IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005341
First-tier Tribunal No:
HU/57007/2021
IA/16184/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 01 September 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

Sarwan Singh Deo
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr M Hoare, H & S Legal
For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 22 August 2023

DECISION AND REASONS

1. I begin by recording that although the First-tier Tribunal previously made an anonymity direction, such a direction is not justified in this appeal. Mr Hoare confirmed that an anonymity direction was not sought by the appellant and there is in my judgement no good reason for an anonymity direction to be made.

2. The appellant is a national of India. There is an extensive immigration history that I do not need to set out at any length in this decision. For present purposes it is sufficient to note that he arrived in the United Kingdom in May 1982 as a spouse. He was granted indefinite leave to

remain in May 1983. In October 2003 he was convicted at Harrow Crown Court for conspiracy to facilitate illegal entry to the United Kingdom. On 19 November 2003 he was sentenced by Her Honour Judge Freedman to a term of seven years and six months in prison. A confiscation order in the sum of £19,950 was also made. Following a series of legal challenges, a deportation order was signed, and the appellant was deported to India on 2 February 2010.

3. In June 2012 the appellant's solicitors made submissions to the respondent requesting revocation of the deportation order. The respondent refused that request and the appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Cox for reasons set out in a decision promulgated on 10 October 2014. A further request was made by the appellant for revocation of the deportation order on 15 September 2020. That was refused by the respondent on 15 September 2021 giving rise to an appeal before the First-tier Tribunal.

4. The appellant's appeal against the respondent's decision to refuse his human rights claim was dismissed by First-tier Tribunal Judge Andrew for reasons set out in a decision dated 5 August 2022.

5. The appellant claims Judge Andrew made perverse or irrational findings on a matter or matters that were material to the outcome of the appeal. The appellant criticises the Judge's finding:

    a. That the appellant has not established that he entered EU countries lawfully, despite exhibiting a residence permit and visa entry stamps.

    b. That there are very limited differences between the claims advanced by the appellant now and the circumstances as they were when a previous appeal was dismissed by First-tier Tribunal Judge Cox in 2014

    c. That the appellant was involved with another woman.

    d. That there is no independent medical evidence that the appellant's partner's mental health is affected by the deportation of the appellant. The respondent's bundle contains medical records of depression, panic attacks and anxiety.

6. The appellant also claims Judge Andrew mistakenly concluded that the evidence fails to establish no more than 'usual emotional ties', whereas there was evidence to establish unusually strong parent-child relationships, maintained despite the vicissitudes of separation. The appellant claims Judge Andrew mistakenly recorded that no reason is given why family time cannot continue online and by visits. The appellant claims Judge Andrew made a 'material misdirection of law'. She gave no positive weight to rehabilitation and the absence of reoffending, contrary to the decision of the Court of Appeal in AA (Nigeria) v Secretary of State [2020] EWCA Civ 1296 and the Supreme Court in In HA (Iraq) v Secretary of State for the Home Department [2022] UKSC 22. The appellant claims Judge Andrew failed to carry out a full proportionality assessment and she imports a value judgment.

7. Permission to appeal was granted by First-tier Tribunal Judge Cruthers on 10 November 2022. Judge Cruthers said there is sufficient in the grounds to make a grant of permission appropriate but he laid down a marker that he struggled to see the materially of / the value of some of the points raised in the appellant's grounds.

8. Before me, Mr Hoare confirmed the grounds of appeal were not settled by him and that the focus is upon the finding that was made by Judge Andrew that other than the passage of time and the letter from India stating that the appellant is the mayor of his village, there is nothing further to add to the evidence that was before Judge Cox. Mr Hoare submits that since the decision of Judge Cox promulgated in October 2014, in addition to the overall passage of time, there is evidence of remorse, an absence of further offending, and of lawful entry to many other countries including EU Member States.

9. Mr Hoare submits the absence of evidence of any further offending over a considerable period of time is such that the public interest in maintaining the deportation of the appellant has now weakened, particularly when considered alongside the evidence before the First-tier Tribunal. Mr Hoare drew my attention to the letters from the 'Baba Himmat Singh Charitable Technical Institute' *(Page 282 of the respondent's bundle)*, that confirms the appellant is a 'Sarpanch' of his village and donates annually to functions. The appellant's charitable work and donations was also referred to in the letter from the 'Sri Maha Kali Mandir', and there was a letter from the Sub Inspector of the Punjab Police who confirms the appellant serves the community with food, grocery, sanitizers and masks. That letter speaks of the contribution made by the appellant to the local community during the Covid-19 pandemic. That was, Mr Hoare submits, good evidence that the appellant has been rehabilitated and that the public interest in maintaining the appellant's deportation is now considerably weaker.

10. Mr Hoare submits the factors identified, taken cumulative are relevant to a proper proportionality assessment, but here, Judge Andrew failed to attach any positive weight to the evidence of the appellant's rehabilitation and lack of reoffending. The appellant and his family continue to have a strong and enduring family life and visits and meetings abroad are no substitute to the family being able to live together. Mr Hoare submits Judge Andrew did not make any proper assessment of whether the decision to maintain the appellant's removal is proportionate to the legitimate aim, and that if a proper fact sensitive assessment had been conducted, the Tribunal is likely to have concluded the respondent's decision to refuse to revoke the deportation order is disproportionate.

11. In reply, Ms Arif submits the Judge directed herself properly and the grounds amount to no more than a disagreement with the findings and a conclusion that was open to the Judge. She submits the Judge carried out a full assessment of the Article 8 claim advanced by the appellant. At paragraph [20], Judge Andrew accepts that twelve years have passed since the appellant's deportation, and at paragraph [21] she accepts the appellant has no further convictions either in this country or in India. At

[22] she acknowledged the evidence that the appellant may have visited other countries, and she accepted the appellant has been granted temporary residence in Belgium. It was open to her to note there was no evidence before the Tribunal to show how he achieved that, and whether the appellant had disclosed his previous convictions. Ms Arif submits that at paragraph [26] Judge Andrew referred to the appellant's evidence that he had paid the confiscation order and had co-operated with the authorities. Ms Arif submits that at paragraph [28] of her decision, Judge Andrew conducted a balancing exercise taking into account all relevant matters including the length of the appellant's absence from the UK and the progress made by the appellant in India. Ms Arif refers to the decision of the Supreme Court in HA (Iraq) v SSHD [2022] UKSC 22, in which Lord Hamblen said, at [58], that the weight to be given to any relevant factor in the proportionality assessment will be a matter for the fact-finding tribunal, and no definitive statement can be made as to what amount of weight should or should not be given to any particular factor. Ms Arif submits that reading the decision as a whole, Judge Andrew had proper regard to all relevant factors and there is no material error of law in her decision.

12. In his submissions in response, Mr Hoare submits nothing said in paragraph [58] of the decision of the Supreme Court in HA (Iraq) absolves a decision maker judge from identifying and making findings upon the relevant facts. He submits there is a material difference between a Judge saying that a balancing exercise has been conducted and properly carrying out that balancing an assessment giving due weight to relevant factors. Here, Mr Hoare submits, Judge Andrew failed to have any proper regard to the change in circumstances since the appellant's deportation. There was no evidence before the First-tier Tribunal of any reoffending since the index offence that was committed in 2003 and since his deportation, the appellant has visited other EU Member States. At the relevant times, the respondent would have been able to exchange information regarding the appellant's convictions with other EU Member States and the appellant's conduct is likely to have been taken into account. Mr Hoare accepts, as Judge Andrew states at paragraph [21], that there was no professional evidence before the Tribunal to show that the appellant has properly addressed his past offending, but there was evidence Mr Hoare submits, of the progress made by the appellant regarding the positive contributions he now makes. A professional report is not required and the Judge was required to take the evidence of rehabilitation into account.

Decision

13. At paragraph [2] of her decision, Judge Andrew noted the issue in the appeal is whether the Deportation Order should be revoked and whether the refusal to do so is a disproportionate one in terms of Article 8 ECHR. She summarised the facts in paragraph [4] of her decision:

> "…The Appellant had been living in the United Kingdom having entered as the husband of Rajinder Kaur in 1982. In 1984 he was granted ILR. He and Rajinder Kaur had two children. The marriage was dissolved in 1985 it seems because of the Appellant's domestic violence towards his then wife. In May 1988 he married Rani, his present wife, who is a British citizen.

> Although no mention of it has been made in the statements I have before me I have noted from Rani's medical documents that the Appellant has been involved with another woman. However, it is accepted by the Respondent in the Refusal letter that the marriage of the Appellant and Rani is a genuine and subsisting one."

14. Judge Andrew referred to the appellant's relationship with two of his children in particular, Situ Deo and Harpreet Singh. The appellant's children are now over the age of 18. Judge Andrew found the appellant does not have a 'family life' with his children for the purposes of Article 8. I reject the appellant's claim that it was not open to Judge Andrew to find appellant does not have a 'family life' with his children for the purposes of Article 8.

15. Ultimately, the question whether an individual enjoys family life is one of fact and depends on a careful consideration of all the relevant facts of the particular case. The question is highly fact sensitive. In Kugathas -v- SSHD [2003] EWCA Civ 31, at [14], Sedley LJ cited with approval, the Commission's observation in S v United Kingdom (1984) 40 DR 196: "Generally the protection of family life under Article 8 involves cohabiting dependents, such as parents and their dependent, minor children. Whether it extends to other relationships depends on the circumstances of the particular case.". There is no presumption that a person has a family life, and the Tribunal must consider a range of factors that are relevant. Such factors include a consideration of matters such as the family members with whom the individual has lived, identifying who the direct relatives and extended family of the appellant are, the nature of the links between them, the age of the applicants, where and with whom they have resided in the past, and the forms of contact they have maintained with the other members of the family with whom they claim to have a family life. Here, at paragraph [12] Judge Andrew said:

> "…It is apparent they have all made their way in the world since the Appellant's deportation and are adults with, in the main, their own lives. I have no evidence before me to suggest there is anything other than the usual emotional ties between the Appellant and the children.

16. At paragraph [17] of her decision, Judge Andrew said that she must take the previous decision of First-tier Tribunal Judge Cox as her starting point. That too was a decision against a decision of the respondent refuse to revoke the deportation order made against the appellant on Article 8 grounds. At paragraph [19], Judge Andrew found that the passage of time and the letter from India stating that the appellant is the mayor of his village, there is nothing further to add to the evidence that was before Judge Cox. At paragraph [20] she accepted twelve years have passed since the appellant's deportation. At paragraph [21], she also accepted it may be the case the appellant has no further convictions either in this country or in India, albeit there was no confirmatory evidence from India. She also noted she had no professional evidence before her to show that the appellant has properly addressed his past offending.

17. Judge Andrew went on to address the appellant's application for revocation of the deportation order by reference to paragraph 390 of the Immigration Rules that were in force as at the date of her decision. She

noted that paragraph 391 of the immigration rules operates so that here, the continuation of deportation order against the appellant will be the proper course unless the continuation would be contrary to the ECHR or there are other exceptional circumstances that means the continuation is outweighed by compelling factors.

18. Addressing paragraphs 399(a) and (b) of the immigration rules, Judge Andrew noted that the appellant's son Harpreet is no longer a child and has done very well having qualified as a doctor since the previous decision of Judge Cox. The appellant's absence had not affected Harpreet's academic achievements. Judge Andrew noted the respondent accepts the appellant is in a genuine and subsisting relationship with his wife and that it would be unduly harsh for her to live in India. However, she also found there was nothing in the evidence before the Tribunal to show that the appellant's wife cannot remain in the United Kingdom without him, and that it would be unduly harsh to expect her to do so. Judge Andrew said there is no independent evidence to show that her physical concerns are such that she cannot manage without the appellant or that her mental health is so affected either. Addressing paragraph 399A of the rules, Judge Andrew noted the appellant has not lived in the United Kingdom for more than half his life. She was not satisfied he is socially and culturally integrated into the United Kingdom, and there are no very significant obstacles to the appellant's integration in India.

19. At paragraphs [26] to [27] of her decision, Judge Andrew said:

> "26. In his submissions the Appellant's representative said I should consider that the circumstances were very different now from this when Judge Cox made his decision. He said that the Appellant had paid the confiscation order and had co-operated with the authorities and also that he had shown remorse. However, this is what was also submitted to Judge Cox. As I have said the only difference now is the passage of time and the fact that Harpreet is no longer a child.
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> 27. I find that there is nothing in the evidence that would persuade me to depart from the findings of Judge Cox."

20. I reject the submission made by Mr Hoare that Judge Andrew failed to have proper regard to the evidence that was before the First-tier Tribunal and erred in her finding that other than the passage of time, and the letter from India stating the appellant is the mayor of his village, there is nothing further to add to the evidence that was before Judge Cox previously. Mr Hoare identifies the evidence of remorse, an absence of further offending, and of lawful entry to many other countries including EU Member States as being relevant factors Judge Andrew failed to have any or any proper regard to.

21. Judge Andrew clearly accepted the lengthy passage of time since the appellant's deportation at paragraph [20] of her decision. At paragraph [21] she also accepted the appellant has no further convictions in this country or in India. There was, as Mr Hoare accepts, no professional evidence that the appellant has properly addressed his past offending. I accept that professional evidence is not required and that the evidence relied upon by the appellant here, was the absence of any reoffending

coupled with evidence before the Tribunal of the positive contribution made by the appellant to the local community in India. However at paragraph [24] of her decision, Judge Andrew did have regard to that evidence that was before the Tribunal. She noted the evidence adduced by the appellant shows how well he has done since his deportation to India. He is economically stable having a number of businesses and is the leader of his village. She noted the evidence before the Tribunal during the covert pandemic, the appellant has been praised for the work that he did.

22. In HA (Iraq) v SSHD [2022] UKSC 22, the Supreme Court confirmed that in an Article 8 claim where it is said that there are considerations that are so strong that deportation would be disproportionate, rehabilitation is a factor to be weighed in the balance. At paragraph [58] Lord Hamblen said:

> "Given that the weight to be given to any relevant factor in the proportionality assessment will be a matter for the fact finding tribunal, no definitive statement can be made as to what amount of weight should or should not be given to any particular factor. It will necessarily depend on the facts and circumstances of the case. I do not, however, consider that there is any great difference between what was stated in Binbuga and by the Court of Appeal in this case. In a case where the only evidence of rehabilitation is the fact that no further offences have been committed then, in general, that is likely to be of little or no material weight in the proportionality balance. If, on the other hand, there is evidence of positive rehabilitation which reduces the risk of further offending then that may have some weight as it bears on one element of the public interest in deportation, namely the protection of the public from further offending. Subject to that clarification, I would agree with Underhill LJ's summary of the position at para 141 of his judgment:
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> > "What those authorities seem to me to establish is that the fact that a potential deportee has shown positive evidence of rehabilitation, and thus of a reduced risk of re-offending, cannot be excluded from the overall proportionality exercise. The authorities say so, and it must be right in principle in view of the holistic nature of that exercise. Where a tribunal is able to make an assessment that the foreign criminal is unlikely to re-offend, that is a factor which can carry some weight in the balance when considering very compelling circumstances. The weight which it will bear will vary from case to case, but it will rarely be of great weight bearing in mind that, as Moore-Bick LJ says in Danso, the public interest in the deportation of criminals is not based only on the need to protect the public from further offending by the foreign criminal in question but also on wider policy considerations of deterrence and public concern. I would add that tribunals will properly be cautious about their ability to make findings on the risk of re-offending, and will usually be unable to do so with any confidence based on no more than the undertaking of prison courses or mere assertions of reform by the offender or the absence of subsequent offending for what will typically be a relatively short period."

23. It is clear therefore that the weight to be given to each factor was for the First-tier Tribunal. If, as here, the only evidence of rehabilitation was the absence of further offending, that was likely to have little or no weight, whereas evidence of positive rehabilitation which reduced the risk of further offending might carry some weight. It is clear in my judgement

that the approach adopted by Judge Andrew was entirely in accordance with these principles.

24. At paragraph [22], Judge Andrew accepted the appellant has visited other countries and has been granted temporary residence in Belgium. There was, as she said, no evidence to show how the appellant had achieved that, and whether those countries were aware of the appellant's convictions. She acknowledged the submission made on behalf of the appellant that checks would have been made, but as she said, there was no evidence before her that that was the case. It was undoubtedly open to her to state that it cannot simply be assumed that other countries may act in the same way as the United Kingdom does. What is clear is that Judge Andrew properly engaged with the claim made by the appellant and the evidence before the Tribunal.

25. I reject the claim that Judge Andrew failed to conduct a proper balancing exercise. In concluding, Judge Andrew said:

> "28. When conducting the balancing exercise I do accept the length of time the Appellant has been away from the United Kingdom. However, he committed a serious offence which goes to the heart of the United Kingdom's immigration control. There is a public interest in the prevention of disorder and crime. Further, the continuing of the deportation order acts as a deterrent to others. The Appellant has done well for himself in India and is integrated into that country. He maintains regular contact with his wife and family by means of visits to them in other countries and by way of electronic media. I find that the scales fall firmly on the side of the Respondent.
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> 27.*(sic)* Whilst I accept that this may cause upset for the Appellant and his family it is as a result of the consequences of his criminal offending."

26. It is now well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal. In particular: (i) They alone are the judges of the facts. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. It is probable that in understanding and applying the law in their specialised field the tribunal will have got it right. Appellate courts should not rush to find misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently.

27. An appeal before the Upper Tribunal is not an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, even surprising, on their merits. Here, the decision of Judge Andrew must be read as a whole. She gives adequate reasons for the findings she made. A fact-sensitive analysis was required. The findings and conclusions reached by the judge were neither irrational nor unreasonable in the Wednesbury sense, or findings and conclusions that were wholly unsupported by the evidence. I reject the overall claim that the analysis of the evidence is irrational or perverse. The Judge did not consider irrelevant factors. It is clear in my judgement that in reaching her decision, Judge Andrew had regard to all relevant factors, including the immigration rules and the evidence before the Tribunal. The weight to be attached to the evidence

either individually or cumulatively, was a matter for her. The conclusion reached by the judge was based on the particular facts and circumstances of this appeal and the strength of the evidence before the Tribunal. Where a judge applies the correct test, and that results in an arguably harsh conclusion, it does not mean that it was erroneous in law.

28. To identify an error of law there has to be more than a general literary criticism. Although "error of law" is widely defined, the Upper Tribunal is not entitled to find an error of law simply because it does not agree with the decision, or because the Tribunal thinks the decision could be more clearly expressed or another judge can produce a better one. Baroness Hale put it in this way in AH (Sudan) v SSHD at [30]:

> "Appellate courts should not rush to find such misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently."

29. In my judgment, the grounds of appeal do not disclose a material error of law capable of affecting the outcome of the appeal.

30. It follows that I dismiss the appeal

Notice of Decision

31. The appeal is dismissed

V. Mandalia

Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 August 2023