Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00770/2014

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination Promulgated**
on 20 January 2015	**on 22 January 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

IRFAN LIAQAT

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Winter, Advocate, instructed by Maguire Solicitors (Scotland) Ltd
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a determination by First-tier Tribunal Judge Kelly, promulgated on 18 July 2014, dismissing his appeal against deportation to Pakistan.

2. The grounds of appeal to the Upper Tribunal (prepared by previous representatives) are in part no more than insistence on the case which

was put to the First-tier Tribunal. Other parts dilate upon the case law on the interaction of Article 8 of the ECHR and the Immigration Rules but in rather confused terms, asserting generally that the First-tier Tribunal should have engaged in a proportionality exercise without much regard to the Immigration Rules.

3. The ground which the judge granting permission thought arguable was that the finding of a medium risk of re-offending and a high risk of causing serious economic harm contradicted the "expert evidence" in a probation service report, without sufficient reasons – ground 5(a). The grant of permission explicitly finds no merit in grounds 5(b) and (c), but leaves the remaining grounds to be argued.

4. Mr Winter sought to argue additional grounds, although he said that at least in part they aim to clarify points which might be based on the original grounds: (1) error in stating at paragraph 24 there was no evidence whether the appellant had sisters or more distant relatives in Pakistan, all the witnesses having said he had no family there, which might have borne materially upon the outcome; (2) error at paragraph 26 in not being satisfied that the appellant would cope with everyday life or the workplace environment in particular, which overlooked that he had been working [for 6 to 7 months prior to being sentenced] as a delivery driver for *Dominoes Pizza* without further offending; and (3) error in failing to have regard to the development of family life in the future, and not appraising how his child's interests and welfare might be better served by his remaining here.

5. Mrs O'Brien had no objection to the additional grounds being argued.

6. Mr Winter's submitted along the following lines. He went through the evidence which was before the First-tier Tribunal, in particular going to low risk of re-offending now that the appellant's mental health difficulties are controlled by medication, with a good prognosis; the various statements about having no relatives left in Pakistan; and the period of work as a delivery driver. He accepted what is said in *MF* [2013] EWCA Civ 1192 about exceptional circumstances in the Rules equating to very compelling reasons to outweigh the public interest, as cited by the First-tier Tribunal at paragraph 29. However, he adopted the grounds on error of legal approach at 5(d) and 19-20. He said the Judge concentrated unduly on the Rules, failed to look at the wider circumstances, and was wrong to conclude that there were no very compelling reasons against deportation. *Ganesalaban* [2014] EWHC 2712 [a judicial review of an Article 8 decision by the SSHD] held that a proportionality consideration is always required. In a case where it was unreasonable for wife and child to relocate, the Judge was wrong to hold at paragraph 35 that the medical condition was the only point not contemplated by the Rules. *MM* (Zimbabwe) [2012] EWCA Civ 279 arose under very similar circumstances and was a strong indication that this case should have been allowed, see paragraph 35:

> In my view, the Upper Tribunal was diverted, by reason of the arguments advanced, from an important aspect of the case, namely, whether it was

> disproportionate to deport the appellant on the grounds of his previous convictions in the light of the evidence of the prognosis and the relationship between his mental illness and his offending. The judge never seems to have reached any clear conclusion based on an assessment of the risk of re-offending despite continued medication and support from his family here. If the correct view is that there is no realistic risk of further offending and the prognosis is excellent then it is difficult to see how it could be proportionate to deport this appellant. He has been in this country for 12 years and he has nothing to go back to save his grandmother and great-aunt, if they are still alive.

The appellant and his family are now aware of his mental health problem and it can be controlled. On a correct legal approach and understanding of the facts, the determination should be reversed.

7. Mrs O'Brien submitted that paragraph 26 of the determination was based on a full reading of the reports placed before the First-tier Tribunal. The pre-sentencing report (page E5) and the psychiatric reports all linked the offending to stress in the working environment. The circumstances narrated at paragraph 5 of the determination showed two separate incidents at each of two workplaces. The Judge did not have to set out every detail of the evidence. A short period of employment without further offending while awaiting sentence did not displace the Judge's reasoning. Even if a low re-offending risk should have been found, a medium risk of harm towards others would remain (page E10, pre-sentence report). The point was not one which affected the outcome. The Judge was correct not to find separation from wife and child a reason to allow the appeal outside the Rules because such consequences are catered for in the Rules and by definition cannot constitute exceptional circumstances. The Judge would not have been entitled to go on a free-wheeling Article 8 exercise. The relevant factors were governed by the Rules, which provided that those factors in favour of the appellant were outweighed by the public interest in deportation. The only possible other factor was the mental health element but that would not help the appellant anyway. There was no reason to think the necessary medication was not available in Pakistan and the point was, as the Judge said, a double-edged sword since the condition lies behind the offending.

8. I reserved my determination.

9. *MM* predates the far-reaching changes in the Rules in July 2012 and their interpretation in *MF*. The Judge followed *MF*. Paragraphs 399 and 399A of the Rules did not apply. The exceptional circumstances had to be found in other matters, not in the considerations about wife and child which were settled by the Rules. I prefer the submissions for the respondent to the argument in grounds and submissions for the appellant, which sought latitude of approach beyond the settled case law.

10. The considerations outside the Rules were self-evidently much less weighty than those within the Rules, which went to the heart of family life.

11. The Judge's reasons for the finding of a medium risk of re-offending are carefully considered and in my opinion legally sufficient. I also agree that a low risk finding would not change the outcome.

12. The Judge made a slip about there being no evidence whether there were sisters or more distant relatives in Pakistan. The witnesses concurred that there were no relatives. However, it is also plain that the absence of evidence on that point played no significant part in the finding that there were no exceptional circumstances or very compelling reasons.

13. The determination of the First-tier Tribunal shall stand.

14. No anonymity direction has been requested or made.

20 January 2015
Upper Tribunal Judge Macleman