IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005920

First-tier Tribunal No: HU/00871/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23rd of November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RANJEET SINGH BAL
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Mrs. R. Arif, Senior Home Office Presenting Officer
For the Respondent: Mr. M. Rashid, Counsel instructed by Bright Legal Solicitors

Heard at Birmingham Civil Justice Centre on 9 November 2023

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Shanahan, (the "Judge"), promulgated on 4 November 2022, in which she allowed Mr. Bal's appeal on human rights grounds. The Secretary of State had made a deportation order against Mr. Bal and he appealed against this on human rights grounds, Article 8 family life.

2. For the purposes of this decision I refer to the Secretary of State as the Respondent and to Mr. Bal as the Appellant, reflecting their positions as they were before the First-tier Tribunal.

3. Permission to appeal was granted by Upper Tribunal Judge Macleman in a decision dated 19 January 2023 as follows:

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> "1. In the FtT, Judge Shanahan allowed this appeal, and Judge Easterman refused permission to appeal to the UT.
>
> 2. Error in the phrase "akin to qualifying status" appears unlikely to be material, for the reasons given by Judge Easterman.
>
> 3. Some parts of the grounds may be no more than meandering disagreement; and [9] is impenetrable.
>
> 4. However, it is arguable that the grounds identify inadequacy of reasons for the crucial finding of very compelling circumstances over and above the statutory exceptions to deportation."

The hearing

4. The Appellant and his wife attended the hearing.

5. Mrs. Arif stated at the outset that, given that the grant of permission had been limited, she was only relying on Ground 3. It did not appear to me that the grant had been so limited, albeit that it had been noted that Ground 1 appeared unlikely to be material, and that parts of Ground 2 were no more than disagreement. However Mrs. Arif stated that she did not intend to pursue Grounds 1 and 2, and that reliance was placed solely on Ground 3. She stated that she and Mr. Rashid had discussed this prior to the hearing and were in agreement that the Tribunal did not need to concern itself with Grounds 1 and 2.

6. I heard oral submissions in relation to Ground 3. I reserved my decision.

Error of law

7. Ground 3 states:

> "At [39] the FTTJ then directs herself that she will assess if there are very compelling circumstances (indeed, as stated above - the respondent submits that was the only issue before the FTTJ albeit looking at relevant factors under the exceptions). In the following analysis however the FTTJ appears to focus exclusively on factors that weigh in favour of the appellant. There is no proper recognition of the competing public interest on the other side of the scales as required in the balance sheet approach under 117C(6)."

8. Mrs. Arif submitted, with reference to [39] and the following paragraphs of the decision, that the Judge had failed to provide sufficient reasons for finding that there were very compelling circumstances. She submitted that the Judge had failed to give proper recognition to the public interest.

9. Mr. Rashid submitted that the Judge had properly directed herself to the law. Her consideration was not limited to [39] and the following paragraphs, but the decision should be read as a whole. He then went through the decision from [15] onwards. He submitted that the grounds amounted to no more than a disagreement with the findings of the Judge.

10. I find that Ground 3 is not made out. Both in the grounds, and at the hearing, the Respondent has focused only on [39] and the following paragraphs. However, I find that from [20] onwards of the decision the Judge considers whether there are

very compelling circumstances. Her findings are not limited to [39], [42] and [43]. On a proper reading of the whole decision, she has used the balance sheet approach and has not focused exclusively on factors weighing in favour of the Appellant.

11. Before she turns to consider the Appellant's case, the Judge states that she has had regard to section 117C which states that the deportation of foreign criminals is in the public interest [15]. She cites [22] of NA Pakistan and Others [2016] EWCA Civ 662. At [16] she states:

> "I have also had regard to the component factors that comprise the public interest. These are namely, to reflect public revulsion of serious crime or lack of confidence in the immigration system, to protect the public from further offending and to deter others from acting in a similar way."

12. This indicates that she is aware of the factors that she must take into account when assessing the public interest.

13. At [17] the Judge makes it plain that she is aware of the "great weight" which she must attach to the public interest. "As said in SS (Nigeria) [2013] EWCA Civ 550 the public interest in deportation can only be outweighed "by a very strong claim indeed"." I find that it is very clear from these paragraphs that the Judge had the public interest at the forefront of her mind. She is aware that the Appellant's claim must be very strong in order to outweigh this public interest, and she makes this clear before she turns to consider the Appellant's circumstances.

14. The Judge starts her consideration of the Appellant's circumstances by looking at his offence. She states that "the starting point therefore must be the seriousness of the offending" [21]. Contrary to the submission that she has focused exclusively on factors weighing in favour the Appellant, her consideration of his circumstances starts with the seriousness of the Appellant's offence. At [22] she sets out the sentencing remarks. At [23] she states:

> "Clearly therefore this was regarded as a serious offence on a vulnerable child requiring immediate custody and the public interest must be significant in considering deportation following the principles set out above in paragraphs 15 to 17."

15. She states that the public interest must be "significant", following the principles she has earlier set out. I find that she is very aware of the public interest in the Appellant's deportation.

16. At [24] she turns to the Appellant's case and first considers whether he has a genuine and subsisting parental relationship with his three children ([25] to [27]). The Respondent has not challenged this finding. At [28] she finds that there is a genuine and subsisting relationship between the Appellant and his wife, and again there has been no challenge to this finding.

17. The Judge then considers whether the Appellant's deportation would result in unduly harsh consequences for his wife and children. I find that there is no error in her considering it in this way. She does not stop with her consideration of whether there are unduly harsh consequences but this is part of her overall consideration of very compelling circumstances.

18. At [31] and [32] she considers the best interests of the children, which she is bound to do. At [35] and [36] she considers the evidence from the social worker. It has not been submitted that she has attached undue weight to this, and her consideration of this evidence is not challenged in Ground 3. At [37] she states:

> "Bearing in mind the high threshold but also that the concept of a comparator child was rejected in KA (Iraq) 2022, I consider that the impact of the Appellant being deported on the children both in the present and in respect of their future development would result in unduly harsh consequences for them."

19. She is aware of the high threshold when considering the impact of the Appellant's deportation his children. She finds at [38] that the Appellant's wife also meets the high threshold and that the Appellant's deportation would also result in unduly harsh consequences for her.

20. However, the Judge does not stop with her consideration of unduly harsh consequences, and at [39] states "the test for very compelling circumstances requires that there are factors over and above those in the exceptions". She sets out the Appellant's circumstances when the offence took place at [40]. At [41] and [42] she makes further findings relating to the Appellant's remorse, and his rehabilitation. At [43] she concludes:

> "Taking all the evidence into account therefore I find that the Appellant has genuine and subsisting relationships with his three younger children and his wife and that it would be unduly harsh for them to remain in the UK if he were deported. Further I find that there are very compelling circumstances that just outweigh the public interest in his deportation, specifically the adverse and severe impact this would have on his children and his wife. Accordingly, his appeal is allowed."

21. The Judge was aware that she had had to consider all relevant circumstances. She stated at [20]:

> "In the case of HA (Iraq) [2022] UKSC 22 it was said in paragraph 51, that when considering very compelling circumstances all relevant circumstances must be considered and weighed against the very strong public interest in deportation."

22. I find that the Judge has considered "all relevant circumstances" throughout the decision as set out above. Paragraph [43] is her conclusion taking into account all of the evidence, which she has considered through the decision. At [18] the Judge set out the Respondent's concession that "neither the wife nor the children could be removed and that the Appellant may have a genuine and subsisting parental relationship with the three younger children". She records that the Respondent's representative identified the issue as being "whether the Appellant's deportation would result in unduly harsh consequences for the wife and children." Despite this submission from the Respondent's representative, had the Judge only considered whether there were unduly harsh consequences she would have made an error of law, given that the Appellant's children nor wife were "qualifying". However, she did not stop with that consideration. She states at [24] that although the Appellant could not meet the exceptions "it is still pertinent to consider the factors contained in the exceptions and in particular in relation to his wife and children". There is no error in this. Considering it through the lens of the exceptions, she found that it would be unduly harsh and then went on to consider whether there were any "very compelling circumstances".

23. There has been no challenge to the Judge's finding at [43] that there would be an "adverse and severe impact" on the Appellant's children. The Judge was clearly aware of the weight to be given to the public interest as set out at e.g. [15] to [17], [21], [23] and [37]. I find that it is clear that the seriousness of the offence and the consequent public interest was at the forefront of her mind. Her reasoning is clear that it is the adverse and severe impact on the children which means that there are very compelling circumstances over and above the exceptions of deportation. It is simply incorrect to assert that her only focus was on the factors in favour of the Appellant.

24. I find that the grounds are no more than a disagreement with the findings of the Judge. She attached weight to the evidence from the social worker, which she was entitled to do. When read holistically rather than focusing only on the final paragraphs, the decision shows adequate consideration of all of the relevant factors, both those in favour of the Appellant and the Respondent.

Notice of Decision

25. The decision of the First-tier Tribunal does not involve the making of a material error of law and I do not set it aside.

26. The decision of the First-tier Tribunal stands.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
14 November 2023