



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA 01103 2012

THE IMMIGRATION ACTS

**Heard at Field House
On 25 April 2014**

**Determination Promulgated
On 21st May 2014**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MUHAMMED UMAR FAROOQ

Respondent

Representation:

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer

For the Respondent: Mr A Jafar, Counsel instructed by Thopee & Co Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant” against the decision of the Secretary of State to deport him following an order made under Section 32(5) of the United Kingdom Borders Act 2007.
2. This was the second time the claimant’s appeal against that decision had been allowed. The previous determination was found unsatisfactory by Upper Tribunal Judge Peter Lane who decided the case had to be heard again in the First-tier Tribunal and it is the subsequent decision of the First-tier Tribunal that is the subject of the appeal before me.
3. Permission to appeal was given by First-tier Tribunal Judge Plimmer. She distilled the following criticism under point 3:

“The Tribunal’s determination is a detailed and carefully drafted one. The Tribunal has properly taken into account the seriousness of the offence (paragraph 61) together with the risk posed by the appellant (paragraphs 62-64). It is however arguable that the Tribunal has failed to take into account the other aspects of the criminal offence above the risk of reoffending: the need to deter others and the need

to express society's revulsion at the criminality. As in **SE (Zimbabwe) v SSHD** [2014] EWCA Civ 256 states, it is always appropriate to consider all three aspects of the individual's offence when assessing whether Article 8 rights should prevail."

4. In summary outline, Mr Duffy said that Judge Plimmer's grant went to the heart of the matter, that the First-tier Tribunal had done a careful determination but had lost sight of an important part of its functions and the appeal needed to be decided again. Mr Jafar's response was that the determination properly understood showed consideration of all the things that needed to be considered and the Secretary of State had to accept the independent judicial decision of the First-tier Tribunal.
5. I begin by looking at the determination and seeing exactly what the First-tier Tribunal decided.
6. The claimant first arrived in the United Kingdom in July 1996 when he was 15 years old. He is now 33 years old. He came with members of his family and was not subject to immigration control because his father worked for the Pakistan High Commission. His exemption from immigration control ended some time in May 2000 but he did not leave the United Kingdom. In July 2003 his father made an application for him to have indefinite leave to remain. Eventually the claimant's siblings and parents were given leave and became naturalised British citizens in 2010 but the claimant could not be naturalised because of his criminal record.
7. On 20 February 2011 he was convicted at the Crown Court sitting at Isleworth for an offence colloquially described as "money laundering" and was sentenced to four years' imprisonment and a confiscation order made in the sum of £17,810.
8. He did not respond to a notice telling him he was liable for automatic deportation and the deportation order was signed. This appeal is an appeal against the decision to refuse to revoke that order.
9. The First-tier Tribunal noted that the claimant arrived in the United Kingdom with his mother and siblings and that the siblings started school on arrival. Their circumstances were such that when they had to pay school fees they left formal education and started work.
10. The claimant lived in the United Kingdom without permission from May 2000 until 2003 when his father applied for the family to be given leave to remain because of the "seven years children's policy". The application was refused but an appeal by the family members was allowed by the Upper Tribunal. The claimant was not given leave because he had criminal charges against him.
11. The claimant then became the subject of a deportation order following his conviction on 22 February 2011 as indicated above.
12. The determination then notes the earlier hearing of the appeal that was decided wrongly and the Upper Tribunal's ruling that the only findings of fact to be preserved were those relating to the claimant's rehabilitation and activities carried out whilst in detention which do not seem to be controversial.
13. It was noted that the claimant's father had paid the confiscation order of £17,810 made at the Crown Court.

14. The First-tier Tribunal accepted the claimant's evidence that he had lived industriously in the United Kingdom, that he had undertaken courses in prison, that he had contacted his family daily and by telephone during his imprisonment and that the family live together in a house paid for in part by the claimant's contributions to the mortgage. The property was owned jointly with his mother.
15. The Tribunal further accepted that the claimant had not been to Pakistan since arriving in the United Kingdom at the age of 15 years.
16. Apart from his imprisonment and "a brief period" when the claimant lived in Birmingham he had always lived with his family.
17. It was the claimant's case that his sister was married but his brothers were not married.
18. He had some relatives in Pakistan but had had little contact with them since his grandmother had died.
19. The Tribunal accepted evidence from the claimant's immediate family in the United Kingdom that they were unaware of his criminality but highly dependent on his contribution to the family funds, that the family had suffered in his absence and there were no close relatives in Pakistan to assist him in the event of his return.
20. The Tribunal found that the claimant had a "strong family bond" with his parents and with his siblings and was in a particularly responsible position in the family because he was the eldest son who could be expected to and did, give financial support for the education of his siblings.
21. The Tribunal was satisfied that the claimant's relationship with his immediate family was better understood as being part of his "family life" than his "private life" when considering his private and family life for the purposes of Article 8 of the European Convention on Human Rights.
22. The Tribunal accepted the evidence that the claimant had behaved in prison and there was no evidence that he was likely to reoffend.
23. The claimant's ambition was to reintegrate with his family in the United Kingdom.
24. The Tribunal found that in the event of his return the claimant would have no accommodation in Pakistan and would be "forced to live with an uncle or an aunt who live with their own families". The Tribunal found it "unreasonable to expect this [claimant] to return to Pakistan and to re-establish his links with the country of his nationality."
25. The Tribunal repeated that the claimant had committed a serious offence for which he had been punished, that he had not reoffended and had very close bonds with his family in the United Kingdom.
26. The Tribunal in all the circumstances removal would be disproportionate.
27. As Mr Duffy confirmed that the grant of permission to appeal set out the gist of the Secretary of State's case I invited Mr Jafar to outline his case. Mr Duffy had the opportunity to give detailed reply.

28. Mr Jafar reminded me, correctly, of the decision of the Court of Appeal in **AM v SSHD [2012] EWCA Civ 1634** and particularly at paragraph 22 where it was made plain that the citation of authority is not important in itself. What mattered “is whether it is discernible from the FTT’s reasoning that the correct principles were applied.”
29. He submitted that the correct principles were applied by the First-tier Tribunal in this case.
30. He pointed out that the Tribunal at paragraph 47 set out in terms paragraph 398 of HC 395. In particular it reminded itself under the heading “A” that “the deportation of the person from the United Kingdom is conducive to the public good because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least four years.”
31. At paragraph 49 the Tribunal expressly reminded itself that paragraph 399A which identified circumstances where a person who had lived continuously in the United Kingdom for a considerable period should not be deported. Clearly the Tribunal was following the Rules as required by the decision in **Gulshan (Article 8 – new rules – correct approach) Pakistan [2013] UKUT 640 (IAC)**. However the Tribunal continued in paragraph 49:

“The deportation order was made because the [claimant] had been convicted of an offence and sentenced to imprisonment of at least four years. What the [claimant] has to show is that there are exceptional circumstances that exist and that the public interest which requires deportation is outweighed by the circumstances. The [claimant] states that he has established substantial private and family life in the UK and his removal will be a disproportionate interference to his rights under Article 8 of the ECHR”.
32. In short the Tribunal had expressly reminded itself that there is a presumption that deportation is conducive to the public good in the case of persons sentenced to at least four years’ imprisonment and that exceptional circumstances were needed before the public interest in deportation was outweighed by the claimant’s particular facts. Mr Jafar then reminded me how in **AM** the Court of Appeal had set out part of the judgment in **JO (Uganda) [2010] EWCA Civ 10** at paragraph 25 quoting paragraph 29 of **JO** where the Court of Appeal had suggested that circumstances that would make removal disproportionate might not be sufficient to make deportation disproportionate because of the “additional weight to be given to the criminal offending on which the deportation decision was based” but stressed that the actual weight was fact-specific.
33. Without in any way wishing to diminish the seriousness of the offences for which the claimant was convicted Mr Jafar pointed out how this was not a case of violent crime, promotion of illicit drugs or unlawful sexual activity and so was not the kind of offence that was particularly repugnant to the public. Mr Jafar took me back to paragraph 49 of the First-tier Tribunal’s determination and said that the Tribunal was correct in law to say that there needed to be exceptional circumstances before the public interest requiring deportation was outweighed by the particular facts of the claimant’s case.
34. The direction was correct and there was no reason to think it had not been followed.

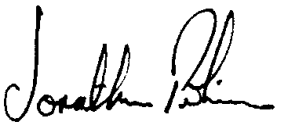
35. At paragraph 64 of its determination the First-tier Tribunal found that the claimant was not any risk to the general public and was not satisfied in this particular case that the public interest requires that the claimant be deported.
36. Nevertheless Mr Jafar also very properly drew my attention to the judgment of Elias LJ in AM who, having endorsed the view that mantras are not necessarily indicative of good decision-making said at paragraph 49:

“I have wondered whether in the light of these considerations we can properly infer that this specialist Tribunal did have regard to the necessary considerations, albeit that they did not refer to them. But I have concluded, in agreement with Pitchford LJ, that this would be a step too far. There is nothing in the decision or even the way in which the arguments were framed before the FTT to indicate that these wider aspects of the public interest were ever drawn to the Tribunal’s attention.”
37. They were not focused on by the Secretary of State in the refusal letter and the Court of Appeal decided they had not been considered properly.
38. Mr Jafar submitted that here the Tribunal did have the public interest in mind and the fact they had assessed it in a way that does not please the Secretary of State does not constitute an error of law.
39. Mr Duffy in reply said that the Tribunal had in mind the possibility of reoffending and concluded that the claimant was unlikely to reoffend. As pointed out by Judge Plimmer when she gave permission to appeal that is not enough. The Tribunal should have had regard to the need to deter others and the expression of society’s revulsion at the criminality.
40. Mr Jafar was most persuasive but on reflection I find that the First-tier Tribunal did err in law. What the First-tier Tribunal did it did diligently and with conspicuous care. However it only did half the job. When conducting the proportionality exercise for the purpose of the Article 8 evaluation it considered only the public interest in this particular claimant not reoffending. It did not consider the general deterrent effect and the expression of society’s disapproval. These two are legitimate interests and have been ignored.
41. This is an error that has to be corrected. I do not think there is any point in sending the matter back to the First-tier Tribunal. That has been done twice. Certain things are quite clear. The claimant is a citizen of Pakistan. He has lived in the United Kingdom since he was aged 15 years and he is now aged 33 years. He has not returned to Pakistan after he left it almost eighteen years ago and although he may have some relatives in Pakistan there is no evidence of any close ties with the country. He has established a strong private and family life in the United Kingdom and plays a bigger part in the life of his nuclear family than might ordinarily be expected of a man of his age. In particular he is the co-owner of the family home and has made significant financial contributions towards it.
42. I do not think the age of the siblings is set out in the papers although one brother, Muhammed Rauf, was born on 14 March 1986. I assume all the children have achieved their majority but in any event both parents are alive and living in the family home. The claimant is not the father figure in the life of minor children.
43. It follows that although the claimant has lived in the United Kingdom for some considerable time and although his relationships with his brothers and parents

are more than usually important he is not in the position of a person with a life partner who cannot be expected to remove or a minor child looking to him for fatherly guidance. These often weighty matters are not present in his case.

44. Although I accept that the claimant has not been convicted of the “sex, drugs, violence” kind of offence which carries particular public disapproval he was a significant (I accept not the major) participant in wholesale money laundering. This was a very serious crime and does attract a particularly high degree of public repugnance that ought to be reflected in the balancing exercise.
45. I accept that the claimant has no adult experience of life in Pakistan and in any event the Pakistan that he left when he was aged 15 is not the same place as the Pakistan of today. Nevertheless it is the country of which he is a national. He will find it hard to establish himself there but I cannot accept that he cannot establish himself in that country. I accept that removing him will cause significant hurt to the claimant’s family members.
46. I also accept that although quite a lot of his time in the United Kingdom has been without leave he cannot be held responsible for things that happened when he was a minor and although he could theoretically have introduced himself to the authorities as soon as he achieved his majority in reality that would have been expecting rather a lot from a young man who might be still expected to defer to his parents. The fact that he was in the United Kingdom without leave is a further reason to remove him but in this case it is a peripheral point.
47. Cases involving a person who chooses to commit a very serious criminal offence and so face deportation to a country where he has little or no adult experience are particularly troubling to this Tribunal but the Rules make it plain that the public interest requires the removal of such people. Each case is fact-specific and the human rights of the person to be removed and (usually more importantly) those affected by his removal must be considered and considered fully. Nevertheless, and without in any way departing from the factual findings of the First-tier Tribunal concerning these circumstances I am satisfied that when the need to express society’s disapproval and to discourage others is factored into the balancing exercise the claimant’s removal is proportionate and the deportation order shall stand.
48. It follows therefore that I find the First-tier Tribunal erred in law and I substitute a decision dismissing the claimant’s appeal against the Secretary of State’s decision.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 20 May 2014