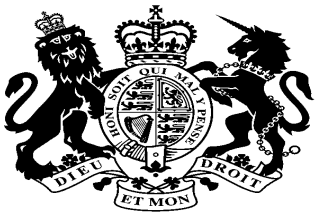

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal number:** HU/07923/2018

THE IMMIGRATION ACTS

Heard at Glasgow	Decision and Reason Promulgated
on 15 February 2019	On 01 March 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SAMEER KHAN

Respondent

For the Appellant: Mr A Govan, Senior Home Office Presenting Officer
For the Respondent: Ms S Rashid, Advocate, instructed by Solacexis, Solicitors, London

DETERMINATION AND REASONS

1. Parties are as above, but the rest of this determination refers to them as they were in the FtT.

2. The SSHD has permission to appeal against a decision by FtT Judge Mill, promulgated on 12 July 2018, allowing the appellant's appeal against deportation.

3. The main points in the grounds are these:

"…

> 2. … the FtT found at [26-29 & 31] that the appellant could not meet the requirements of the immigration rules to avoid deportation.
>
> 3. … the FtT erred at [40] by relying on *Kaur* [2017] UKUT 00014 to give considerable weight to the appellant's private and family life, notwithstanding the operation of section 117B(5) of the 2002 Act.
>
> 4. … the FtT at [43] "misapplied" findings of a previous tribunal about risk of reoffending, which had to be given weight; the appellant had gone on to offend further and presented an ongoing risk.
>
> 5. … the FtT had found it would not be unduly harsh for the appellant's new fiancée to relocate to Pakistan.
>
> 6. … there was no basis for the finding at [48] of low risk of reoffending; his history showed him to be a persistent offender.
>
> 7. … in any event, rehabilitation carried little weight; *Olawareju* [2018] EWCA Civ 557 at [17].
>
> 8. The FtT misdirected itself at [50] by emphasising factors of little significance in a deportation case; *NA (Pakistan)* [2016] EWCA Civ 662.
>
> 9. … the finding at [51] of very significant obstacles to return to Pakistan was speculative, and did not justify a "near miss" under paragraph 399A of the rules or meet the threshold of very compelling circumstances."

4. Mr Govan submitted that as the FtT found that the requirements of paragraphs 399 and 399A of the rules were not met, and there were no very compelling circumstances over and above those circumstances, it had no basis on which to allow the appeal. He relied upon *Hesham Ali* [2016] UKSC 60 as well as on *NA (Pakistan)* and *Olawareju*.

5. Ms Rashid relied upon her skeleton argument and made further submissions. Her key points were these:

   (i) No error in referring to *Kaur*; *Rhuppiah* [2018] UKSC 58, which did not involve children, confirmed the flexibility inbuilt to the concept of little weight; no error in giving weight to the appellant's private and family life.

   (ii) Detailed consideration and reasoned base for the assessment of low risk of re-offending.

   (iii) Public interest appropriately considered by FtT at [41]; *Olawareju* distinguishable – offending from an earlier age and more serious; the FtT did follow the approach set out in *NA* at [36]; *NA* distinguishable, as facts therein merited strong public interest in deportation, and this appellant's offending not analogous.

   (iv) No speculation by FtT about obstacles to integration, as witnesses were all found to be credible and reliable, their evidence having been tested in cross-examination; conclusion about proportionality open to FtT.

   (v) No material error of law; decision evidence based, and within scope of discretion.

6. I reserved my decision.

7. The inter-relation of the scheme of the rules and article 8 is explained in *Hesham Ali*, in particular at [37, 38 & 53].

8. *Kaur* is a very different case from the present one. It establishes no principle by which the FtT was entitled to give the appellant's private and family life such weight as to avoid deportation. There is no such principle in *Rhuppiah* either.

9. *NA* is a specimen case of a tribunal going wrong by failing to approach its decision through the lens of the rules, making a separate assessment outside the rules without appreciating the force of the public interest, and identifying circumstances which were not exceptional, and not rationally capable of meeting the rules.

10. The weight to be given to the public interest is established not only by the rules but by statute: 2002 Act section 117C(1), the deportation of foreign criminals is in the public interest.

11. Section 117C(2) provides that the more serious the offence, the greater the public interest in deportation, but that does not enable the appellant to avoid the principles discussed in *NA* by distinguishing the seriousness of his offending.

12. While each case turns ultimately on its own facts, it is instructive that other than as to the nature of the offending, *NA* at [51-53] discloses circumstances similar to the present case.

13. *Olawareju* illustrates that risk of reoffending is only one facet of the public interest. That point cannot be washed away by distinguishing the facts. Again, on comparison, that case is like the present one, including the absence of a basis for finding very significant obstacles to integration.

14. The FtT correctly found at [32] that the appellant did not meet the exceptions within the rules to resist deportation. Within the same sentence the FtT began to go wrong, embarking on "a freestanding article 8 claim outwith the immigration rules". No such exercise was open to the FtT. From that point on, its decision is hopelessly confused.

15. The FtT said at [34] that there had to be very compelling circumstances over and above the exceptions in paragraphs 339 and 339A, but it went on to allow the appeal without identifying any such circumstances.

16. Apart from not speaking "fluent Urdu" the matters discussed by the FtT at [51] are to do with the appellant's life in the UK, not obstacles to integration into Pakistan. There is nothing which justifies the conclusion in the last sentence.

17. Ms Rashid has done her bests to extract any points which might turn matters back in the appellant's favour, but in reality, there are none.

18. Having found that the requirements of paragraphs 399 and 399A of the rules were not met, and there were no very compelling circumstances over and above those, the only rational outcome the FtT could have reached, applying the rules and section 117C of the 2002 Act, was to dismiss the appeal.

19. The decision of the FtT is set aside, and the appeal, as originally brought to it, is dismissed.

20. No anonymity direction has been requested or made.

26 February 2019
Upper Tribunal Judge Macleman