



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
DA/00006/2014

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 19 September 2014**

**Determination  
Promulgated  
On 13 January 2015**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

SHAZHAD AKHTAR

Respondent

**Representation:**

For the Appellant: Ms Johnstone, a Senior Home Office Presenting Officer

For the Respondent: Ms Barton, instructed by Sabz Solicitors

**DETERMINATION AND REASONS**

1. I shall refer in this determination to the appellant as the respondent and to the respondent as the appellant (as they appeared respectively before the First-tier Tribunal).
2. The appellant, Shahzad Akhtar, was born on 26 January 1983 and is a male citizen of Pakistan. The appellant made a claim for asylum using a false identity in July 2007 and, in November 2010,

applied in that false identity for a certificate of approval for marriage. He subsequently married Shamaila Ghazal in Manchester in February 2011. He pleaded guilty to offences of obtaining leave to remain by deception and making a false statement to obtain a payment, fraud by making a false statement to the Department for Work and Pensions, possession with intent of a false identity document and, on 24 November 2011, at the Crown Court in Manchester he was sentenced to twelve months' imprisonment. He was released on licence after serving three and a half months in prison. A decision was made to deport him on 16 December 2013 and the appellant appealed to the First-tier Tribunal (Judge Brunnen; Mr A E Armitage) which, in a determination promulgated on 18 June 2014, allowed the appeal. The Tribunal found [61] that for the purposes of "paragraph 398 [of HC 395] there are exceptional circumstances in this case that outweigh the public interest in the appellant's deportation". The Tribunal found that the appellant's Article 8 ECHR rights would be breached and that the appellant did fall within Exception 1 of Section 33 of the 2007 Act. The Secretary of State now appeals, with permission, to the Upper Tribunal.

3. The grounds of appeal assert that the circumstances in the appellant's case were not exceptional. The Tribunal had found that members of the appellant's family relied upon him for physical and emotional support in a manner which exceeded that which might normally be expected between family members. The appellant's parents are deaf and mute and also illiterate. They are unable to use any form of recognised sign language and can communicate only using an informal system of signs which they have developed between themselves [36]. The appellant's brothers, his wife and youngest sister can communicate with the appellant's parents only to a very limited extent. The Tribunal noted [38] that they had before them a "quantity of medical evidence". There was also evidence from Manchester Social Services and the grounds complain that the offer to the family of assistance and support by way of a "family support package" provided by the social services had not been taken into account by the panel. The Secretary of State's strongest ground, perhaps, is that of paragraph [11]. The ground complains that the Tribunal took:

The appellant's evidence as to his family's circumstances at face value contrary to the fact that it had been found that the appellant fabricated an asylum claim and had been convicted of crimes of deception which he committed in order to stay in the United Kingdom.

4. Dealing with that ground first, I find that it is without merit. The Tribunal's determination is extremely thorough and is very clearly expressed. It is apparent that the Tribunal was well aware that it

was accepting an account of the appellant's family's circumstances against a background of previous deception exercised by this appellant with the cynical and criminal intention of remaining in the United Kingdom. At [37] the Tribunal gave virtually no weight to testimonials which it had received speaking of the appellant's "reputable character and describing him as an honest person". It is equally clear that the Tribunal was aware that there was limited medical evidence which provided "no real commentary on the state of health of the appellant's parents". It was noted that the appellant's father suffers from hypertension, osteoarthritis and prostate cancer whilst the mother has a history of hypertension and diabetes. The Tribunal was well aware that there was no medical evidence that "provides us with an assessment of the severity of these conditions or their implications for the couple's ability to care for themselves". There was, however, a number of items of correspondence from Manchester Social Services which outlined the very considerable difficulties which the appellant's parents have in coping with everyday life, including communicating with others. I find that the Tribunal was entitled to place weight on that evidence. The evidence also corroborated what the appellant himself said about his parents' circumstances. To that extent, the Tribunal was not placing reliance entirely upon the evidence of a proven liar. The Tribunal reminded itself throughout of the severity of the appellant's offending and the fact that his own evidence has had to be treated with circumspection.

5. Crucial to the outcome of the appeal was the detailed analysis undertaken by the Tribunal of the likely effect of the appellant's deportation upon his other family members. At [46] the Tribunal considered the ability of other family members to care for the appellant's parents should he be removed to Pakistan. I can see no error in that analysis which is factually correct and reasonable in the circumstances. The Tribunal's conclusion that "there is no reason to think that [other family members] would be willing to step into the appellant's shoes as their parents' carer still less reason to think that they would be suitable" was plainly available to them on the evidence.
6. There was also detailed evidence from the children services department at Manchester City Council regarding the appellant's sister. That evidence indicated the "extremely close relationship" with the appellant and the incontrovertible fact that the appellant's parents would themselves be unable to care for the sister in the appellant's absence. His sister had become "extremely distressed ... very upset and unable to concentrate in ... lessons" during the appellant's absence in prison. Whilst not inevitable, the Tribunal's conclusion at [57] that the sister's best interests "strongly" depended upon the appellant remaining in the United Kingdom it was a finding achieved by the Tribunal following

a rigorous analysis of the evidence. At the end of the day, the Tribunal was drawn towards the conclusion that, notwithstanding the seriousness of his offending (which the Tribunal did not seek to minimise), the appellant's sister and also his parents would suffer unjustifiably harsh consequences in the event that the appellant was deported to Pakistan. Crucial to that decision was the Tribunal's finding that neither social services nor other family members would be able to provide the same or an adequate substitute level of care for those individuals. The Secretary of State may not agree with the Tribunal's findings but I am unable to conclude that they were in any way wrong in law. There was sufficient other documentary evidence to support the appellant's own description of his family's circumstances. Accordingly, I find that the appeal should be dismissed.

**DECISION**

7. This appeal is dismissed.

Signed

Date 19 November 2014

Upper Tribunal Judge Clive Lane