IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002250

First-tier Tribunal No: DA/00104/2022

Extempore Decision

THE IMMIGRATION ACTS

Decision & Reasons Issued:

5th January 2024

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

The Secretary of State for the Home Department

Appellant

and

JB
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondent: Ms S Ferrin, Counsel, instructed by Turpin & Miller LLP (Oxford)

Heard at Field House on 27 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by the Secretary of State. However, I will refer to the parties as they were designated in the First-tier Tribunal.

2. The appellant is a citizen of the Netherlands. He entered the UK in March 2019 and was granted pre-settled status in June 2019.

3. In November 2021 he was convicted of assaulting his son and sentenced to two year's imprisonment. In January 2022 he was notified of his liability to deportation under the Immigration (EEA) Regulations 2016, as saved. In November 2022 a decision to deport the appellant was made. The appellant appealed against this decision to the First-tier Tribunal where his appeal came before Judge of the First-tier Tribunal H L Williams. In a decision promulgated on 16 May 2023 the judge allowed the appeal. The respondent now appeals against this decision.

4. As will become apparent, in order to determine this appeal, it is necessary to understand the nature of the offence committed by the appellant in 2021 and the risk he has been assessed as continuing to pose. The sentencing remarks, dated 29 November 2021, summarise the appellant's offending as being a series of offences where he beat and flogged his 10 year old child, including with a weapon. The judge described the offending as extremely serious.

5. The OASys Assessment of the appellant, dated 18 October 2022, refers to the appellant beating/whipping his child with cables and belts, slapping him in the face and forcing him to stand in a stress position for prolonged periods of time. It is stated that the victim and other family members of the appellant described the abuse as occurring "in a context of asserting discipline and power within the family". It is also stated that the abuse may reflect the appellant's cultural heritage and upbringing and "appears to have been perpetrated in an attempt to discipline his sons".

6. The OASys Assessment also notes that the appellant denies the offending. It is stated that the appellant "should be assessed as posing a medium risk of harm to children, particularly to his own but with the potential to harm future partner's children through his disciplining also". It is also stated that "risk is likely to be greatest if [the appellant] resides in a household with children or has unsupervised contact with them" and an important risk factor identified is the appellant's "continued acceptance of corporal punishment to discipline and control children".

7. The judge identified that the question for him to determine was whether the appellant's personal conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. The judge, after considering the OASys Report in detail, found that the appellant is not rehabilitated and poses a serious risk to children with whom he is in a family unit (whether his children or those of a new partner). However, the judge did not consider that the appellant poses a risk to children, or others, in the wider community.

8. The judge found that the appellant is prevented by his licence conditions from having contact with his (estranged) wife and children, and that any contact in the future would need to be approved through official channels. With respect to any other children the appellant might have a relationship with, the judge found in paragraph 77:

> As the Appellant is designated a 'PPRC' [person who poses risk to children], with a conviction against a child, there are systems in place in the UK through Social

> Services and other agencies including the Police and the Family Court, to protect the Appellant's children, any future children of the Appellant and/or any children who might end up exposed to him in a familial setting.

9. The judge concluded that although the appellant poses a serious risk to children in a family setting, there are systems in place to prevent this occurring, and therefore the risk is not sufficiently serious to reach the threshold of affecting one of the fundamental interests of society.

10. The respondent advances two grounds of appeal.

11. The first ground is a rationality challenge, submitting that the judge's finding that the appellant poses a risk to children only in a familial setting rather than to the wider public at large is irrational given the OASys Assessment states that the appellant has the potential to harm children of future partners and has been deemed a medium risk of offending against children in the community. It is submitted that the judge failed to identify any evidential basis or adequate reason for finding that the appellant does not pose a risk to the wider public at large.

12. The second ground submits that the judge failed to properly apply the principles in *Kamki v The Secretary of State for the Home Department* [2017] EWCA Civ 1715. The grounds refer to paragraph 18 of *Kamki* where it was found to be: "legitimate to look at both the likelihood of reoffending occurring and at the seriousness of the consequences if it does". It is submitted that the decision is deficient because of a failure to consider the likelihood of the appellant reoffending and the seriousness of the consequences of him doing so.

13. I am grateful for the clear and concise submissions of both Mr Melvin and Ms Ferrin. I have not set out their submissions in detail but the assessment below reflects the arguments they advanced.

14. I am not persuaded that there is any merit to the first ground of appeal. The judge's finding that the risk posed by the appellant is confined to a family setting is consistent with the OASys Report, where it is made clear that the offending occurred solely within the family setting and stemmed from his extreme attitude (in respect of which he has shown no remorse) to corporal punishment and disciplining children. Based on the OASys report, sentencing remarks, and the documentary evidence as a whole, it was plainly open to the judge to conclude that the appellant poses a risk to his children and the children of any partner he may live with in the future (as well as any children he may perceive himself as having a role in disciplining) but not to children outside of this context.

15. I am also not persuaded by ground 2, which argues that the judge failed to properly apply the principles in *Kamki*. First, the judge accurately summarised those principles in paragraph 71 where he stated "I bear in mind that, following *Kamki*, even where the risk of reoffending is low, the threat can be sufficiently serious if the consequences of the re-offending are very serious".

16. Second, the judge accepted that the appellant's offending was serious and that the resulting harm, should the appellant re-offend, would be very serious. However, the judge, consistently with the OASys Report, found that the serious risk of serious harm was confined to a family setting. The judge considered the likelihood of offending occurring in that context and found that it was unlikely because of the steps the authorities are taking (and will continue to take) given

the appellant's designation as a PPRC. This is set out in detail in paragraph 77 of the decision, where the judge refers to the appellant being designated as a PPRC and systems being in place to protect the appellant's children and any future children who might be exposed to the appellant in a familial setting. These (unchallenged) findings about the protections in place mean that it was open to the judge to conclude that, even though the appellant is not rehabilitated, the risk he poses is small.

17. Before concluding, I note that in the grant of permission a point was raised that is not in the grounds of appeal, which is that the judge failed to take account of - or attach sufficient weight to - the evidence indicating that the appellant has failed to accept responsibility for his offending. Ms Ferrin argued that I should not consider this point as it was not raised in the grounds. I disagree. As this argument was raised by the judge granting permission, the appellant has had ample opportunity to consider the issue, and I will therefore consider it.

18. The point raised in the grant of permission has no merit. First, the contention that the judge failed to attach "sufficient weight to the evidence" is not a basis to set aside the decision as, subject to irrationality, weight is a matter for the judge. Second, the judge did not fail to take into account the evidence of the appellant not taking responsibility for the offence. On the contrary, the judge made a clear finding that the appellant had not been rehabilitated but despite this did not pose a significant risk. As I have explained, the judge was entitled to reach this conclusion because it was open to him to find that (a) the appellant only poses a serious risk in a family setting; and (b) there are sufficient protections in place to prevent the appellant harming his children or other children in a family setting in the future.

Notice of Decision

19. The decision did not involve the making of an error of law and therefore stands.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22.12.2023