**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

**Ce-File Number: UI-2021-001862**
**First-tier Tribunal No: HU/03708/2020**

**THE IMMIGRATION ACTS**

**Heard at Bradford IAC**
**On the 2nd December 2022**

**Decision & Reasons Promulgated**
**On the 21ST February 2023**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**MA (Pakistan)**
**(anonymity direction made)**

Appellant

**And**

**Secretary of State for the Home Department**

Respondent

**For the Appellant: Mr Ghafoor, Ghafoors Immigration Services Limited**
**For the Respondent: Ms Young, Senior Home Office Presenting Officer**

**DECISION AND REASONS**

1. The Appellant is a national of Pakistan born in 1982. He appeals with permission against the decision of the First-tier Tribunal (Judge Curtis) to dismiss, on human rights grounds, his appeal against a decision to deport him.

2. The reason that the Respondent wants to deport the Appellant is that on the 4th February 2019 the Appellant was convicted of supplying cocaine and heroin (both class A drugs) for which he was concurrently sentenced to 36 months' imprisonment. He is therefore a foreign criminal, subject by s32 of the UK Borders Act 2007 to automatic deportation.

3. The Appellant sought to resist his deportation on the grounds that one of the 'exceptions' set out at s33 of the 2007 Act applied. In particular he contends that his deportation would be 'unduly harsh' for his British wife and children.

4. In his decision dated the 4th December 2021 Judge Curtis rejected that contention. Although he accepted that it would be unduly harsh for the Appellant's family members to be expected to relocate to Pakistan with the Appellant, Judge Curtis did not accept that it would be unduly harsh to expect them to remain here without him. Finding no exceptional reasons beyond that to allow the appeal, Judge Curtis dismissed it.

5. On the 9th December 2021 the Appellant applied for permission to appeal to this Tribunal, relying on grounds that he had drafted himself, and it was on the basis of those grounds that permission was granted by First-tier Tribunal Judge LK Gibbs on the 4th January 2022, and consequently listed before me. Mr Ghafoor appeared on behalf of the previously unrepresented Appellant. He informed the Tribunal that he had been instructed since January 2022, and provided a copy of amended grounds, filed with the Tribunal on the 18th January 2022, along with a copy of a written application of the same date to amend the grounds. Neither myself nor Ms Young had seen these grounds. Having heard from Mr Ghafoor and Ms Young I decided that it would be in the interests of justice to admit them. I accept that they were filed with the Tribunal in January and that they were not linked to the file due to administrative error. Ms Young was given a short break to familiarise herself with the grounds as now pleaded and it is to her credit that she was able to do so quickly and deal with each point raised in her helpful submissions.

6. At the close of proceedings I reserved my decision which I now give.

**Discussion and Findings**

7. The amended grounds identify four areas in which there are said to be errors in approach by Judge Curtis. I deal with each in turn.

*Undue Harshness*

8. The grounds make several points under this heading. The first is that the Tribunal has erred in its assessment of the importance of a male role model for the Appellant's children, in particular in reaching

its conclusion that the children's maternal uncles could fulfil that role. The grounds submit that there was no evidential basis for that conclusion. It is further submitted that it is unsafe to assume that uncles could "fill the void left by a father".

9. What the Tribunal actually said about support networks was this. Having found that the children's mother had in fact coped well when their father was in prison, and that she had managed to continue to give them a good level of care on her own, the Tribunal added:

> [The Appellant's wife] has a strong support network (even if there were attempts to underplay this in evidence). That much is clear from Ms Harris' report. Each of the four children held their maternal grandmother out to be a relation that was "most important" to them. [The Appellant's wife] said to Ms Harris that her sister [N] was the most supportive figure to her. She also received financial assistance from her sister [P]. I have little doubt that [her] mother and sisters will continue to provide significant support to her and the children were the Appellant to be deported. I take into account the age of the children. In particular MI and MIA are boys who have recently entered their teenage years. I accept that the absence of a male role model as they navigate that period in their lives is likely to be detrimental to them. I do note, though, that [the Appellant's wife] has brothers who live nearby and who might be able to help fill that particular void. I also note that the children have been able to regularly (notwithstanding the language difficulties) contact their paternal grandmother over Facetime or WhatsApp video and if the Appellant is deported to Pakistan there is no reason why such method of communication cannot continue. There is also no reason why the children could not periodically visit the Appellant in Pakistan.

10. It is apparent from this passage that the Tribunal makes no assumptions one way or the other about the support that the children's maternal uncles might be able to provide. In fact it does no more than direct itself to the possibility that they "might be able" to act as role models, a remark peripheral to its central finding that this was a family unit that had persisted and managed whilst the Appellant was away. His wife was not left to cope alone: it was clear from the evidence before the Judge that she had a wide extended family network who were supportive to her and the children. This was plainly a relevant factor in determining whether the impact of deportation would be unduly harsh.

11. The second point also relates to the children's extended family network. The grounds contend that the decision contains an error of fact: "FtTJ incorrectly states that each of the children held their maternal grandmother out to be a relation that was most important (paragraph 78) subsequently downplaying the Appellant's importance". Again, this is something of a mischaracterisation of what is said in the decision. The Tribunal simply note, correctly, that

the maternal grandmother is a relation identified by the children as being “most important”. It cannot be said, either from this passage, or from the decision alone, that the Tribunal misunderstood how important the Appellant is to his children. That matter is expressly acknowledged, in particular in the Tribunal’s acceptance that it would be in their best interests if the family unit were to remain intact.

12. The third ground is that the Judge erred in his approach to the evidence of independent social worker Diana Harris. Having accepted that she was an expert, the Tribunal goes on at its paragraph 75 to reject her assessment that the children MI and/or MIA had experienced behavioural issues at school in their father’s absence. In fact what the Tribunal does at its paragraph 75 is to properly subject the evidence of Ms Harris to critical evaluation:

> 75. Ms Harris also stated that “it was evident by the indicators of behavioural and anger management issues with [MI] and [MIA] and the reduction in emotional wellbeing of all four children that they have been impacted by the temporary separation from their father” (9.2). I found it difficult to follow to which behavioural and anger management issues Ms Harris was referring. There is no evidence provided directly by the school that suggests MI displayed such issues. The evidence from the school relating to MIA simply said that he had not settled initially and there were meetings between the school and [the Appellant’s wife], but that report did not say that this was because of MIA’s behaviour or anger issues. As above, it appears that MI changed schools prior to the Appellant’s incarceration and so the difficulty in settling may well be independent of that event. [The Appellant’s wife] does not touch on any such behaviour or anger issues (and she felt it was sufficient to provide a statement running to six paragraphs in which she confirmed the contents of the Appellant’s witness statement but did not set out in her own words any evidence relating to how she and the children had been affected by the Appellant’s incarceration and how they might be affected by his deportation). It may be that Ms Harris is referring to the fact that MI told her he had “anger/behaviour problems at school” and that MIA “continues to have problems” but, in the absence of any independent or other verification of the accuracy of the children’s self-assessment or the extent of it I am not able to accept Ms Harris’ conclusion that there were reliable indicators that MI and/or MIA had anger or behaviour issues at school.

13. It is trite that judges are not bound to accept uncritically the opinion evidence of experts. Here the Tribunal gave good reasons for its conclusions.

14. Finally under this heading the grounds pray in aid the judgment of Peter Jackson LJ in HA (Iraq) [2020] EWCA Civ 1176, and his emphasis of the importance of the emotional or psychological impact on children whose parents are facing deportation. It is submitted that Judge Curtis failed to take this “child-focused approach”. I do not

accept that this is so. This was a carefully reasoned judgment in which the Tribunal demonstrates an understanding of what it might mean to these children to lose day to day contact with their father.

*Best Interests*

15. A finding that deportation would be contrary to a child's best interests is of course important. It is a primary consideration in the evaluation that the Tribunal needs to make. It is not however the same as the undue harshness assessment mandated by parliament in Part 5A of the Nationality, Immigration and Asylum Act 2002. The second limb of the Appellant's case before me is that "inadequate weight" was given to the best interests of these children. Weight is, absent perversity, a matter for the judge. Here there is nothing on the face of the decision to suggest that the Tribunal did anything other than give its own finding on best interests the weight it was due.

**Anonymity**

16. The Appellant is a criminal and should not ordinarily benefit from an order protecting his identity. In the particular circumstances of this case I am however satisfied that identification of the Appellant could lead to identification of his children, and that this would be contrary to their best interests, such that the principle of open justice is, exceptionally, outweighed. For that reason I make the following order for anonymity:

> "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, any of his witnesses or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

**Decisions**

17. The decision of the First-tier Tribunal is upheld, and this appeal dismissed.

18. There is an order for anonymity.

Upper Tribunal Judge Bruce
20th December 2022