was remitted to the First-tier Tribunal for a fresh hearing.

10. The appellant's appeal then came before First-tier Tribunal Judge Hena on 15 September 2023. By that time ZA was 10 years of age, AA was 8 and EA was 5. Judge Hena had before her evidence of a SEN support plan for AA due to his emotional and mental health as well as an independent social worker report dated 12 September 2023 from Nikki Austin, an HCPC registered social worker, and reports and letters from the children's schools. The judge was also provided with a PNC report, recording a second offence committed by the appellant. The judge heard from the appellant, his wife and his wife's sister. She considered the case of Devaseelan and noted that there was new evidence which had not been before the previous Tribunal, namely the birth of a third British child, and evidence of changes in the family support network available to the appellant's wife in the UK and her caring responsibilities and career. The judge considered that that was significant new evidence which justified departure from the previous Tribunal's decision. She accepted, on the basis of that evidence, that it would be unduly harsh on the appellant's wife and children to remain in the UK without him. The judge noted that the respondent was not requiring the appellant's wife and children to relocate to Pakistan with him, but went on to consider the matter and concluded that it would be unduly harsh for them to do so. The judge then considered the question of 'very compelling circumstances', noting the appellant's further offence but concluding that it was not evidence of someone who was a repeat offender, and considered that it was not in the public interest to remove the appellant from the UK. She concluded that the deportation order should be revoked and she allowed the appeal on human rights grounds. Her decision was promulgated on 14 November 2023.

11. The Secretary of State sought permission to appeal the decision on two main grounds: firstly that the judge, in finding that the effect of the appellant's deportation on his wife and children would be unduly harsh, had failed to direct herself to, and apply, the highly elevated threshold in HA (Iraq) v Secretary of State for the Home Department [2022] UKSC 22, and that the circumstances to which she referred in reaching her findings failed to meet that threshold; and secondly, that the judge had failed to conduct a full Article 8 proportionality assessment through section 117C(6) and had failed to direct herself to the demanding nature of the 'very compelling circumstances' test.

12. Permission was granted in the First-tier Tribunal. Mr Haywood filed a detailed rule 24 response opposing the appeal. Mr Melvin filed a brief skeleton argument in response.

13. The matter then came before us. Both parties made submissions and we address those in our discussion below.

Discussion

14. The first part of ground one is an assertion that the judge failed to direct herself, and to then apply, the ‘highly elevated threshold’ required for the ‘unduly harsh’ test as set out in HA (Iraq). Mr Melvin, in his submissions, accepted that the judge was not necessarily required to cite the relevant authority, but he submitted that the judge failed to follow the approach in HA (Iraq) as evidenced by the reasons she gave for concluding that the ‘unduly harsh’ test was met. That was, he submitted, reflected by the fact that she placed inordinate weight upon the career goals of the appellant’s wife TM. In response Mr Haywood’s submission was that the judge was not required to cite the relevant test and authority and that in any event she had explicitly said, at [20], that she had considered all relevant case law even if not cited in her decision. He submitted further that there was nothing in the judge’s decision to suggest that she had not considered and applied the relevant test and he relied upon the oft-cited provisions in Secretary of State for the Home Department v. AH (Sudan) & Ors [2007] UKHL 49 as to the specialised expertise of the Tribunal. Further, he submitted, the evidence to which she referred, and the reasons she gave, showed that the correct test was applied and that the judge was entitled to conclude as she did.

15. We find ourselves in agreement with Mr Haywood. It would have been helpful if the judge had included a self-direction on the ‘unduly harsh’ test as set out in HA (Iraq), but she was not required to do so. There is nothing in her decision to suggest that she was not cognisant of, and did not take into account and apply, the correct test. There is nothing in her decision which would lead us to conclude that she had misdirected herself in law and we find nothing in her reasoning to suggest that she was not entitled to conclude that the test was met.

16. The judge, properly applying the principles in Devaseelan, provided clear reasons as to why the new evidence and the change in the appellant’s family circumstances entitled her to depart from the decisions of the previous Tribunals. Although the Secretary of State’s grounds assert that those circumstances failed to meet the elevated threshold for the ‘unduly harsh’ test, the assertion is a generalised and unparticularised one. Mr Melvin, in his submissions, relied upon the ‘inordinate weight’ attributed by the judge to the appellant’s wife’s career goals and the fact that she found that to be a significant factor (at [30]). Had the judge relied solely upon that particular factor we would have been in agreement with the respondent’s challenge. However, it is clear that there were other significant factors which the judge took into account in her overall assessment of the impact of the appellant’s deportation on his family, as Mr Haywood set out in some detail in his rule 24 response. TM’s career goals was simply one of several factors the judge was entitled to consider.

17. We turn to those various factors. When assessing the effect of the appellant’s absence on his family in the event of his deportation, the judge, at [28] and [29], considered the lack of alternative support available to his wife given the changed care needs of her elderly parents and her sister who was suffering from cancer; at [30] she considered the impact on his wife’s ability to work full-time because of her role as carer for her parents, her sister and her children; and at [31] to [33] she considered the impact upon the appellant’s children of his absence given the nature of their relationship. The judge went on to consider the scenario of the family relocating to Pakistan together with the appellant, considering at [36] the care needs of the appellant’s wife’s parents and sister and the impact upon them of her absence; at [36] to [37] she considered the treatment of women in Pakistan and the impact of that on the appellant’s wife and daughter; and at [38] she considered AA’s mental health issues and care needs and the impact upon him of relocation to another country.

18. The judge's findings were supported by references to the evidence, in particular references to evidence of specific issues relating to the children, particularly AA who had enhanced support needs, and to the appellant's significant parenting role. The judge referred to the SEN reports for AA (pages 19 to 28 of the composite bundle) confirming his issues and support needs, a letter from the head teacher at the children's school (page 29 of the bundle) and the report of the independent social worker, Nikki Austin (pages 39 to 61). We note that the letter from the head teacher refers to the significant impact on the children of the appellant's absence, to the "important influence" of the appellant on his children, to the serious impact on AA's progress and to the fact that it would be "hugely determinantal" for AA and in turn the other children if their father was absent. We note also that the independent social worker refers, at [4] of her report, to the "profound effect" of the appellant's departure on his children and to the fact that he is their primary carer.

19. Whilst the judge could have provided more detailed references to the evidence, it is clear, nevertheless, that she had full regard to the evidence before her, that her findings and conclusions were based on that evidence and were reached with the benefit of oral evidence from the appellant's wife which she found to be credible and persuasive. As Mr Haywood pointed out, none of that evidence was challenged by the respondent. We see no reason to conclude that that evidence did not entitle the judge to conclude as she did, nor that her conclusions were not properly reasoned by reference to that evidence. It may be that the Secretary of State does not agree with the conclusions reached by the judge, or even that another judge may have reached a different decision, but we reject the respondent's claim that the judge was not lawfully entitled to make the decision that she did on the 'unduly harsh' question.

20. In the circumstances we find no merit in the first ground. The appellant's lengthy immigration history and 'spurious' applications, to which Mr Melvin referred and upon which he relied in his submissions, were clearly not relevant to the 'unduly harsh' assessment but were considerations for the assessment of 'very compelling circumstances'. As Mr Melvin, properly accepted, the challenge to that assessment in the second ground fell away if the first ground was not made out, as the appellant's ability to meet an exception to deportation was determinative of the appeal. The grounds are therefore not made out.

21. Accordingly the grounds do not identify any material errors of law in the judge's decision. We therefore dismiss the Secretary of State's appeal and uphold the judge's decision.

Notice of Decision

22. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The Secretary of State's appeal is dismissed and Judge Hena's decision to allow the appellant's appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 September 2024

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