Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/01297/2014**

THE IMMIGRATION ACTS

Heard at: Manchester	**Decision & Reasons Promulgated**
On: 3rd February 2016	**On: 12th February 2016**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

HK
(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Butterworth, Counsel, Mansfield Chambers
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Pakistan born on the 12th August 1978.

2. On the 14th January 2015 his deportation appeal was dismissed by First-tier Tribunal Judge Brunnen.

3. Permission to appeal was sought. On the 18th March 2015 First-tier Tribunal Scott-Baker considered whether the grounds of appeal raised arguable errors of law. The resulting order contains conflicting indications. Paragraph 7 of the decision reads “permission is refused”. That outcome appears to be consistent with the tenor of the foregoing paragraphs 1-6. The heading, however, reads “permission is granted”.

4. Before me Mr McVeety submitted that leave to appeal had clearly been refused. Mr Butterworth was instructed to seek to pursue the appeal. Given the ambiguity of Judge Scott-Baker's decision I give the benefit of the doubt to the Appellant and proceed as if permission was granted.

Background and Matters in Issue

5. The Appellant is subject to a deportation order because on the 18th September 2009 he was sentenced to eleven years in prison for offences concerning the importation of heroin. In view of the length of sentence it is unnecessary to set out the details of the crime. It was by any measure an extremely serious offence.

6. When the matter came before the First-tier Tribunal the Appellant's representatives accepted that he had to do something more than show, with reference to paragraphs 399 or 399A of the Immigration Rules, that his removal would be an interference with his Article 8 rights. Because of the length of his sentence he had to show that there were "very compelling circumstances over and above those matters described in 399 and 399A". The case advanced on behalf of the Appellant, insofar as it is material to this appeal, was:

    a) That it would be unduly harsh for his British son to live in the UK without him;

    b) That it would be unduly harsh for his British son to go with him to live in Pakistan;

    c) That his wife would face insurmountable obstacles in relocating to Pakistan with her husband because she has caring responsibilities in the UK *inter alia* for her British son;

    d) The Appellant's wife is a carer to her mother and severely disabled sister, and if she were to leave the UK the consequences for them would be so dire that it would amount to very compelling exceptional circumstances.

The Determination

7. Judge Brunnen begins by making the appropriate direction as to the law. No issue is taken with the legal framework as applied by the First-tier Tribunal.

8. In respect of the matters in issue summarised above, Judge Brunnen had regard to the evidence of independent social worker Mr Robert Simpson. Mr Simpson had visited the family home and spoken with the Appellant's son for approximately 35 minutes. He had thereafter spent just over an hour interviewing the Appellant's wife. He had read all of the relevant documents about the case that had been supplied

to him by the Appellant's representative. Judge Brunnen also heard evidence from the Appellant's wife, and from the Appellant himself.

9. It does not appear to have been a matter of dispute that it would be unduly harsh for the Appellant's son to go to Pakistan with him. The focus of enquiry, insofar as the child was concerned, was whether it would be "unduly harsh' to expect the boy to live in the UK without his father. Judge Brunnen considers this matter between paragraphs 39 and 43. At paragraphs 41-42 he summarises the views of Mr Simpson on this matter and notes, *inter alia* that Mr Simpson did not direct his mind to whether the Appellant could be considered a poor role model for his son. At 43 the determination concludes:

> "Despite these misgivings, I accept that it would probably be in [the child]'s best interests for the Appellant to remain in the UK. However this is not to say that it would be unduly harsh for [the child] to remain in the UK without the Appellant. That question involves wider matters than [the child]'s best interests"

10. In respect of the Appellant's wife and her caring responsibilities, the determination notes that her mother is 68 and is suffering from rheumatoid arthritis, osteoarthritis, hypertension and diabetes. She is dependent on her daughter for most aspects of daily living. The Appellant's wife is also carer to her sister, who is 39 and suffers from Prader-Willi syndrome, learning difficulties, progressively deteriorating vision (she is registered blind), perforated eardrums, vertigo, menorrhagia and incontinence of urine. She is dependent on others for all aspects of daily living and requires 24-hour care. Judge Brunnen accepted that the principle burden of caring for these women fell on the Appellant's wife [47]. However he noted that she has made visits to Pakistan and during those trips other family members provided the necessary care. Her sister-in-law was looking after the women whilst she attended the hearing.

11. Having made these findings Judge Brunnen balances these factors against the public interest in deportation, which in view of the long sentence, is found to prevail. It would not be unduly harsh for either son or wife to remain in the UK without the Appellant. The baseline tests in 399 and 399A are not established. He does not find there to be any compelling circumstances.

Error of Law

12. The grounds of appeal are:

a) That in reaching its conclusions on the Appellant's son the Tribunal has misunderstood the evidence of Mr Simpson or alternatively failed to take it into account;

b) It was irrational for the First-tier Tribunal to apparently supplant its

own view on the "devastation" caused by drug importation with the findings of the probation service that there was a low risk of reoffending;

c) The Tribunal failed to engage with the medical evidence concerning the Appellant's sister-in-law, in particular the evidence that her condition had deteriorated since the last trip to Pakistan and the fact that the Appellant's wife receives carer's allowance in respect of her role looking after her sister;

13. Mr McVeety opposed the appeal on all grounds, whilst properly reminding me that as far as the Respondent is concerned, permission had not been granted.

14. My findings are as follows.

The Evidence of Mr Simpson

15. Issue is taken with the opening sentence of paragraph 42: "Mr Simpson has not considered the risk that the Appellant would prove to be a poor role model for [his son]". I was directed to paragraphs 3.28-3.29 of the social worker report in which Mr Simpson records how much the boy misses his father (the Appellant being in custody at the date of the meeting), how strong the relationship is, and how his son is aware that his "daddy did a bad thing" but loves him nonetheless. It is submitted that properly construed, the report shows that Mr Simpson did in fact consider the question identified by Judge Brunnen. I do not accept that. Judge Brunnen was entitled to make that remark since it is not apparent from the face of the report whether Mr Simpson did direct his mind to whether the Appellant could be considered a poor role model. Furthermore the point is is entirely irrelevant, since Judge Brunnen goes on to accept, at paragraph 43, the conclusions reached by Mr Simpson, namely that it would be in the child's best interests if his father stayed in the UK. There is no merit in this ground.

The Risk of Reoffending

16. At paragraph 42 the determination records the assessment made in the OASYS report that the appellant presented a low risk of reoffending. It is argued that in the closing sentence of that that same paragraph the Judge appears to supplant that assessment with his own: "this analysis takes no account of the widespread devastation of people's lives caused by the importation of massive quantities of heroin, a point emphasised in the judge's sentencing remarks".

17. This is an unsustainable reading of paragraph 42. Judge Brunnen is not supplanting the OASYS assessment with his own, he is merely

noting that probation services have to consider the risk of reoffending, whereas an immigration judge must consider a rather wider set of considerations, such as the fact that the previous offending is likely to have caused "widespread devastation". That was a finding that was open to the Judge, and was a matter that he was bound by law to take account of. There was therefore no error of law.

The Medical Evidence

18. The central point advanced on behalf of the Appellant was that the Tribunal had erred in its analysis of the impact upon the Appellant's sister-in-law, for instance by omitting to consider the evidence that her conditions had worsened in the past couple of years, and that she only trusted her sister to look after her.

19. The medical evidence relating to this lady consisted of three letters dating from August 2014. The content of those letters is reflected in the body of the determination. Judge Brunnen has made a full note of the conditions she suffers from, and the uncontested fact that the Appellant's wife is her day to day carer. The evidence he is alleged to have omitted to consider appears to be the oral evidence of the Appellant's wife, and the fact that she receives carer's allowance. It is not clear what either of these could have added to the conclusions reached by Judge Brunnen. He accepted that this lady suffers from terrible and debilitating conditions and that her sister is her main carer. The fact that she receives carer's allowance goes nowhere to undermine Judge Brunnen's conclusions that there are other family members who could step in should the Appellant's wife wish to go and visit her husband in Pakistan. He does not dispute the assertion that the lady in question would prefer for her sister to be with her every day. It does not however amount to an insurmountable obstacle, must less a "very compelling exceptional circumstance". There is nothing in the findings of the First-tier Tribunal which disclose an error of law.

Decisions

20. The decision of the First-tier Tribunal does not contain an error of law and it is upheld.

21. I maintain the order for anonymity made in the First-tier Tribunal

Upper Tribunal Judge Bruce
2nd February
2016