



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00682/2013

THE IMMIGRATION ACTS

Heard at Field House

On 9 December 2013

Determination

Promulgated

On 23 December 2013

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

BALDEV SINGH MALIEN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Y Akande, instructed by S Z Solicitors

For the Respondent: Ms A Holmes, Senior Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by a national of India born 15 January 1975 against the determination of First-tier Tribunal Judge Widdup and Mr D R Bremmer JP (the panel) who for reasons given in their determination dated 21 June 2013 dismissed the appeal against the decision to refuse to revoke a deportation order made on 20 April 2009 on 3 September 2012.

2. I make an order in respect of the minor children and their mother (Mrs B) in this case, preventing them from being identified. That order includes a prohibition on the disclosure of any information that might identify the address or school of the children, which I consider to be in the interests of the child. Any breach of this order occasioned by putting the information in the public domain might be punishable as a contempt of court either by the Upper Tribunal exercising powers of High Court under s.25(2)(c) of the Tribunals, Courts and Enforcement Act 2007, or by any other court of competent jurisdiction.
3. The panel's determination sets out the immigration history of the appellant and the events which led to the deportation decision and circumstances thereafter. There is no need to repeat them here except for the following key points:
 - (i) The appellant arrived in the United Kingdom in 1993 illegally.
 - (ii) His relationship with Ms B, a British citizen, began in 1996. This relationship broke down in November 2005 after an incident of serious domestic violence leading to the appellant's conviction of assault occasioning actual bodily harm for which he received a sentence of twelve months' imprisonment suspended for two years.
 - (iii) In November 2007 the suspended sentence was activated at Isleworth Crown Court when the appellant received an additional two months' imprisonment and a disqualification from driving for three years after having been convicted of driving with excess alcohol and without a licence.
 - (iv) His appeal against the decision to make a deportation order was dismissed in March 2008.
 - (v) In August 2011 the parties married.
 - (vi) An endeavour by the appellant to appeal to the ECtHR was dismissed in September 2011.
 - (vii) There are four children to the relationship born 1997, 2001, 2003 and 2012
4. The panel found that paragraph 399 of the Immigration Rules did not assist the appellant in the light of the ability of Ms B to care for the children, and furthermore their relationship was not genuine and subsisting. It was accepted by Mr Pretzell on behalf of the appellant that he could not derive assistance from paragraph 399A. The panel's conclusions therefore were solely on Article 8 grounds, in respect of which they concluded that his and Ms B's interests as well as the children were outweighed by the public interest in deportation. At [44] of the determination the panel made these comments on events since January 2009:
 - “(i) We accept that four and a half years have elapsed since the Tribunal assessed the best interests of the children and that in that time s.55 has been enacted. That lapse of time appears to have been caused by the appellant's challenges to the Tribunal's decisions. His appeal rights were only exhausted in September 2011.

- (ii) The evidence does not show that the appellant has been cohabiting with Ms B since December 2009. On the contrary, we find that it was only from his release on bail that he has been living at Ms B's address.
- (iii) We accept that the appellant has not reoffended or been in breach of bail conditions.
- (iv) The appellant has not successfully addressed his alcohol abuse. In those circumstances there remains a risk to Ms B and the children of aggressive behaviour.
- (v) Another child, K, has been born."

5. At [45] of their determination the panel identified the substance of the case as being:

"There are two crucial facts which present a continuing risk to the children, namely the appellant's alcoholism and his tendency to react aggressively. The fact that there is now another child whose interests must be considered does nothing to diminish those risk factors."

- 6. The complaint made in the grounds of application refers to Ms B having given clear evidence to the effect that the appellant having resorted to drinking in the past few weeks had never resorted to aggressive or threatening behaviour either towards her or the children. It is argued that the finding of the continuing risk to the children is reached in an evidential vacuum. It was incumbent of the panel to base their concerns on some evidential footing and to state why Ms B's evidence had not been accepted. In conclusion it is argued that with an account having been rejected, reasons must be given.
- 7. The second ground refers to the Presenting Officer having conceded before the panel that the Secretary of State had not followed her own policy, "the children and family cases process instructions". It is argued that the panel had erred in concluding that that failure could be vitiated by reference to information obtained from the children's social worker.
- 8. At the hearing before me Ms Holmes produced evidence that despite what was understood by the parties and the panel, there *had* been detailed consideration of the impact of removal of the appellant on the children including reference to and comments from a professional advisor to the office of the children's champion. Also included in this thirteen page document are details of further consideration by the Secretary of State on receipt of the response from the OCC and authorisation of the decision by the Operations Manager of the Enforcement and Crime group.
- 9. Dealing with the second ground first, Ms Akande did not seek to withdraw the ground but in the light of what had now been produced was unsure how far it took matters. The panel had proceeded on the basis that the children's champion had not been consulted, but nevertheless having observed that the application to the Secretary of State had been made to

revoke a deportation order after the interests of the children had been fully considered and then found as a consequence there was no error in the decision making process. It appears to me that that is a conclusion that was open to the panel. Even if I could be persuaded otherwise on the basis that there was unlawfulness by the Secretary of State in not consulting the Children's Champion, it is now beyond doubt that she had done so. Any error found would not require the decision to be remade.

10. I return to the first ground. This is in essence a reasons challenge and it is not argued that the panel was either perverse or irrational in its conclusions. Despite the forceful submissions by Ms Akande which supplemented a detailed skeleton argument, I am not persuaded that the panel reached its conclusions in an "evidential vacuum" and it is clear from a reading of the determination that the evidence adduced in support of the appellant's rehabilitation was considered and rejected for cogent and sustainable reasons. Over a number of paragraphs from [33] to [42], after correctly directing themselves in accordance with the principles in *Devaseelan* and noting the findings made by the panel of three judges in the Upper Tribunal, the panel went on to observe that even if it were not for the adverse credibility findings made by that tribunal:

"... the evidence of both the appellant and Ms B showed a clear tendency to minimise the appellant's past behaviour towards Ms B and understated the appellant's current alcohol consumption".

11. At [35] the panel concluded that the appellant appeared to have no understanding whatsoever of the dangers drink posed to him, Ms B and his family, and went on to explain why they attached no weight to the evidence of the appellant's father who appeared to know little about his son's drinking or about the reasons for his imprisonment. As to the appellant's relationship with Ms B, at [38] and [39], reasons are given why there had not been a genuine reconciliation. There is explanation here for what appears to be a confusing reference in [44] above as the panel observes that the bail conditions for the appellant required him to live at Ms B's address in December 2012 but he was not living there overnight before his detention in September that year.
12. The panel also had before it reports by a social worker Gemma Lee dated 20 July and 20 September 2012. She explains that she is the social worker for the appellant's children. In the most recent report she refers to issues around domestic violence no longer being prevalent in the family and that the appellant's situation had been largely fuelled by his alcohol consumption. Since completion of a program after being referred to Ealing DIAS, a drug agency, both the appellant and Ms B had reported that the appellant's alcohol use was no longer an issue and that he only drank occasionally on social occasions. At [40] of the determination, the panel gave detailed reasons why they considered they could attach little weight to her observations and conclusions. It is significant that those reasons are not subject to challenge in the grounds of application in the renewed application. It is unnecessary to spell all the reasons given out and I am readily persuaded that the panel engaged with Ms Lee's reports and gave

reasons open to them in the context of the evidence as a whole for why it attracted little weight.

13. On analysis, the challenge in the first ground is a disagreement with factual findings by the panel which do not disclose error of law. Those findings led the panel to a conclusion under Article 8 that took proper account of the best interests of the children and the impact of separation on family life as found. The conclusions reached were supported by the evidence leading to a permissible conclusion on Article 8 grounds.
14. This appeal is dismissed.

Signed

Date 13 December 2013



Upper Tribunal Judge Dawson