**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: DA/02040/2013

**THE IMMIGRATION ACTS**

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| **Heard at Bradford** | **Decision & Reasons Promulgated** |
| **On 8 October 2015** | **On 20 January 2016** |

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**SHUJAT HASSAIN SHAH KAZMI KAZMI**
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

**THWE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Royston, instructed by Parker Rhodes Hickmotts, Solicitors
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Shujat Hassain Shah Kazmi Kazmi, was born on 31 March 1969 and is a male citizen of Pakistan. He arrived in the United Kingdom in July 1992 on a spouse visa. He did not return to Pakistan after his (out of time) application for further leave to remain on the basis of marriage was refused in 1993. He did make further applications for leave to remain in 2007 and again in 2008 but these were also refused. A deportation order was signed on 21 February 2008 and, following further representations by the appellant's representatives, the respondent

decided on 27 September 2013 to refuse the appellant's human rights application and decided also not to revoke the deportation order. The appellant appealed against that decision to the First-tier Tribunal (Judge Grimshaw) which, in a decision promulgated on 19 August 2014, dismissed the appeal on all grounds. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant has a criminal record dating back to 2000. In particular, he was convicted on 3 December 2012 and sentenced to twelve months imprisonment for dangerous driving. He had also been convicted of using a vehicle whilst uninsured and driving whilst disqualified.

3. There are two grounds of appeal. First, it is argued that the First-tier Tribunal failed to have regard to a material consideration, that namely a policy of the respondent (Criminal Case Work: introduction to children and family cases – 11 June 2013) in reaching its decision. The appellant submits that the respondent's policy does not require "family life to be demonstrated as a condition precedent to its application." The policy appears to state that it is "triggered ... where a child is separated from the parent." It is not disputed that the appellant is the parent of children in the United Kingdom. The appellant argues that non-compliance with the policy by the respondent without proper explanation was itself enough to vitiate the respondent's decision as not being in accordance with the law. The appellant argues that the judge failed to make any proper finding as to whether or not the respondent was entitled to find that there was not sufficient evidence for family life between the appellant, his wife and his children.

4. It is true that the judge does not make specific reference to the policy of the respondent. She recorded the fact that the respondent considered the appellant to be a persistent offender and considered also that the respondent had failed to prove that he was in a genuine and subsisting relationship either living with his two children (both aged under 18 years) and his wife. However, at [38] the judge stated this:

> When I stand back and look at the facts specific to this case for the purposes of the proportionality weighing process I acknowledge that the appellant's expulsion will cause disruption and hardship to [the appellant's wife] and all their children. Their young daughter should not be fixed with the wrongdoing of the appellant. Unfortunately for the appellant those factors either singly or in combination do not make his case unusual or exceptional.

5. The judge had regard to evidence [27] from a social worker that it would be in the best interests of the children for the appellant to remain in the United Kingdom and to be "able to rebuild their family life and support [the child] through her childhood and adolescence provided he refrains from further offending." At [25] the judge noted that the appellant's wife would find it difficult coping "as a single parent" without the appellant if the latter were removed. At [22], the judge made the specific finding that "the appellant enjoys a genuine and subsisting relationship with his wife

and children ..." The judge addressed the question of the respondent's policy at [21] but considered that it was not relevant because

> It only applies when the caseworker has sufficient evidence to show a subsisting family life. I am aware that the respondent has taken the view that as a result of his marital difficulties the appellant cannot show that subsisting family life exists.

The appellant's argument is that the judge should not have dismissed the relevance of the policy so readily. I am not satisfied that that submission has any merit. It is true that, as the grounds of appeal state, the judge "makes no finding that the respondent was entitled to find that there was no sufficient evidence of family life ..." But the judge did find that there was a genuine and subsisting relationship between the appellant and his wife and children, a contention which had been rejected by the respondent. In the light of the judge's clear finding, it would appear that she was of the view that the respondent should have considered the case on the basis that there was family life. However, I am not satisfied that that should have inevitably have led the judge to find that the decision of the respondent was not in accordance with the law and to remit the matter to the Secretary of State for her to consider the policy. The judge was required to take a practical and robust approach to the appellant's appeal and, having found that there was family life, the judge went on to consider the question of proportionality. If a conclusion regarding Article 8 ECHR is sound, then it follows that nothing whatever would have been gained by remitting the matter to the Secretary of State and the question of a policy becomes "immaterial" as Judge Levin observed when refusing permission in the First-tier Tribunal.

6. The second ground of appeal concerns an alleged misdirection in law by the First-tier Tribunal. The appellant argues that there was no "exceptionality test" before Article 8 ECHR is engaged and that by applying such a test the judge erred in law. Notwithstanding the fact that there was no need for the Tribunal to go looking for "unusual or exceptional features in a case, the appellant accepts [skeleton argument, 12] that the First-tier Tribunal may 'look for compelling circumstances to allow a deportation appeal on Article 8 grounds ...'"

7. At [39], Judge Grimshaw wrote:

> I remind myself that where the facts surrounding an individual who has committed a crime are claimed to be exceptional or compelling those considerations are to be placed in the weighing scale, in order to be weighed against the public interest. Despite the best endeavours on his behalf by Mr Royston I am unable to find the position of the appellant exceptional or compelling. I have weighed all the facts against the strong public interest and I am satisfied that public interest must prevail.

8. The judge went on at [40] to record that she had "conducted a proportionality assessment to considered the relevant factors within the context of the expressed will of Parliament in favour of deportation ..."

She concluded that the removal of the appellant to Pakistan was both "fair and proportionate in all the circumstances of this case."

9. I refer to the passages from the First-tier Tribunal decision which I have quoted above. In my opinion, those passages do not represent an example of a First-tier Tribunal searching for "exceptional circumstances" but, rather, a brief but robust assessment of the relevant evidence. It is clear that the judge has not refrained from making a proportionality assessment (she states explicitly that she has carried out such an assessment) because there were no exceptional circumstances in the case. However, the judge had already considered the Immigration Rules (paragraphs 399(a) and 399(b)) which explicitly require the existence of exceptional circumstances for the public interest in favour of deportation might be outweighed [11]. The judge made clear that she was not dealing with happy settled family life which would be sundered by the appellant's sudden removal; family life had already been fractured and destabilised by the appellant's own criminal conduct. Set against that family life was a strong public interest concerned with the appellant's deportation; he is, by any standards, a persistent re-offender whose appalling driving conduct represents a threat to the public. Finally, the judge was entitled to conclude that there was no evidence to show that the best interests of the children would be put at serious risk as the deportation of the appellant in relation to the children had already been damaged by his own conduct.

10. If the judge had, as the grounds assert, gone in search of exceptional circumstances and, having identified none, made no attempt to consider proportionality and the effects on the family of the appellant's deportation, then she may have fallen into legal error. However, that is not what the judge did in this instance. It was reasonable for the judge to ask whether there was any unusual or compelling circumstance which might outweigh the very strong public interest concerned with the appellant's deportation and her conclusion (based on the relevant evidence) that it would be proportionate for the appellant to be removed was plainly not perverse and was a conclusion which was not vitiated by any failure of process on the part of the judge; the decision is relatively brief but it deals with all the relevant evidence. In the circumstances, this appeal is dismissed.

**Notice of Decision**

This appeal is dismissed.

No anonymity direction is made.

Signed Date 1 January 2016

Upper Tribunal Judge Clive Lane

**TO THE RESPONDENT**
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 1 January 2016

Upper Tribunal Judge Clive Lane