



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal no: **HU/09769/2017**

THE IMMIGRATION ACTS

At **Royal Courts of Justice**

Decision & Reasons
Promulgated

on **22.01.2018**

On 30.01.2018

Before:

Upper Tribunal Judge
John FREEMAN

Between:

JAGMOHAN SINGH

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Usha Sood* (counsel instructed by direct access)

For the respondent: *Mr Paul Duffy*

DECISION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Ian Howard), sitting at Harmondsworth on 13 October, to dismiss a deportation appeal by a citizen of India, born 1988. The appellant had arrived here on a husband visa in 2007, and received indefinite leave to remain in 2009; but in 2012 he was sentenced to five years' imprisonment for the rape of a girl of 16, at their joint work-place. Meanwhile he and his wife had had a daughter 'S' themselves, born on 3 January 2009.

2. That resulted in a deportation order, made in 2014, and an appeal against that was dismissed the following year by a first-tier panel (Judge PJM Hollingworth and a lay member). Final refusal of permission to appeal was followed by judicial review proceedings: an interim stay on removal

NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.

(2) persons under 18 are referred to by initials, and must not be further identified.

was granted by Kitchin LJ on 1 February 2016, but judicial review was finally refused on 3 May. The appellant had been on bail from 12 July 2016 to 15 January 2017. Two sets of further submissions followed, and on 3 February 2017 there was a further stay: however on the 22nd judicial review was again refused.

3. On 14 June 2017 the decision in *Kiarie and Byndloss* [2017] UKSC 42 came out, and the appellant was granted a further in-country right of appeal against the deportation order, though this had not been based on s. 94B of the [Nationality, Immigration and Asylum Act 2002](#). Having arrived when he was already grown-up, and been sentenced to five years' imprisonment, the appellant had to show, in terms of s. 117C (5) of the Act, not only that he had a 'genuine and subsisting relationship' with his wife or S, and that the effect of his deportation on either of them would be unduly harsh; but also that (6) it would involve 'very compelling circumstances' over and above that consideration.
4. The judge accepted the necessary family life between the appellant and his wife and S, and that S's interests would in the short term be significantly adversely affected by his removal; but he did not accept that this would necessarily be the case in the long term. He concluded that "... in the absence of evidence of both significant and persistent detriment to the health and well-being of [S] ..." the necessary 'very compelling circumstances' were not present.
5. Apart from the appellant's own evidence, and his wife's, there were three main sources before the Judge:
 - (a) Dr Jagbir Jhutti-Jowal, a university lecturer in Sikh Studies (report 22 January 2016);
 - (b) Dr Vinod Kumar, a consultant psychiatrist (report 9 February 2016);
and
 - (c) Mrs Michelle Johnson. Mrs Johnson was appointed as litigation friend for S, in place of her mother, and her statement of 6 October 2017 does not amount to expert evidence. However she says she has some teaching experience, and an interest in child welfare: she gave oral evidence before the judge, and her statement provides a useful summary of what is said to have happened since reports (a) and (b) were compiled.
6. The appeal before me turned on how the judge dealt with the evidence from these sources. He did not deal with Dr Jhutti-Jowal at all, or with the events set out by Mrs Johnson, except, at 19, for one of them, as related by the appellant's wife, though without reaching any conclusions on its bearing on the questions posed by s. 117C (5) and (6). He did give a fair summary at 17, as Mrs Sood agreed, of Dr Kumar's conclusions about likely short and long term effects of the appellant's deportation on S.
7. The question is how far the judge's treatment of the evidence affected the validity of his conclusions. In his summary of Dr Kumar's evidence, at 17, he noted the short-term ones as "... temper tantrums, clinginess, sleep difficulties and occasional bedwetting, which are continuing ...

symptomatic of adjustment disorder". In the short term, the appellant's removal would definitely have a detrimental effect on both her psychological and emotional progress.

- 8.** So far as the long-term factors are concerned, these would depend on other considerations. The judge quoted Dr Kumar as saying that "... the negative cultural impact of [the appellant's] deportation would be detrimental to S, as it would shatter her picture of her father". This was not quite right: what Dr Kumar had actually said was that "... finding the real reason [*in other words, his conviction for rape*]" for his detention and possible deportation would have this effect.
- 9.** However, as the judge went on to say, Dr Kumar went on to give his opinion that

"... children who have absent fathers are more likely to have difficulties in forming relationships particularly with members of the opposite sex. When considering the impact of a deterioration in her mother's ability to cope, this, like the absence of a father, would be strongly mediated by the reaction of her wider family and peers."
- 10.** At this point, 18 – 19, the judge went on to discuss the appellant's wife's depression, and the incident referred to at **6**: S had locked herself in her bedroom and, when the door was forced open, was found holding a pair of scissors, the fear being that she had meant to harm herself. The date of this incident, as related to her, is given by Mrs Johnson at paragraph 7 of her statement as 22 February 2017.
- 11.** While the judge may well have been right in saying, at 19, that there had been no repetition of this behaviour, there was another incident, dated by Mrs Johnson as 9 July, where S's mother had found she had hidden a packed rucksack, and announced her intention of going to find her father. Although she has been taken to see him where he has been detained, she is said to know nothing about the reasons for him living there.
- 12.** Dr Kumar had gone on from the passage quoted at **9** to say that if S's mother "... goes downhill and becomes more depressed and feels unable to cope as a lone parent, then she [S] is likely to suffer with more problems". Mrs Sood's main challenge to the judge's decision is on the basis of his not assessing S's history since Dr Kumar reported in February 2016 by way of making his own findings on the February and July 2017 incidents, and taking a view on whether they showed a continuing decline in her and her mother's condition, in line with that prediction, hypothetical as it was when Dr Kumar made it.
- 13.** Dr Jhutti-Jowal's evidence was mainly directed to the appellant's wife's potential situation as a lone mother, in terms of Sikh custom, on which she is well qualified to give expert evidence. It was relevant to the questions before the judge, but, at least so far as the existence of 'very compelling circumstances' was concerned, only in terms of how her situation might have an effect on S's.

14. At 24 the judge dealt with the questions before him as follows:

“It is the effect of his deportation upon his wife and in particular his daughter that the appellant submits would be unduly harsh and that there are very compelling circumstances over and above that render his deportation unnecessary. [*He went on to accept there would be short-term adverse effects*]

However the evidence, be it that of either doctor [*the reference is to another psychiatrist who had given a report for the earlier appeal*] does not establish to the requisite standard that these adverse effects will persist. [*The point about the importance of help from the family is repeated here*]

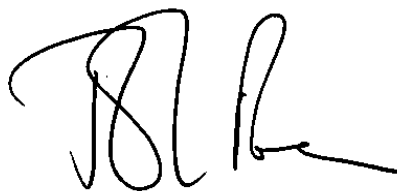
The bar set by paragraph [*sic*] 117C (6) is a very high one and in the absence of evidence of both significant and persistent detriment to the health and well-being of S, I am not satisfied that criterion was met.”

15. The judge did not consider in terms whether the effect of the appellant’s deportation on S would be unduly harsh, by weighing the circumstances of his crime against the effects on her. Although he was quite right to point out the stringency of the requirements of s. 117C (6), he needed to consider whether the February and July incidents did show, in terms of Dr Kumar’s conclusions, that some kind of significant detriment to S had already taken place, and take an informed view on whether it was likely to persist after the appellant’s removal. Then he could have made a fully-reasoned decision as to whether those effects would be unduly harsh, and if so, amount to ‘very compelling circumstances’.

16. Both sides agreed that the result of my finding an error of law in these terms would have to be a fresh hearing before the First-tier Tribunal, so, regrettable as that is, it must follow.

Appeal allowed: first-tier decision set aside

Fresh first-tier hearing at Harmondsworth, not before Judge Howard



(a judge of the Upper
Tribunal)