Upper Tribunal
(Immigration and Asylum Chamber) Appeal no: **DA/01654/2014**

THE IMMIGRATION ACTS

At **Royal Courts of Justice** Decision and Reasons Promulgated
On **12.10.2015** On 13.10.2015

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Mohd. Adeel MALIK

appellant

and

Secretary of State for the Home Department

respondent

Representation:
For the appellant: *Usha Sood* (counsel by direct access)
For the respondent: Mr Paul Duffy

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Patrice Wellesley-Cole), sitting at Taylor House on 16 March, to dismiss an appeal against refusal to revoke a deportation order by a citizen of Pakistan, born 14 February 1987. Permission to appeal was given in the Upper Tribunal, on the basis that the judge might

NOTE: no anonymity direction made at first instance will continue, unless extended by me.

not have given adequate reasons for her conclusions on paragraph 399A of the Rules at paragraphs 16 – 18 of her decision.

2. Paragraph 399A reads as follows:

> 399A. This paragraph applies where paragraph 398(b) or (c) applies if –
>
> (a) the person has been lawfully resident in the UK for most of his life; and
>
> (b) he is socially and culturally integrated in the UK; and
>
> (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.

3. There was no indication in the Home Office cover-sheet (PF1), or in the first-tier decision that (a) did not apply to this appellant, who had arrived here with his mother and sister in 1995. However, as the Home Office pointed out in their skeleton argument, the appellant's mother had been granted four years' exceptional leave to remain in 1998, and he himself had last had leave in line with that, so ending in 2002. Though his mother and sister had later been given indefinite leave to remain, and are now British citizens, that would have been impossible for this appellant, who had been first been sentenced to detention and training, for robbery, in March 2002. It follows that the appellant could not satisfy paragraph 399A (a), whatever the possession might have been on (b) and (c): as Mrs Sood accepted, the draftsman's use of 'and' clearly shows that each of these must be satisfied for the rule to apply.

4. Later the appellant had received these sentences

(a) two years s.91 detention, for more robbery, in August 2002;

(b) 30 months detention in a young offenders' institution [YOI] for attempted robbery, in July 2004;

(c) 3½ years detention for robbery and violence, in September 2007;

(d) a community order, for battery and possession of a class 'A' drug, in June 2012;

(e) 16 weeks imprisonment, for two more batteries, and possession of a class 'A' drug, including breach of the community order, in August 2012; and finally

(f) two years imprisonment, suspended for two years, for possession of a class 'A' drug with intent to supply, in January 2014.

5. The background to the sentence at (f) was this: in 2012 the appellant had had a son R with his partner: he already had one son, born in 2001, whom he does not see. However, in March 2013 he was arrested on a charge of domestic violence towards his baby-mother, and kept in custody till the following January. No doubt full account was taken of that time in the sentence passed then. These proceedings ended in an order by the family court on 9 July 2013, granting guardianship of R to his maternal grandmother: the appellant was to have no contact with him without her consent.

6. There was no question in this case of the appellant having a continuing relationship with his partner or, following the order of the family court, with R; so he could not satisfy the requirements of paragraph 399 either. Paragraph 398 did apply to him, as a person sentenced to 12 months' or more imprisonment; so this was the rule to be applied on his application to revoke the deportation order, in force but unenforced against him ever since 2007:

> 390A. Where paragraph 398 applies the Secretary of State will consider whether paragraph 399 or 399A applies and, if it does not, it will only be in exceptional circumstances that the public interest in maintaining the deportation order will be outweighed by other factors.

7. It follows that the judge was fully justified in dealing with this case on the basis that exceptional circumstances were required for the appellant's removal under the deportation order not to be proportionate to the public interest in that. Mrs Sood realistically accepted that this was the position on the ground on which permission had been granted; so, if that were all, the appeal would have to be dismissed.

8. I was very grateful to Mrs Sood for agreeing to represent this appellant for the first time before me: he had appeared in person before the judge, and drafted his own grounds of appeal. Mrs Sood referred me to the Presidential guidance, which allows the Tribunal to give some latitude in such cases. She went on to refer to the particular desirability for the appellant's sister of having her brother to represent her in marriage business, and for his mother to have him with her too. Besides that, there was the interest of R in having a father in this country, especially where, as here, his mother was from a different ethnic group and religion. Mrs Sood asked me to grant an adjournment, so that she could put forward a case for the appellant on grounds amended on these lines.

9. I am quite prepared to accept that, in a case where article 8 consideration was at large, these would all have been relevant points. However, I do not think that they even arguably amount to exceptional circumstances, in a case where it is limited by the clear words of paragraph 390A: the same conclusion would follow from the restrictions on departing from the Rules, on the authorities since *MF (Nigeria)* [2013] EWCA Civ 1192.

10. That conclusion would also follow from the relevant part of s. 117C of the Immigration Act 2014 :

> (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
>
> (4) Exception 1 applies where—
>
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
>
> (b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C's integration into the country to

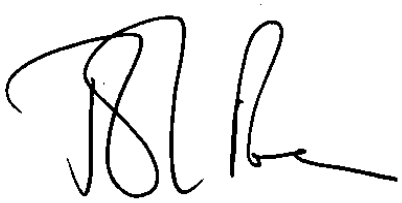
which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

11. This appellant could not benefit from Exception 1, for the same reason as he is ineligible for consideration under paragraph 399A. Nor, having not seen or been in touch with R since his arrest in March 2013, could he benefit from Exception 2. While Mrs Sood put forward reasons why the order of the family court was not necessarily correct or final, she found herself unable to argue that the judge should have been wrong in law not to accept it as determining the position on the facts before her.

12. The result is that granting an adjournment for amended grounds to be put forward would serve no useful purpose, and so I refuse it. The appellant and his family do however have the satisfaction that Mrs Sood's intervention has resulted in every possible point in his favour being put forward. If I had had the power in a case of this kind to grant legal aid for counsel only, I should have used it. As I did not, Mrs Sood has acted *pro bono*, in the best traditions of the Bar.

Appeal dismissed



(a judge of the Upper Tribunal)