Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/17065/2013

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 13 January 2015	**On 26 January 2015**

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department

Appellant

and

Mohamed Abdulla Hansrot
[No anonymity direction made]

Claimant

Representation:

For the claimant: Mr J Nicholson, instructed by Watson Ramsbottom Partnership
For the respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The claimant, Mohamed Abdulla Hansrot, date of birth 1.6.59, is a citizen of India.

2. This is the appeal of the Secretary of State against the determination of First-tier Tribunal Judge Agnew promulgated 31.3.14, allowing the claimant's appeal against the decision of the respondent, dated 15.8.13, to refuse his application for revocation of the deportation order made against him on 15.1.02. The Judge heard the appeal on 19.3.14.

3. First-tier Tribunal Judge Lewis refused to extend time for permission to appeal on 20.8.14. However, when renewed to the Upper Tribunal, Upper Tribunal Judge Macleman granted permission to appeal.

4. Thus the matter came before me on 13.1.15 as an appeal in the Upper Tribunal.

5. At the outset of the hearing Mr Nicholson took the preliminary point that the appeal was out of time and time had not been extended. Although Judge Macleman did not spell it out, I take the view that properly read it can be readily inferred that Judge Macleman extended time, and found the grounds of appeal arguable, stating that "It might be thought that the conclusion reached at §25 does not readily flow from the consideration at §19-24." I thus proceed on the basis that time has been extended.

Error of Law

6. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Agnew should be set aside.

7. The relevant background is that the claimant was deported in 2002, as a result of his commission of an offence of indecent assault on a female whilst in a position of trust as a minister of religion and when the victim was a girl with physical hardships including being deaf and having mild to moderate learning difficulties. He was sentenced to a term of 6 months imprisonment.

8. A previous application to revoke the deportation order was refused and the appeal against refusal dismissed in 2011.

9. Judge Agnew allowed the appeal,

10. Ms Johnstone relied on the drafted grounds of application for permission to appeal which in essence are that the First-tier Tribunal Judge failed to provide adequate reasons for the conclusion at §25 that the order should be revoked. At §25 the judge stated "In light of all the circumstances I find that the deportation order should be revoked." However, it is not clear at all from the determination what circumstances the judge has taken into account in order to reach this conclusion. Reading the decision, the matters set out in §19 through §24 all mitigate against revocation. For example, at §21 the judge found that the claimant "has seriously unrepresented the actual offence he committed and his reprehensible behaviour thereafter in attempting to deny it." The claimant continues to deny that he intended to indecently assault the vulnerable victim, which the judge rejected as not true, stating, "It is of concern that the appellant still has not had the courage or integrity to reveal the full details of his offence, and admit full responsibility for it. Without this, it is difficult to believe he shows remorse over and above what effect the sentence and consequences has had on his family."

11. At §23, in respect of the separation of the claimant from his family in the UK, the judge noted the findings of the previous judge that this was a deliberate choice on

the part of the claimant and his wife. The family had the opportunity to follow him to India, but chose not to do so, preferring to remain in the UK in the "best interests" of the family. At §24 the judge did not consider the claimant's interests, given that he has been working and living in South Africa for several years leaving his family in the UK by choice, so adversely affected as to on that basis alone justify the revocation of the deportation order.

12. One is left to wonder on what basis the judge reached the conclusion that the deportation order should be revoked. It is not necessary for the judge to rehearse every detail or issue, but he/she must explain at least in brief and clear terms why he/she reached the decision he/she did, so that the parties can understand why they have won or lost: Budhathaki (reasons for decision) [2014] UKUT 00341. The decision of the First-tier Tribunal fails to meet that standard.

13. What may have persuaded the judge to conclude that the deportation order should be revoked, though it is far from clear, is an erroneous interpretation of paragraph 391(a), which provides that, "..the continuation of a deportation order against that person will be the proper course: (a) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of less than 4 years unless 10 years have elapsed since the making of the deportation order.." However, this only indicates that it will be the proper course if 10 years have not elapsed. It does not follow that if 10 years have elapsed revocation is the proper course. The elapse of time is only one consideration, and other considerations including those in paragraph 390 have to be taken into account.

14. At §15 of the decision, which is difficult to decipher, the judge stated in the first sentence that, "As I read paragraph 391(a), as 10 years have elapse and the sentence of imprisonment was of less than 4 years, the continuation of a deportation order is not the proper course." That is a misstatement of the provision and a misdirection in law, which Mr Nicholson was at a loss to explain to me. I accept that the judge went on to observe in the same paragraph that 391(a) is to be read in the light of 390,"Otherwise, a deportation order would always be revoked after 10 years and that does not appear to be the intention of the respondent in the drafting of the relevant Rules," but that does not explain the error in the first sentence.

15. It is impossible to be satisfied from the above that the judge has correctly understood paragraph 391(a), and if there was such an error of law, as there may well have been, it necessarily adversely affects the weight the judge accorded to other relevant factors, some of which were those submitted by the Home Office Presenting Officer at the hearing and noted at §17 of the decision.

16. In the circumstances and for the reasons stated, I find that there was such error of law in the decision of the First-tier Tribunal that it cannot stand and must be set aside and remade.

17. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted

to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. Where the facts or findings are unclear on a crucial issue at the heart of an appeal, as they are in this case, effectively there has not been a valid determination of those issues. The errors of the First-tier Tribunal vitiates all other findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.

18. In all the circumstances, at the invitation and request of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the appellant of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

Conclusion & Decision:

19. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to the First-tier Tribunal to be decided afresh.

Signed: Date: 23 January 2015

Deputy Upper Tribunal Judge Pickup

Consequential Directions

20. The appeal is remitted to the First-tier Tribunal at Bradford;

21. No findings of fact are preserved and the appeal is to be a de novo hearing;

22. The time estimate is 2 hours;

23. If an interpreter was required at the hearing on 19.3.14, one should also be allocated in the same language;

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The outcome of the appeal remains to be decided.

Signed: Date: 23 January 2015

Deputy Upper Tribunal Judge Pickup