Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/19815/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 18th November 2019	**On 22nd November 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

WA
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: **-**
For the Respondent: **Mr Bates, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The Appellant is a national of Pakistan born in 1991. The Secretary of State seeks to deport him on the grounds that he is a foreign criminal.

2. This appeal comes before me for remaking pursuant to a transfer order signed by Principle Resident Upper Tribunal Judge O'Connor on the 16th September 2019. That Order followed the decision of Upper Tribunal Judge Plimmer of

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the 6th August 2019 to set the decision of the First-tier Tribunal (Judge Williams) aside.

3. The issues before me are:

    (i) Whether the Appellant is indeed liable to automatic deportation pursuant to s32 of the United Kingdom Borders Act 2007;

    (ii) Whether he can demonstrate that he is exempt from the automatic deportation procedure on grounds:

        (a) Of his Article 8 family life in the United Kingdom with his wife and son; and/or

        (b) Of his Article 8 private life in accordance with paragraph 399A of the Immigration Rules.

    (iii) Further and in the alternative, whether he can demonstrate that there are other exceptional reasons why he should not be deported.

4. The Appellant did not attend the hearing before me. I heard submissions from Mr Bates and considered the file before concluding that it would be appropriate to proceed in his absence. I was reluctant to proceed without hearing from the Appellant but concluded that in the circumstances the appeal could be justly determined. I had regard to the fact that the Appellant has attended both his appeals before Judge Williams and Judge Plimmer, and that he had, at least in the past, instructed representatives. I also had regard to the following matters;

    i) The Appellant should have been aware of the hearing, Notices of Hearing having been sent to his last known address;

    ii) The Respondent's records demonstrate that the Appellant has breached his bail conditions, having failed to report to an immigration officer on the 9th July 2019 and thereafter;

    iii) His last known representatives, Highfield Solicitors, informed the Home Office that the Appellant was aware of the directions given by Judge Plimmer in July of this year, but they were left without instructions.

    There being no explanation for his non-attendance, and the fact that (i)-(iii) above indicate a pattern of non-engagement, I cannot be satisfied that there is any realistic prospect of the Appellant attending at a later date.

5. I heard brief submissions from Mr Bates and I reserved my decision. My findings are as follows.

Automatic Deportation

6. Section s32 of the Borders Act 2007 reads:

> *32 Automatic deportation:*
>
> (1) In this section "foreign criminal" means a person—
>
> (a) who is not a British citizen,
>
> (b) who is convicted in the United Kingdom of an offence, and
>
> (c) to whom Condition 1 or 2 applies.
>
> (2) Condition 1 is that the person is sentenced to a period of imprisonment of at least 12 months.

7. The Appellant is not a British citizen. He has been convicted in the United Kingdom of an offence: between 2014 and 2017 he received 10 convictions for 13 offences. Condition 1 applies in that at least one of the convictions led to a sentence of at least 12 months' imprisonment: on the 6th March 2017 at Preston Crown Court the Appellant was convicted of possession of a Class A drug (heroin) with intent to supply and sentenced to 42 months. I am satisfied that the Appellant is a 'foreign criminal' to whom the automatic deportation provisions apply.

The Exceptions

8. Section 33 of the Borders Act 2007 reads (insofar as is relevant) as follows:

> *33 Exceptions*
>
> (1) …
>
> (2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach—
>
> (a) a person's Convention rights, or
>
> (b) ….

Here 'Convention rights' is to be read as a reference to those rights protected by the European Convention on Human Rights (ECHR).

9. Where an appellant claims that his removal would breach rights protected by Article 8, decision makers must look to Part 5A of the Nationality, Immigration and Asylum Act 2002 (as amended by the Immigration Act 2014):

> *117C Article 8: additional considerations in cases involving foreign criminals*
>
> (1) The deportation of foreign criminals is in the public interest.
>
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
>
> (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
>
> (4) Exception 1 applies where—
>
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
>
> (b) C is socially and culturally integrated in the United Kingdom, and
>
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
>
> (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
>
> (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
>
> (7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

Exception 1: Private Life

10. The first exception concerns private life. The question for the Tribunal is whether the Appellant has a private life in the United Kingdom, and whether the interference that would be caused to it by his removal would be disproportionate. Section 117C (and the Immigration Rule which mirrors it – paragraph 399A) aims to strike the balance by reference to a three-part test.

11. The first part is whether the Appellant has been lawfully resident in this country for most of his life. It is accepted by the Secretary of State that this test is met. The Appellant is currently 28 years old. He arrived in the United Kingdom in 2003 when he was 12 years old and continuously held leave to enter or remain from that time until his deportation order was signed on the 10th September 2018. This means that he spent more than half of his life living here with leave.

12. The second question is whether the Appellant is socially and culturally integrated in the United Kingdom. This matter was resolved in his favour by Judge Williams and that finding was upheld by Judge Plimmer.

13. The final question is whether the Appellant can demonstrate that there are very significant obstacles to his integration in Pakistan. On this matter the First-tier Tribunal noted that both the Appellant and his wife had left Pakistan when they were about 12 years old, although both have returned there for visits, including the occasion of their own marriage. It found as fact that the Appellant has only distant relatives in Pakistan. Given the limited nature of these ties, the First-tier Tribunal was satisfied that the third part of the test was made out. Judge Plimmer overturned that element of the First-tier Tribunal decision in the following terms:

> "Simply concluding that these obstacles are very significant is insufficient, in my judgment, in a case such as this, where the relevant individual is healthy, physically robust and an adult who has shown himself to be resilient".

14. I respectfully adopt Judge Plimmer's reasoning. The test is a "stringent" one: see Bossade (ss.117A-D-interrelationship with Rules) [2015] UKUT 415 (IAC). Applying it in the case of a foreign criminal who had lived in the UK since he was four years old, the panel said this:

> "57. But the paragraph 399A(c) test is more stringent: it is not met simply by showing that a person has no close family ties in the country to which it is proposed he is deported; it requires "very significant obstacles to…integration" to be shown. In our judgement

> the obstacles the claimant faces do not meet this demanding standard. In relation to his command of language spoken in the DRC, it was his own mother's evidence that he had been brought up in a household where French was spoken. The DRC is a Francophone country. In any event, it was not suggested on his behalf that there would be any reasons related to physical or mental inability preventing him from learning the local language or dialect. As regards his lack of knowledge of the culture, whilst it was his evidence that he identified with British culture, it was not suggested he had specifically rejected or no longer understood his cultural origins. Furthermore, as regards lack of family ties, he is now a young adult and the skills he has acquired through attending classes in prison will assist him in being able to earn a living without the need to be a dependant. Further, we agree with Mr Jarvis that it is reasonable to infer that his mother and/or other relatives here will seek to help him financially, at least until he has had time to find his own feet. We agree with Mr Jarvis that **it has not been shown that he would be prevented by reason of any physical or mental ability from developing social and cultural ties in the DRC**. He is young, able-bodied and of an adaptable age".
>
> (my emphasis)

15. The point that the Tribunal here make is derived from long-standing Strasbourg jurisprudence. The term 'private life' encompasses "the physical and moral integrity of the person" which must include, fundamentally, the right to establish and develop relationships with other human beings: see for instance McFeeley v United Kingdom[1] , Pretty v United Kingdom[2] or the opinion of Judge Martens in Beldjoudi v France[3]. It is that irreducible core of what it means to have a private life that the rule is concerned with. As in Bossade, the Appellant has not demonstrated that he would be unable to make new friends and new relationships in Pakistan, nor that he would face any obstacles at all in doing so. It could also be said that the rule is concerned with more practical aspects of life – the ability to clothe and feed oneself etc. Again, none of the evidence produced by the Appellant comes close to establishing that he would face such a difficulty: his own statement does not address the matter at all. I appreciate that his life is in this country, and that he wishes to remain here, but the third limb of the 'private life' test is a stringent one which he has not met.

[1] No 8317/78, 20 DR 44 at 91
[2] (2002) 35 EHRR 1
[3] App 234-A (1992)

Exception 2: Family Life

16. Judge Williams had been satisfied that it would be unduly harsh for the Appellant's son if he were to be deported. Judge Plimmer was not satisfied that this had been a decision open to him on the scant evidence before him. That evidence, consisting of statements from the Appellant, his wife and other members of the family, indicates that the Appellant and his son are close, that they love each other very much and that it would be in the child's best interests if his father were to remain in the United Kingdom. At its very highest the evidence, given in the statement of the Appellant's wife, indicates that whilst his father was in prison the child behaved poorly and that after his release it "completely changed for the better".

17. The Appellant has had some three months since Judge Plimmer's decision to adduce further evidence about his relationship with his son. None has been forthcoming. Whilst I see no reason to doubt the written evidence that the Appellant has a meaningful parental relationship with his little boy, there is simply no evidence before me that comes anywhere close to establishing that it would be "unduly harsh" for this child if his father were to be deported. The adverse consequences that the child will suffer are the same as those suffered by any child who faces a parent's deportation. They are commonplace, and do not demonstrate that the impact on this particular child would be "bleak" or "severe".

18. The second exception is not engaged.

Exceptional Reasons

19. It appears to have been argued before Judge Williams and Judge Plimmer that it would not be in the public interest to deport the Appellant because he contributes to the care of his younger brother, who appears from the medical reports before me to be desperately unwell. He has, amongst other conditions, what appears to be severe Downs' Syndrome: the child is non-verbal, confined to a wheelchair and requires 24 hours a day care.

20. I do not doubt the evidence that the Appellant helps to look after his brother, and that he has been a source of support to his mother who is the main carer. I am however unable to find that the Appellant plays anything other than a supporting role in this endeavour, since the only independent evidence that I have on the point indicates that the main carers are the Appellant's mother, sister and wife: see the 'Assessment of Complex Medical Needs' by Lancashire Care NHS Trust dated November 2018. As such neither the child, nor the women who care for him, would be particularly adversely affected should the Appellant be removed to Pakistan.

21. Although I have not heard submissions from the Appellant, nor evidence on the point, I think it appropriate to mark the evidence given by his sister, Z, who writes in her statement in moving terms about the "hard and tortuous childhood" endured by the Appellant. Z writes that their father subjected both of them, but the Appellant in particular, to extreme violence including being doused with petrol and exposed to a naked flame, and being threatened with knives. She states that he was regularly beaten throughout his childhood: "I understand this badly affected his childhood and does not justify his actions, but I do believe it has impacted him severely". I have given Z's evidence what weight I can. Her statement was not tested, and her opinion unsupported by any independent psychological assessment of the Appellant. Had such evidence been available my decision may well have been other than it is: taken with the Appellant's long residence and claimed rehabilitation, this may have established a case of 'very compelling circumstances' such that deportation action should not be pursued. However, on its own I am unable to find Z's statement to be of sufficient weight to discharge the burden of proof.

Decision

22. The appeal is dismissed on all grounds.

23. Having regard to the fact this claim involves children I make the following direction for anonymity, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders.

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings".

Upper Tribunal Judge Bruce
18th November 2019