Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/01183/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 10 November 2015	**On 04 March 2016**

Before

UPPER TRIBUNAL JUDGE STOREY
UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant
and

MR GRISH KANTILAL PATEL

Respondent

Representation:

For the Appellant: Mr E Tufan Home Office Presenting Officer
For the Respondent: Mr N Ohanugo of Grand and Machyle Solicitors

DECISION AND DIRECTIONS

1. The respondent, (who we shall refer to hereafter as the appellant because that was his position before the First tier Tribunal) is a citizen of India now aged 64. He has been in the UK for some 39 years. Following the death of his first wife he married a Mrs Patel in 1999 in India. She subsequently came to the UK in May 2000 and was granted ILR in September 2001. On 29 May 2014 the Secretary of State (hereafter) respondent made a deportation

order against him under s.32 of the UK Borders Act 2007 (UKBA 2007) following his conviction and sentence of 14 months imprisonment on 19 November 2013. He was convicted on 2 counts for dishonestly making false representations to make gain for self/another or cause loss to other and expose other to risk. He did not appeal against conviction or sentence.

2. In a determination sent on 2 January 2015 First-tier Tribunal Judge Burnett allowed his appeal against this decision. He did so on the basis that the appellant fell within one of the exceptions set out in s.33 of the UKBA 2007 by virtue of meeting the requirements of paragraph 399A of the Immigration Rules and also the "exceptions in section 117 [of the Nationality, Immigration and Asylum Act 2002 as amended]"). He also considered that the decision breached the appellant's Article 8 rights.

3. It is unnecessary for us to set out the respondent's grounds of appeal or the submissions of the parties at the hearing because we are in no doubt that the judge's determination was vitiated by legal error.

4. In his determination the judge found that the appellant did not meet the requirements of paragraph 399 ([78]).

5. The judge concluded however that the appellant succeeded under the Immigration Rules because he met the requirements of paragraph 399A. Para 399A provides that:

> "This paragraph applies where paragraph 398(b) or (c) applies if-
> (a) the person has been lawfully resident in the UK for most of his life; **and**
> (b) he is socially and culturally integrated in the UK; **and**
> (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported"

The requirements of this paragraph are cumulative. The conjunctive "and" leaves no doubt that the requreiemtns are cumulative.

6. Having considered that the appellant met the requirements of paragraph 399A(a)-(b), the judge turned to consider whether the appellant was able to show that pursuant to paragraph 399A(c) there would be "very significant obstacles" to his integration into the country to which it is proposed he is deported.

7. In our judgment it was at this juncture that the judge fell into error because in assessing the requirements of paragraph 399A(c) he conducted a one-sided weighing up of the relevant factors, stating that the factors that led him to this conclusion were: (i) the appellant's age; (ii) the fact he had spent the majority of his life in the UK; (iii) the fact he had no family in India; and (iv) the fact that he had children and grandchildren in the UK. In respect of the last-mentioned factor, he also found at [63], without any reasoning, that "their best interests mean that the appellant should remain in the UK" ([62]). This was one sided and amounted to a failure to take into account all relevant factors because the judge nowhere weighed in the balance factors

pointing against there being very significant obstacles, in particular: (a) the fact that the appellant had lived in India for the first 20 years of his life and was thus culturally and linguistically familiar with that country; (b) the fact that he still had some family members there; (c) the fact that he had paid several visits back to that country during which he made contact with family members there; (d) the fact that his wife was also from India and had spent a significant period of her life there; and (e) on his own account there was little provided in terms of the details and how often the appellant saw and spent time with the grandchildren. For the judge the test he applied in practice appears not to have been whether there were very significant obstacles to integration but rather whether the appellant had shown he lacked any real connection with India (see [77]). In the penultimate sentence of [79] the judge appeared to have reasoned illogically that because the appellant had not re-integrated into Indian society when he visited there he could not be expected to re-integrate if deported there. That is illogical because reintegration for the purposes of a short visit and reintegration on a permanent basis are not necessarily the same thing and may involve in certain cases very different considerations. There was certainly nothing in the judge's reasoning that explained why the considerations would be the same in both contexts.

8. As regards the judge's allowance of the appeal under ss.117C(4), that provision contains three requirements identical to those set out in paragraph 399A. As regards assessment of s.117C(4)(c), this too (like paragraph 399A(c)) requires it to be shown that "there would be very significant obstacles to C's integration into the country to which C is proposed to be deported". Whilst the judge was entitled to find the appellant met the requirements of s.117C(4) (a) and (b), his basis for considering that the requirement set out in s.117C(4)(c) was met was flawed for the same reasons as his assessment of the paragraph 399A(c) requirement.

9. As for the judge's allowance of the appeal under Article 8 at large, it was not open to him to go beyond the Immigration Rules dealing with Article 8 claims by foreign criminals as those rules are a "complete code": see MF (Nigeria) [2013] EWCA Civ 1192. Further and in any event, his reasoning under this limb was parasitic on his earlier flawed reasoning on the Immigration Rules and s.117C.

10. For the above reasons we conclude that the judge materially erred in law and we set aside his decision.

Re-making of the decision

11. The appellant had not submitted any further evidence in response to Tribunal directions and both representatives said they were content that if we decided to set aside the decision of the First tier Tribunal (as we have) we could proceed to re-make the decision on the basis of the evidence and submissions before us. We would emphasise, however, that we have taken careful account afresh of all the evidence in this case.

12. There is no challenge to the First tier Tribunal rejection of the appellant's case under paragraph 399 and his acceptance that the appellant met the requirements of 399A(a) and (b) and s.117C(4)(a)-(b).

13. It is not in dispute that the appellant is not entitled to succeed either under paragraph 399A or s.117CD unless he can also meet the requirements of paragraph 399A(c) and s.117C(4)(c), both of which require him to show that there would be very significant obstacles to his integration into the country to which he is to be deported. We are not persuaded the appellant meets either requirement. We take account, in his favour, inter alia, that: he is now nearing 65 and he is someone who has spent the majority of his life in the UK (he came in November 1978); he has resided in the UK continuously with valid leave for at least 15 years; his (second) wife resides in the UK and has settled status since September 2001; he has a mortgage and business in the UK; and he has not re-offended since he was convicted in November 2013 on two counts for dishonestly making false representations; and he no longer has significant family ties in India.

14. However, we consider that such factors are outweighed by others indicating that the obstacles to his integration in India would not be very significant. These include, inter alia, that he is in generally good health and is still able to work in a business; his children are now adults and his ties with them have not been shown to over and above normal emotional ties; although he has grandchildren there is a dearth of evidence to show that his ties with them are particularly close; his wife was, like him, born in India and lived there until she was 37 years old and both of them can be considered to have sufficient experiences of the language, cultures and traditions they shared in India to be able to re-establish their lives in India; he has travelled to India with his mother in 2011 and stayed in his brother's flat; although the appellant may not any more enjoy close family ties in India, it is incontrovertible that he still has some family members there; and he can be expected to renew those ties upon return; in any event, his wife be able to accompany him if she chooses without this giving rise to significant hardship, and hence he will not be without family life of his own; although he has strong ties in the UK, his conduct shows a disregard for UK society to the extent that he has accumulated a criminal record (commencing in 1991) and most notably receiving 14 months sentence on 19 November 2013; whilst he still has a mortgage and business in the UK, he cannot be said to be contributing economically in any significant way because he continues on his own account to experience financial difficulties.

15. For the avoidance of doubt we have not when assessing the requirements of paragraph 399A(c) or s.117C(4)(c) taken into consideration any specific public interest considerations based on the appellant's criminal offending (we regard the observations regarding the extent of his integration in the UK in the previous paragraph in light of his criminal conduct to be a matter solely related to the quality of his integration).

16. Given our earlier conclusion that in a foreign criminal case the Rules are to be regarded as a complete code, it is not open to us to address the appellant's human rights claim under Article 8 at large. But even if de bene

esse we translated the appellant's grounds so as to amount to a claim that he should benefit from paragraph 398 on the basis that the public interest in his deportation was outweighed by other factors where there are very compelling circumstances over and above those described in paragraph 399 and 399A, we would unhesitatingly conclude that there were no such factors sufficient to outweigh the public interest in his deportation. In this context we would note first that we have again taken into account all the evidence in this case and have had regard to the factors in his favour including all those identified by the First tier Tribunal when assessing his Article 8 circumstances.

17. When it comes to paragraph 398, we are obliged to have regard to the fact that the judge found the appellant to have shown a post-trial lack of remorse which "perhaps increases to a degree, the likelihood of [his] re-offending". We agree with this observation. This was a man who had pleaded guilty and was now saying he was not even though he had not appealed against conviction or sentence. Even though he has children in the UK they are adults and the evidence does not establish that his ties with them go beyond normal emotional ties. Nor (as already noted when considering paragraph 399A(c) and s.117C(4)(c)), does the evidence establish that he had close ties, let alone even significant ties, with his grandchildren [see [62]).

18. In deciding the appellant's appeal we must apply the guidance set out by the Court of Appeal in MF(Nigeria) and subsequent cases, including AM v SSHD [2012] EWCA Civ 1634, AJ (Angola) [2014] EWCA Civ 1636, and SSHD v SS (Congo & Ors [2015] EWCA Civ 387. In AJ (Angola) Sales LJ emphasised that the requirements of assessment through the lens of the new rules "also seeks to ensure that decisions are made in a way that is properly informed by the considerable weight to be given to the public interest in deportation of foreign criminals…".

19. We are in no doubt that when given considerable weight in this case, the public interest in the appellant's deportation is not outweighed by factors of a compelling nature. In essence the appellant's claim is based on his age (64), his lengthy period of residence in the UK (some 39-40 years), his relationship with his wife who has indefinite leave to remain in the UK, the fact that he has adult children as well as grandchildren here; and the fact that he still runs a business (albeit he has financial difficulties). Such considerations, taken cumulatively, fall well short of crossing the necessary threshold.

20. For the above reasons:

the First-tier Tribunal materially erred in law and its decision is set aside;

the decision we re-make is to dismiss the appellant's appeal on all grounds.

Signed

Date:

Dr H H Storey

Judge of the Upper Tribunal