



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

Appeal Number: IA 25898 2013

THE IMMIGRATION ACTS

Heard at Field House

On 25 March 2014

Determination

Promulgated

On 28th April 2014

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

B S N

Respondent

Representation:

For the Appellant Mr J Singh, Senior Home Office Presenting Officer

For the Respondent: Miss Masih of Counsel instructed by Crowngate Law Solicitors

DETERMINATION AND REASONS

1. The respondent to this appeal, hereinafter “the claimant”, appeal successfully to the First-tier Tribunal a decision of the present appellant, hereinafter “the Secretary of State”, a decision to remove him from the United Kingdom.
2. Much of this determination concerns the claimant’s children whose anonymity needs to be preserved. Pursuant to rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure of publication of any information likely to lead members of the public to identify the appellant’s children and any breach of the order shall be punishable as a contempt of court.
3. The children are aged almost 16 years, 13 years and almost 5 years. They are the children of the claimant’s wife by an earlier relationship and they are British citizens.

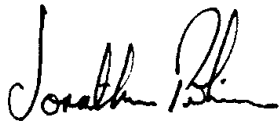
4. The claimant's conduct has been somewhat discreditable. He came to the United Kingdom in 2012 as a visitor although it has been established by the First-tier Tribunal that he came at a time when his relationship with the woman who is now his wife had been established and he entered the United Kingdom not intending to return.
5. Mr Singh says, with considerable justification, that this makes his removal more than ordinarily important because it is undesirable for the purposes of maintaining immigration control that a person who flouts the law in this way is seen to get away with it.
6. The First-tier Tribunal Judge rejected evidence that the claimant's wife could not manage without his presence in the United Kingdom. She found that her mother had helped her in the past and could be expected to do so again.
7. Nevertheless at paragraph 29 of the determination the First-tier Tribunal Judge decided that removing the claimant would have such a detrimental effect on the family life established in the United Kingdom that was disproportionate to the proper purpose of maintaining immigration control and so allowed the claimant's appeal.
8. Mr Singh argues that it is a significant error on the part of the First-tier Tribunal Judge not to have spelt out the importance of maintaining immigration control and particularly in this case where the claimant has behaved in this discreditable way. I understand that point but am impressed by Ms Masih's contention that it was acknowledged in the determination that the claimant had behaved in this way and it is plain from later paragraphs that the First-tier Tribunal Judge took account of all the circumstances including the need to maintain the immigration system.
9. Frankly it would have been better if the First-tier Tribunal Judge had spelt out in more detail that she appreciated this points but I cannot read the determination sensibly and assume that she was unaware of the claimant's behaviour to regard it as unimportant because she made express findings about it. It is clearly something on her mind with the other matters to be considered.
10. Mr Singh also argued in accordance with the grounds that it was not right to allow the appeal when the situation could have been avoided by the claimant returning to his country of which he is a national and making an application in accordance with the Rules. This would have only involved a relatively short period of separation and is something that should not have been expected to impact too severely on the children of his new family. Again this is a point made perfectly well by Mr Singh. However the judge's findings at paragraph 29 are clear and they are that the children's education should not be interrupted by reason of relocation to India.
11. The judge also found that the youngest child in particular had developed a close relationship with the claimant who had played a central role in the lives of all of the children and these are the circumstances taken into account when the judge carried out the balancing exercise.

12. The First-tier Tribunal Judge acknowledged the need for “exceptional circumstances” required by the rules and the Secretary of State’s understanding of them.
13. She also reminded herself, correctly, of the statutory obligation to put first the interests of the children in the appeal.
14. She then allowed the appeal.
15. I remind myself of the guidance given by the House of Lords in the well-known case of R (Iran) & Ors v Secretary of State for the Home Department [2005] EWCA Civ 982 at paragraph 15 where Brooke LJ Vice-President of the Court of Appeal, Civil Division quoted with approval Lord Phillips MR in English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605, to the effect that Tribunal’s decision should stand if the reasoning is discernable and lawful. Although clarity is to be encouraged a decision does not become unlawful because points could have been made better or because a different decision maker might have reached a different conclusion on the same facts.
16. In my experience when appeals are allowed under article 8 of the European Convention on Human Rights it is rarely because of the effect of removal on a person’s own private and family life but because of how a person’s removal would impact on others, particularly children. A great deal depends on the particular impression made by particular witnesses and of course I was not there to hear what sort of evidence was given. What is clear is that the First-tier Tribunal Judge found that the removal of the claimant would interfere disproportionately with the lives of the children in the United Kingdom. Reasons were given for that including the particularly close relationship with the younger child and the critical stage in the education of the older children. It is also plain from the determination that the aggravating features of the offence identified by Mr Singh were appreciated.
17. I have decided that the judge has reached a conclusion open to her on the facts for the reasons given. Cases involving children are likely to be contentious and are likely to produce decisions which are intensely fact-specific and to some extent dependent on the importance particular judges give to maintaining family life in particular circumstances. I cannot say after reading the determination that the First-tier Tribunal Judge misdirected herself in any way or reached a conclusion irrationally or for reasons not open to her and so, not without some hesitation, I decided that I must dismiss the Secretary of State’s appeal and that is my decision.

Decision

Secretary of State’s appeal dismissed

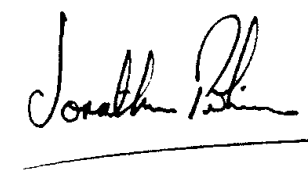
Signed



Jonathan Blain

Jonathan Perkins
Judge of the Upper Tribunal

Dated 16 April 2014



Jonathan Perkins