



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00586/2011

THE IMMIGRATION ACTS

Heard at : King's Court
On : 18th December 2013

Determination Promulgated
On : 6th January 2014

Before

Upper Tribunal Judge McKee

Between

AMIR SALEEM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Miriam Rasoul, instructed by Miles Hutchinson & Lithgow
For the Respondent: Miss H. Rackstraw, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Aamir Saleem, came to this country from Pakistan in 1997 with a 'marriage visa', and in due course obtained indefinite leave to remain here with his British wife. Three children were born to the couple, who lived in Reading, but by 2007 the marriage was breaking up, and in 2008 Mr Saleem went to live in Middlesbrough. There is conflict in the evidence as to how much contact he had with the children thereafter. Mr Saleem says that he would go down to Reading every month to see the children, and that they and their mother stayed with him in Middlesbrough for four weeks in 2009. On the other hand, the three children told a

Family Support Worker in January 2012 that they had not seen their father for several years. At all events, contact ceased in March 2010 when Mr Saleem was arrested for a drugs offence. He was later convicted of being knowingly concerned in the supply of a Class B drug (not Class C, which was the impression formed by the Criminal Casework Directorate of the Home Office), and was sentenced to 14 months' imprisonment.

2. This sentence rendered Mr Saleem liable to 'automatic' deportation, and in deciding whether one of the exceptions in section 33 of the UK Borders Act applied, the Criminal Casework Directorate sought the views of Mr Saleem's ex-wife (they were divorced in July 2011), as to whether the best interests of the children would be served by letting their father remain in the United Kingdom. Their mother replied in no uncertain terms that they would be better off without him. Having ascertained that there had been an incident of domestic violence in 2007, and that there were no current proceedings for contact, the CCD concluded that Mr Saleem's deportation would indeed not put the respondent in breach of her section 55 duty to safeguard and promote the welfare of the children.
3. A deportation order was duly made on 19th July 2011, and an appeal came before the First-tier Tribunal on 12th December 2011. A panel comprising Judge Jhirad and Ms Padfield, JP dismissed the appeal, partly because the appellant was "*estranged from wife and children, [and] there is no evidence that he has pursued contact with them in the past or had a meaningful relationship with them.*" When permission to appeal to the Upper Tribunal was granted and the matter came before Upper Tribunal Judge Kopieczek, two pieces of evidence were highlighted which the First-tier Tribunal had overlooked. In June 2010, prior to being informed that he was liable to deportation, the appellant had instructed Wilson & Co. to initiate contact proceedings. Secondly, although the panel had mentioned the supplementary letter from the Border Agency of 7th December 2011, they did not factor into their decision the information in that letter that Mr Saleem's application for a contact order was to be heard by a Family Court in January 2012, just a few weeks after the deportation hearing scheduled for December 2011. That hearing had previously been adjourned in order to await the outcome of a Family Court hearing in November 2011, which the appellant was unable to attend because of a problem with the escort service.
4. In the light of *MS (Ivory Coast)* and *MH (Morocco)*, which disapprove of determining an appeal against deportation when there are family proceedings pending, it was held that the First-tier Tribunal had erred in law by so doing, and that the decision on the appeal would have to be re-made by the Upper Tribunal. Directions were given for the disclosure of all CAFCASS reports and of any orders made by the County Court in the family proceedings.
5. When the matter came before me, a CAFCASS report of January 2012 was indeed made available, showing that a Family Support Worker had met the three children individually in December 2011 in order to ascertain their wishes and feelings. All three said that their father had not bothered with them in the past, and that they did not want to have contact with him. The two older children could remember an incident of domestic violence. In the light of this report, a Family Court Advisor recommended no direct contact, but suggested that "*the Court may consider it is in the children[s] interest to receive letters and postcards from their father in order to*

maintain their identity as they get older.” In July 2013 another CAF/CASS letter to the Court recounted a telephone call to Mr Saleem, who ascribed his ex-wife’s hostility to the fact that her brother had been married to Mr Saleem’s sister, and the latter had divorced him. This had caused difficulties with his own marriage. But despite his former wife’s hostility, his son had recently contacted him on a friend’s mobile phone. The contact order, when it finally came on 27th November 2013, was for very limited contact. Mr Saleem would be allowed to write four letters per year to each of the children, these communications to be monitored by their mother.

6. Shortly afterwards, the appeal came before me, and I heard oral evidence from the appellant and his sister, who divorced his wife’s brother and who has been living with the appellant in Middlesbrough for several years. There was also a recent letter from Fulcrum, a GP service “supporting recovery from addiction”. The appellant has been taking heroin for many years, and a Recovery Support Worker tells how Mr Saleem has been prescribed Methadone, doses of 15 mls being collected on a daily basis. The appellant had missed three days in a row early in December 2013, which caused his prescription to be cancelled. But it had now resumed. The Recovery Support Worker was unable to say how long this prescriptive treatment would last.
7. In his oral evidence, the appellant assured me that he was fighting his heroin addiction. His doses of Methadone had been successively decreasing, and as soon as he was clear, he would apply for direct contact with his children. But he acknowledged that in a ‘hair strand analysis’, he had tested positive for both Methadone and heroin. He elaborated on the telephone contact which he had managed to have with his son when the latter went to Pakistan last year, contact which was confirmed in witness statements from his uncle and his sister. I allowed the appellant to address me at length about his life history. His parents, he said, had been killed in a family feud about land, and this had caused him to make an asylum claim in May 2011, which was subsequently withdrawn. He was enticed into taking drugs by his wife’s brother, and this was the cause of all his troubles, because this man’s drug-taking had caused the appellant’s sister to divorce him, and then the appellant’s wife, whose brother had been divorced by the appellant’s sister, in turn divorced the appellant. The appellant’s ex-wife had tried to turn his children against him, but in reality his children did want to have contact with him.
8. The appellant’s sister, in her oral evidence, confirmed this account, saying that she had lived with the appellant since her own marriage broke down in 2008. But she did not really know people in Middlesbrough, just her uncle, and she would be very lonely if the appellant were deported to Pakistan. She seemed uncertain as to whether the appellant was still taking heroin, or just Methadone.
9. In her closing submissions, Miss Rackstraw cautioned against accepting all that the appellant had said. His account of events in Pakistan had to be taken with a pinch of salt. Before the First-tier Tribunal he had claimed to have no brothers in Pakistan, but then admitted that he had five. He now claimed that the report of his children’s wishes and feelings, as recorded by a CAF/CASS worker, did not truly reflect what they thought. They had been put up to it by their mother. On the contrary, argued Miss Rackstraw, the experienced CAF/CASS worker would have been aware of this possibility, and would be well able to detect undue influence. The appellant simply

had no family life, and very limited private life in the United Kingdom, having been employed only for a few months in a pizzeria.

10. Miss Rasoul handed up what purported to be text messages to the appellant from his son. Despite an objection from Miss Rackstraw, I admitted the document, which Miss Rasoul said was evidence of contact between father and son. Direct contact was a distinct possibility in the future, and the appellant could be a positive force for good in his children's lives. The allegation of domestic violence had not been followed up by the police, and it was notable that the appellant's drug addiction, which he was trying hard to kick, had not led him into other crimes than the one of supplying cannabis. The Pre-Sentence Report had assessed him as being at low risk of harm, while the Trial Judge had taken him to be a man of previous good character. There was family life between the appellant and his sister, and every likelihood of meaningful family life between him and his children in the future.

Discussion

11. Despite the best efforts of Miss Rasoul, the recent *dénouement* of the Family Court proceedings has deprived the appellant of what would have been the weightiest factor going onto his side of the Article 8 balance. The appeal can only succeed under Article 8 outside the Rules, and the appellant cannot rely on his private life. He has only worked for a few months since coming here in 1997, and only his uncle and sister in Middlesbrough have come forward to support him. Miss Rasoul submits that the appellant enjoys family life with his sister, but for the purposes of Article 8 there must be an element of dependency going beyond the normal ties of affection between adult siblings who are living under the same roof. Such unusual dependency has not been established here. Direct contact with his children and meaningful participation in their upbringing would certainly have given the appellant a strong family life claim, but the current level of contact authorised by the Court is too exiguous to amount to family life, while the prospects of the appellant getting direct contact are too uncertain to be placed in the proportionality balance. He would need to be completely drug-free before applying for a more generous contact order, and the fact that he is still taking heroin as well as Methadone pushes the date when this is likely to happen far into the future. I can accept that there was some telephone contact between father and son in 2012, but that does not mean that the appellant's children were not telling the truth to the lady from CAFCASS who was ascertaining their wishes and feelings. As Miss Rackstraw submits, the CAFCASS interviewer would have been alert to the possibility of undue influence from the mother who had custody of the children, and who was ill-disposed towards their father.
12. Absent a finding that the best interests of the children will be adversely affected by the appellant's removal, there is little to put on the appellant's side of the Article 8 balance. On the other side there is the public interest in deportation as a response to criminal activity, even when there is a low risk of re-offending. For an appeal against deportation to succeed under Article 8 outside the Rules, it has been held in *MF (Nigeria)* [2013] EWCA Civ 1192 that "*very compelling reasons will be needed to outweigh the public interest in deportation.*" Such reasons are simply not available in the present case.

DECISION

The appeal is dismissed.

Richard McKee
Judge of the Upper Tribunal

29th December 2013