



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

Appeal Number: DA/00200/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 18 December 2018**

**Decision & Reasons
Promulgated
On 10 January 2019**

Before

**MRS JUSTICE COCKERILL
UPPER TRIBUNAL JUDGE CANAVAN**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MANMON SINGH

Respondent

Representation:

For the Appellant: Mr T Wilding, Home Office Presenting Officer

For the Respondent: Mr J Dhanji, Counsel, instructed by Malik & Malik Solicitors

DECISION AND REASONS

1. For the sake of continuity we shall refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.
2. The Secretary of State appeals the decision of First-tier Tribunal Judge Aujla (“the judge”), which was promulgated on 9 October 2018. The judge allowed Mr Singh’s appeal against the Secretary of State’s decision dated 8 March 2018 to deport him from the UK on public policy grounds with

reference to regulation 27 of the Immigration (European Economic Area) Regulations 2016. Mr Singh is the family member of an EEA national.

3. The judge began his decision by setting out the background, including Mr Singh's immigration history and the index offence upon which the Secretary of State relied to make the decision. On 9 February 2015 Mr Singh was convicted on two counts of sexual assault on a 16-year-old girl. The offence was committed in October 2013 but he was not sentenced until 2015. He was sentenced to a period of imprisonment of twelve months.
4. At paragraph 20 of the decision the judge outlined the relevant legal framework. There is no suggestion by the Secretary of State that the judge did not refer to the correct provisions. At paragraph 22 the judge set out the Secretary of State's position in respect of deportation. The Secretary of State concluded that Mr Singh posed a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. At paragraphs 23 and 24 of the decision the judge set out the evidence given by the appellant and his wife before going on to make his findings.
5. At paragraph 29 of the decision the judge outlined, correctly in our view, the two main issues he was required to determine. Firstly, whether the appellant posed a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Secondly, whether according to regulation 27 the decision was proportionate in all the circumstances of the case.
6. The judge then went on to outline the particular circumstances of the offence and the appellant's response to it. He considered the fact that the appellant pleaded not guilty but was found guilty after a trial. He also considered the fact that the sentencing judge noted that the appellant did not appear to accept the findings of the jury. It was also apparent from the pre-sentence report that he questioned the findings of the jury and had shown no remorse for the crime. The First-tier Tribunal Judge noted that the sentencing judge was initially minded to impose a suspended sentence, but because of this lack of remorse, she decided that she had no other choice than to impose a custodial sentence.
7. The First-tier Tribunal Judge went on to consider the appellant's evidence. He considered the fact that it was only after he was pressed that he reluctantly accepted the finding of the jury. However, it was open to the judge to find, in light of the other evidence, that this apparent acceptance was not genuine and that he did not show any remorse for the offence.
8. In paragraph 32 the judge went on to say the following:

"I refer to the appellant's lack of remorse here only as part of my assessment as to whether or not the appellant posed a continued risk to the public. Whilst I accept that in very serious cases, such as

homicide, a continued denial of the conviction may well demonstrate a continuous risk to the public from the offender, the offence in this case in my view was not anywhere near that level of seriousness for me to conclude that the continuous lack of remorse without more posed a genuine, present and serious to the public from the appellant.”

9. The judge considered what the sentencing judge said about the nature of the offence. The sentencing judge recognised that the appellant was a man of previous good character. He was given appropriate credit for the fact. The judge said that the incident appeared to be out of character. The First-tier Tribunal Judge noted that the appellant arrived in the United Kingdom only two years before the offences and commented that the appellant might have thought twice before committing the offences if he had lived in the United Kingdom for a longer period. He made clear this was speculation on his part.
10. The judge then went on to consider the appellant’s personal circumstances. He took into account the appellant’s age when he committed the offence and the fact that he had a wife and a young child in the UK. He considered the fact that it had been nearly five years since the offences were committed and that there was no evidence to show any further offending. The judge noted that the appellant had complied with the instructions of his probation officer after his release and had completed the rehabilitation requirements. He was, as required, complying with the ten-year notification requirements imposed on him as a sex offender. He took into account the fact that this requirement would continue into the future. The judge also noted that the appellant was made subject to a Sexual Offences Prevention Order (SOPO) for five years and that there had been no reported breach of that order. The judge went on to consider the fact that the appellant’s wife was expecting their second child and their connections to the Sikh community in the UK.
11. The judge concluded that three and a half years had passed since the appellant was sentenced. In February 2015 he had been assessed to be a ‘medium’ ‘risk to women. However, the judge was entitled to consider the fact that there was no suggestion of re-offending in the intervening period, that he completed his probation and was strictly compliant with the requirements of the orders imposed on him. The judge made clear that he considered those factors cumulatively in assessing whether the appellant continued to present a genuine, present and sufficiently serious threat to one of the fundamental interests of society and concluded that the appellant did not pose a sufficiently serious threat.
12. The Secretary of State challenges this aspect of the decision largely based on the findings made by the judge in paragraph 32. Mr Wilding argued that the judge was wrong to compare the weight given to the lack of remorse that the appellant showed for his offending behaviour with a far more serious offence such as homicide. However, we note that he accepted that this point was only relevant to whether any error was material. Although a discussion took place during the hearing as to where the level

of offending should fall within the context of regulation 27, in the end, we conclude that the judge took into account all relevant matters, including the lack of remorse shown by the appellant, and was entitled to come to the conclusions he did on the evidence.

13. We conclude that it was open to the judge to find that the appellant did not pose a sufficiently serious threat, even though the appellant had shown little or no recognition that what he did was wrong and appeared to show no remorse for his behaviour. It was open to the judge to consider the risk level in light of the evidence taken as a whole, which included the judge's sentencing remarks regarding his previous good character, the fact that the appellant had not re-offended for a fairly lengthy period of time following the offence and had complied with all the conditions of the orders imposed on him. His findings were within a range of reasonable responses to the circumstances in this case.
14. Having found that there is no error of law in the first point raised by the Secretary of State, any criticism of the judge's findings relating to proportionality are not material. In any event, we find that the judge quite rightly took into account the seriousness of the offence and all the relevant factors relating to the public interest considerations in a full and detailed decision. It was open to the judge to take into account the circumstances the appellant might face if he was required to return to his country of nationality (Afghanistan). The appellant has not lived there for a very long period of time. It was within the judge's knowledge as an expert immigration judge to consider the fact that a person from a Sikh minority group may face discrimination in addition to other difficult conditions in Kabul.
15. For these reasons, we conclude that the First-tier Tribunal decision did not include the making of a material error of law. The decision shall stand.

DECISION

The First-tier Tribunal's decision did not involve the making of an error on a point of law

The First-tier Tribunal decision shall stand

Signed 

Date 21 December 2018

Upper Tribunal Judge Canavan