



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

Appeal Number: DA/00401/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 2 September 2014

**Determination
Promulgated**

On 23 September 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

UMAR ZAMAN

Respondent

Representation:

For the Appellant: Mrs Pettersen, Senior Home Office Presenting Officer

For the Respondent: Mr T Hussain, instructed by RKS Solicitors

DETERMINATION AND REASONS

1. The respondent, Umar Zaman, was born on 1 February 1978 and is a male citizen of Pakistan. On 2 November 2011, the appellant was sentenced to four years' imprisonment for wounding with intent to do grievous bodily harm with a two year concurrent sentence for assault occasioning actual bodily harm. A decision was made on 18 February 2014 to deport him.

The respondent appealed against that decision to the First-tier Tribunal (Judge Shimmin; Mrs S A Hussain) which, in a determination promulgated on 2 June 2014, allowed the appeal on human rights grounds (Article 8 ECHR). The Secretary of State now appeals, with permission, to the Upper Tribunal. I shall hereafter refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal).

2. In summary, the grounds of appeal assert that the judge failed to have proper regard for the public interest concerned with the appellant's deportation (see **SS (Nigeria) [2013] EWCA Civ 550**); failed to have proper regard to the fact that the appellant had been violent towards his wife from 2001-2010; failed to have regard to the fact that the appellant had been the sole cause of the necessity for police and local authority intervention in his family's life when the panel had found that the appellant's remaining in the United Kingdom would indicate that there would be "less intervention and support in the lives of the family from statutory bodies" [55]; wrongly found that there were special circumstances in the present case justifying allowing the appeal under Article 8 ECHR; based its assessment on a false premise, namely that the appellant had been provoked into committing violence by an incident in 2008 [41]; the sentencing remarks of the judge indicate that the court found the appellant's behaviour to be completely unjustifiable.
3. I find the Secretary of State's appeal should be dismissed. I have reached that conclusion for the following reasons. First, I accept Mr Hussain's submission that, on the facts of this case, the dismissal of the appeal in the First-tier Tribunal was not inevitable. The appellant had attacked with a cricket bat an individual with whom he had grievance and injured both that individual and his wife. In an even-handed and balanced determination, the Tribunal considered the relevant facts in detail. It is true to say that the Tribunal did find [53] that the appellant's violent conduct had been "prompted by a family feud and provocation". That statement is perhaps qualified by what the Tribunal says at [41] ("Although no excuse for the appellant's actions, we accept that he was provoked by the violent incident in 2008 and by taunting from the victim immediately before the July 2010 incident."). It is clear that the Tribunal does not refer to "provocation" in any technical legal sense but has simply acknowledged that the appellant had attacked his victim as a consequence of a previous incident and what he perceived to be the victim's aggressive and taunting behaviour. I do not find that the Tribunal has considered this "provocation" to have justified the appellant's actions; indeed, the Tribunal says more than once in the determination that the appellant's behaviour was inexcusable and unjustifiable. I find that it has used the word "provocation" simply in order to give an account of the causation for the violent attack and to distinguish it from an entirely random act of violence upon a stranger. That distinction was worth making because, as the OASys Report acknowledged, whilst the appellant's risk to a "known adult" might remain high the risk of his injuring children or strangers has been variously described as medium or

low. I find that the Secretary of State has failed to establish that the Tribunal has based its analysis on a false premise, namely that the appellant may have been justified in attacking his victim on account of being provoked by him.

4. As regards to domestic violence, the Tribunal notes at [35] that the appellant's wife stated in evidence that her husband did not have a violent temper and had never been violent towards the children. The incidents of domestic violence since 2010 appeared to have ceased completely (they are described in the determination as "totally non-existent"). I find there is nothing in the Secretary of State's grounds at [11] which undermines those findings. As for the reduced intervention of statutory bodies in the family's lives, I agree that the point made in the grounds [12] is a good one; it had been the appellant's own conduct which had led to those statutory bodies becoming involved in the first place. However, the Tribunal was entitled to conclude that the presence of the appellant in the family home, would, in the future enable the family to flourish without assistance from social services and other state bodies.
5. For the most part, the grounds are little more than a disagreement with the findings of the Tribunal and the outcome of the appeal. I find, in particular, that the Tribunal has had proper regard to the public interest and has not sought to diminish the seriousness of the appellant's criminal offending. It is also the case that the appellant's probation officer, in a letter dated 15 May 2014, somewhat unusually supported the appellant's appeal against the deportation order. It is also clear that the child, A, has learning, linguistic, physical and behavioural difficulties which the social work evidence indicated would be assisted by the presence of the appellant in the family home. To that extent, the circumstances of the family are unusual and a matter to which the Tribunal properly gave weight in reaching its determination. In conclusion, the Tribunal has reached an outcome which was available to it on the facts and has done so by way of a proper structured and detailed analysis of the relevant evidence and has supported its decision with cogent reasons. The appeal is dismissed.

DECISION

6. This appeal is dismissed.

Signed

Date 20 September 2014

Upper Tribunal Judge Clive Lane