Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01358/2014

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination and reasons promulgated**
on 25th March 2015	**On 30th March 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

RRI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mrs J Moore, Solicitor – instructed by Latitude Law Solicitors, Manchester
For the Respondent: Mr A Mullen, Senior Presenting Officer

DETREMINATION AND REASONS

1. By a decision dated 8th July 2014 the respondent decided to make an "automatic deportation" order against the appellant. Reasons are given in a letter dated 10th July 2014.

2. The deportation is based on the appellant's conviction after trial on 12th November 2013 for possession of a false UK passport in the identity RRI. The sentencing remarks of Mr Recorder Gibson summarise the circumstances, including the pressure under which the true Mr RRI and his mother were put by the appellant who maintained that Mrs I was his

mother, withdrawing that aspect of his defence only after DNA tests. A sentence of sixteen months' imprisonment was imposed.

3. (The respondent identifies the appellant in these proceedings by the name and date of birth which he has always used in this country, adding "also known as H-R". The only reference to that other name in the evidence on file appears to be that the appellant mentioned it during an interview at Manchester on 27th March 2013. In these proceedings the appellant uses the identity RRI and the same date of birth as previously (although he describes himself as a national of Pakistan not the UK). In his statement dated 27th August 2014 he says that he has always believed that to be his true identity. It came as a surprise to him that he had lived in the identity of another person and that he was not a UK citizen. It seems that he seeks to succeed in these proceedings in a discredited identity, and that his true identity remains unknown.)

4. A panel of the First-tier Tribunal comprising Judge Grace and Mr A E Armitage dismissed the appellant's appeal for reasons explained in a determination promulgated on 13th October 2014.

Grounds of appeal to the Upper Tribunal.

1. Failure to properly apply section 55 of the Borders, Citizenship and Immigration Act 2009 and to consider the best interests of the children affected by the decision.

2. Failure to adequately consider the human rights of family members in accordance with *Beoku-Betts* [2008] UKHL 39.

3. Failure to fully consider the proportionality of the decision – *Razgar* [2004] UKHL 27, *Huang* [2007] UKHL 11.

   The Tribunal recognised its requirement to comply with section 55 ... but the detailed consideration ... does not contain a proper assessment of what is in the best interests of the relevant children.

   The Tribunal made findings that the appellant can maintain contact with his wife and daughters via telephone and internet and that his family and friends could visit him in Pakistan ... the Tribunal failed to ... consider ... evidence ... that visits to Pakistan are not financially viable and that electronic communication would be inadequate. The decision is in conflict with ... *SS (India)* [2010] EWCA Civ 388. The Tribunal acknowledged that the appellant's wife is now the primary carer of their children and that the two older children are beginning new stages of academic and vocational education ... however the determination demonstrates no assessment of evidence ... that it would benefit the children to receive their father's direct support ... and that the appellant's wife will struggle to continue to cope without it ... the current family circumstances frequently result in the youngest child returning from school to an empty house ... the appellant's wife spoke in detail of her concern about frequently being out of the home rather than spending time with her children. The Tribunal failed to address this which would be material in any appeal involving a child but especially important where that child attempted suicide just last year.

   The determination correctly identifies that section 117B of the Nationality, Immigration and Asylum Act 2002 states that when

> assessing public interests considerations little weight should be given to a relationship formed with a qualifying partner ... at a time when the person is in the UK unlawfully ... [but] the Tribunal erred in law when dismissing entirely the significance of the appellant's relationship with his wife ... *Beoku-Betts* is still to be applied and the rights and interests of the appellant's wife should have been considered. Her relationship with the appellant began at a time when the appellant is considered to have been in the UK illegally but there is nothing to suggest that she was aware of this and ... she has been the appellant's partner for the last 23 years.
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> Overall, the determination shows no consideration of what outcome would be most beneficial for the children ... and does not consider the interests of the appellant's wife ... the Tribunal has not discharged its duty to consider all the relevant facts or to reach a fully reasoned and proportionate decision.

Submissions for the appellant.

5. Further to the grounds, Mrs Moore relied also on *GO and Others* [2014] UKUT 00517 (IAC). That case deals with the duty imposed by section 55 on a decision-maker to be properly informed of the position of children, to conduct a careful examination of all relevant information and factors, to identify the best interests of the children and to balance them with other material considerations. The question is "an intensively fact sensitive and contextual one". Mrs Moore said that there had been before the First-tier Tribunal a mass of thoroughly prepared evidence about the children. The Tribunal failed to embark on the exercise explained in *GO*. Both older sisters expressed their own concerns and their concerns about the youngest child. The youngest child suffered from mental illness. She attempted suicide, leading to her hospitalisation, an extreme act for a child then aged only 12. Prior to the appellant's arrest his wife had been a full-time stay-at-home mother. She started work in May 2013. He went to prison in October 2013 and has been in prison and later in immigration detention since then. As she was re-starting work after twenty years, only low-paid employment as a carer, involving long and irregular hours, was available to her. There was evidence of her work rota. There was considerable evidence from relatives, friends and supporters of the family. If the appellant were at home he would resume work and his wife would stop. Beneficial arrangements would be in place for the children as previously. The current arrangement meant that the youngest child came home regularly to an empty house (her mother being at work, and her oldest sisters in academic and vocational training) which was plainly not in her best interests. It was "blindingly obvious" that deportation of the appellant was not in the best interests of the children.

6. Apart from the error highlighted by *GO*, there were further errors. On the authority of *SS*, it could not be considered that communications by telephone and the internet were any adequate form of family life. There was a further error of not assessing the position of the appellant's wife. The panel might have been entitled to give that aspect little weight, but not to give it no weight.

7. The errors were so material that the determination should be set aside and there should be an entirely fresh hearing, leading the oral evidence again (although it was acknowledged that there has been no significant change of circumstances).

Submissions for the respondent.

8. Mr Mullen observed that *GO* concerns the duties on the respondent's decision-maker, although he accepted that similar considerations apply in the First-tier Tribunal. He said that the facts in *GO* were very different.

9. The panel correctly reminded itself at paragraph 19 that the best interests of the child were a primary consideration, referring to section 55 of the 2009 Act and to *ZH* [2011] UKSC. The panel also cited *Beoku-Betts* on the need to consider the family life of all relevant family members. There was no reason to think that the panel left all that out of account in reaching its decision.

10. The oldest child in this case was an adult by the time of the respondent's decision. She is a university student, still living at home. The middle daughter was aged 17 and carrying out an apprenticeship in business administration. The panel recorded the position regarding the youngest child, including the attempt at self harm and the relevant documentation. The incident took place in April 2013, prior to the appellant's conviction (although shortly after his arrest in March 2013). The panel noted at paragraph 28 that the child had been discharged by the Child and Adolescent Mental Health Service in terms of a letter dated 25th July 2013, and that there was no recent medical evidence that she was suffering from any mental health condition or receiving treatment. That was a correct recording of the facts. *GO* was not an authority that the panel should have gone any further than it did.

11. The panel's finding at paragraph 29 that the effect of deportation on the wife and two younger children would not be unduly harsh was properly open to it. It implied an acceptance that there was an interference with the interests of the family members but that such an outcome was proportionate. The appellant's offence had been a serious one. It had effects not only on the public interest but on other parties who were falsely implicated through the appellant's insistence on the identity he assumed. No doubt there was interference with family life through his deportation and that was very upsetting for his wife and children, but that was a responsibility he had to shoulder not a disproportionate action by the Secretary of State. The situation of the youngest child not having another a family member at home when she returned from school was shared by many families, including some with two working parents. The panel was entitled to observe that some communication could be carried on after deportation. That observation was not an error of principle in the light of *SS (India)*. The best interests of the children were primary, but the appellant's argument attempted to treat them as paramount. It was an overstatement to say that no consideration had been given to the interests of the wife. In substance the grounds were only a restatement of the case.

Reply for the appellant.

12. The appellant's case was not that the best interests of the children constituted a trump card, but that there was an omission to consider the best interests of the children. That was material, because on such consideration the appeal might have been allowed. In *MF* [2013] EWCA Civ 1192 an appellant succeeded on the basis of his relatively recent relationship with a stepdaughter. This case was much stronger. *Ganesabalan* [2014] EWHC 2712 (Admin) at paragraph 43 was an authority that other cases could be very helpful as working examples on the facts. It could not be said that another Tribunal looking at the assessment of the best interests of the children and weighing that against the public interest might not come to another conclusion.

Discussion and conclusions.

13. The appellant's representatives have stressed the impact of deportation on his family as strongly as they could. The argument was made as plainly to the First-tier Tribunal as it was to the Upper Tribunal. I do not think that the panel failed to see or to consider the case put before it. I uphold the submission for the respondent that the grounds are not in substance more than reassertion and disagreement.

14. The determination, read fairly and as a whole, makes it clear that family interests are the essence of the appellant's case and constitute the factors to weigh against the public interest. The panel correctly identified the ultimate question in terms of section 117C(5) – whether the effect of deportation on wife and children would be unduly harsh. It is plainly implicit in the resolution of that question that the panel understands the strong emotional impact upon all concerned of the deportation.

15. Case law warns against the error of thinking that communication among parties in different countries is an acceptable alternative to living together. It does not invalidate every determination which mentions the fact that such communication is available.

16. At highest for the appellant, there is missing from the determination some such sentence as, "It would be better for the children if their father were to remain;" but that is so clearly the main factor weighed in the balance that the determination cannot sensibly be read in any other way.

17. The grounds do not disclose any such error of law as to entitle the Upper Tribunal to interfere.

18. The First-tier Tribunal made an anonymity order. Neither party mentioned that question in the Upper Tribunal. In the circumstances, a direction is made under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless and until a Tribunal or Court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

30 March 2015
Upper Tribunal Judge Macleman