**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: DA/00270/2016

**THE IMMIGRATION ACTS**

| **Heard at Royal Courts of Justice, Belfast** | **Decision & Reasons Promulgated** |
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| **On 26 November 2018** | **On 12 December 2018** |

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**MR ROBERT BARI**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: No appearance
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against a decision of First-tier Tribunal Judge S Gillespie, promulgated on 5 September 2017, allowing Mr Bari's appeal against the decision of the Secretary of State to deport him on 2 June 2016.

2. The appellant was not represented before me. The appeal had been previously adjourned owing to difficulties in his previous representatives getting instructions from him. Since then, it transpires from correspondence with the previous solicitors that they had been unable to get instructions from him, nor were they able to obtain

information regarding any continuing Family Court proceedings which may be in existence.

3. Most recently, the representatives requested to be taken off the record as they are without instructions from their client. That request was granted.

4. I am satisfied from the file that notice of the hearing was served at the address most recently given FOR correspondence with the appellant and that he has therefore been given due notice of the time, date and venue of the hearing. I am satisfied that in all the circumstances of this case given prior adjournments in order to seek an adjournment to allow him to instruct solicitors that it would be appropriate to proceed with the hearing in his absence.

5. The appellant claims to have arrived in the United Kingdom in 2010. Prior to that he has several convictions in the Slovak Republic, Austria and Germany for offences including robbery, theft and blackmail. He has a total of six previous convictions in the United Kingdom. The most serious of these occurred in 2014. The circumstances of those assaults are set out in the decision of Judge Gillespie; they also appear in a decision of the Northern Ireland Court of Appeal R v Bari [2015] NICA 74.

6. The appellant was deported prior to his appeal but was represented by Ms H Wilson of Counsel. The judge heard submissions from her and from the Presenting Officer; he also took into account amongst other matters a statement from the appellant.

7. The judge noted [20] that the children are reported not to want to have any form of contact with him; it appears also that Freeing Orders with a view to adoption orders being made. The judge concluded [49] that the Secretary of State had not proved that the Regulations of 21(5) of the EEA Regulations were met, there being no basis [48] which the Secretary of State could have determined whether the period of imprisonment had had any reformative effect on the appellant. The judge also concluded [50] that the Secretary of State emphasised the seriousness of the appellant's past criminal record, this pointing to the decision being reached on the basis of the criminal convictions in themselves. He considered also that the appellant's enforced absence meant that if Freeing Order proceedings were conducted in his absence he could not be taken into account as an alternative carer or to participate in the making of that order. The judge concluded that these are all important considerations when taking Regulation 21(6) and the Secretary of State had not proved that they were outweighed by the case for deportation.

8. The Secretary of State sought permission to appeal on the grounds that the judge had erred:-

   (i) in attaching weight to an unsigned and unconfirmed witness statement from the appellant;

   (ii) in concluding that the decision was unlawful putting emphasis on past criminal activity when it was plain that the Secretary of State relied on a reoffending pattern as clear evidence of present risk and that his approach to the Secretary of State's reliance on material provided from the Prison Service was perverse;

(iii) in approaching the Secretary of State's decision as if it were a judicial review rather than making findings of fact as he was required to do;

(iv) in failing to take proper account that the Social Services and Family Courts were content to proceed with their decisions in the appellant's absence and acting perversely in attaching material weight on the appellant's apparent change of heart in respect of his own behaviour and children;

(v) in failing properly to assess proportionality by omitting to take into account public policy reasons for removing a man who is particularly reprehensible that who in his exercise of domestic violence in front of his children and where there is little corroborative evidence capable of showing a change of attitude towards his family and the public in general.

9. I am satisfied that the decision of the First-tier Tribunal did involve the making of an error of law for the following reasons.

10. The judge erred fundamentally in, as the grounds aver, approaching the decision of the Secretary of State as if it were a review. This can be seen particularly at [57] and at [48] where the judge held that there was simply no basis on which the Secretary of State could have determined whether the appellant's period of imprisonment had any reformative effect upon him and the conclusion at [47] that the decision of 3 June 2016 did not make a full, adequate assessment of the present risk posed by the appellant at the date of decision. At no stage does the judge properly set out Regulation 21(5) or direct himself as to whether the personal conduct of the appellant represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

11. The conclusion that the Secretary of State had wrongly relied on the seriousness of the past criminal record being prescribed by Regulation 21(5)(e) is perverse. It is manifest from the refusal letter and the circumstances of the appellant's offending that it was treated as evidence for the conclusion that the appellant represents a genuine, present and sufficiently serious threat. Further, it was perverse for the judge to attach weight to a witness statement which had been neither signed nor confirmed by the appellant. This is of particular note where, as here, the appellant appears to suggest that he has reformed despite a long criminal history of violent behaviour towards his wife and others. There is thus no basis on which the judge could rationally have concluded that the appellant had reformed or rehabilitated and accordingly, I am satisfied that the decision must be set aside.

12. In re-making the decision I note that the appellant has continued to disengage with the proceedings. Despite efforts made on his behalf and the fact that he has had some contact with solicitors, he has failed to remain in contact and there is no indication that he has kept in contact with the courts charged with making decisions about the children.

13. It is, in this case, appropriate to have regard to the observations of the Court of Appeal about this appellant in R v Bari

[2] On 20 June 2014 Mr William Johnston, a Translink bus driver, was at work and driving down Beechland Drive in Lisburn when he witnessed the appellant chase his wife, Beta Barivoa, across the road. Mrs Bariova was with three of her and the applicant's six children, and they tried to board the bus before the appellant could catch up with them.

[3] The appellant grabbed Mrs Bariova by her hair before she could board the bus and slammed her onto the ground. He was pulling her hair and punched her face about five or six times. The children witnessed this attack and were screaming. Mr Johnston was not supposed to leave the driver's cab while working, and so was hoping someone else would intervene. He shouted at the appellant to stop and, when it became clear no-one else was going to assist, he left the driver's cab and pulled the appellant off his wife. Mr Johnston stated that the appellant then tried to choke his wife with his right hand. Mr Johnston hit the appellant twice on the side of his head in an attempt to defend Mrs Bariova. The appellant then struck Mr Johnston on the chin. Once Mrs Bariova and her children managed to get away, the appellant tried to bite Mr Johnston on the arm while he struggled to detain him.

[4] Mr Johnston was able to restrain the appellant on the ground until police arrived and arrested him. Mrs Bariova had fled to safety and was attended to by police. The triage officer, Dr Lee, reported that hair had been pulled out from the side of her head and that she felt tender over that area.

[5] The appellant was interviewed on 20 June 2014. At the start of the interview his solicitor read out a prepared statement on his behalf:

> "I was in Lisburn today and I met my wife and three children at a bus stop. We talked about family matters but then there was an argument. We were both shouting at each other as we both became angry. I was very distressed as I saw my children. A man and some others then grabbed me, they pushed me to the ground. My wife was telling them to stop and that I was her husband. They told her to go away. I was held down until the police arrived. I told the police what happened but I was then taken to the police station. I wish to answer no comment to police questions otherwise.""

He suggested at one point that his wife and one of the witnesses lived in the same hostel and had concocted the story. He was re-interviewed on 7 July 2014. The statements of the witnesses were put to him. He said their account was due to the colour of his skin and because he was a Catholic and they were all Protestants. The police pointed out that the applicant's wife shared his ethnicity.

14. Also of note from the decision of the Court of Appeal is the summary of the pre-sentence report. I notice from the Court of Appeal's decision that the appellant had served eleven years and eight months in prison outside the United Kingdom; that he downplayed his past history of alcohol abuse and concerns regarding the level of domestic abuse in his relationship seeking to blame his wife; that the six children of the family are in care, living separately with foster families.

15. At paragraph 10 the Court of Appeal said of the appellant –

> [10] The report assessed him as a high likelihood of reoffending in light of the above factors. The present offence was a concerning offence where he exhibited

such aggressive behaviour that members of the public intervened and the appellant's wife and children fled the scene in fear of their safety. His actions took place in the context of the victim being a high risk domestic case with a significant history of allegations of domestic abuse. This demonstrated the appellant's willingness to cause both physical and psychological harm to his wife without any regard for her or his children. Real concerns remain regarding the applicant's self-management and his willingness to employ aggression and violence. Given the nature of the offence and on-going concerns it would be pertinent that relevant agencies such as Social Services remain involved. However, in the absence of a confirmed pattern of serious violent offending, the applicant was assessed as not meeting the threshold for posing a significant risk of serious harm. This assessment would be subject to review given any further offending.

16. The Court of Appeal concluded that the sentence was appropriate, stating:-

> [15] First, this attack upon the injured party occurred in a context where the appellant's wife and children had felt compelled to leave home because of risks about their safety. They were plainly, therefore, exceptionally vulnerable and this attack has to be seen as the latest in a series of incidents which must inevitably have given rise to further concerns for the safety of the injured party. Despite the appellant's conviction the pre-sentence report shows that he has failed to demonstrate any insight into his personal responsibility for his actions and more worryingly seeks to place blame for the event on the injured party.
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> [16] In itself that context shows a high degree of culpability for his conduct but perhaps the most culpable aspect is the fact that he exposed his three children to this shocking assault in the public street upon their mother. Each of us sitting in this court has considerable experience of work in the Family Division and we are all too aware of the long-term impacts upon children of exposure to violence of this nature. In particular Orders of the court protecting children need to be observed and those who commit criminal offences in the course of breaching such Orders should expect the court to consider such a breach a serious aggravating factor.
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> [17] In addition to the aggravating factors in respect of the circumstances of the offence his record is also a personal aggravating factor. He has a record for serious offences such as robbery and a recent incident of multiple assault. In a case of this sort these are significant aggravating considerations. It was submitted that it was necessary for the trial judge to explain his sentence by setting out a starting point before taking into account aggravating and mitigating factors and arriving at an outcome. We would not dissuade judges from carrying out that exercise in appropriate cases but it is important that the process for arriving at the right sentence in each case does not become a matter of mathematics rather than judgment. We do not consider that transparency of decision making required such an exercise in this case.
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> [18] We see no merit in the submission that the appellant should gain some advantage from the way in which the case was progressed. He has continued to seek to avoid his responsibility for his conduct. Instead of recognising the harm that he has caused to his wife he has sought to place the blame for his actions on her.

17. I consider that weight can be attached to the assessment of the risk the appellant poses made by the Northern Ireland Prison Service. The appellant has provided nothing of substance beyond his apparent attendance at parenting classes; it is not for the Secretary of State to obtain such documents; it was for him to obtain this evidence and he failed to do so even when he had the assistance of solicitors.

18. Viewing the evidence as a whole I am satisfied that the appellant very clearly represents a genuine, present and sufficiently serious threat to society given the attitude he has shown towards violence against his wife in public and in the presence of children. There is a clear propensity towards violence demonstrated by that and also by his previous offending. It is also shown by his willingness to attack the bus driver who came to his wife's assistance. There is nothing of substance to suggest he has reformed in any way.

19. In assessing proportionality, I note that the appellant has no contact with his children or his former partner. There is no evidence of any work record in the United Kingdom or of any ties which he may have. His age and health are not raised as relevant matters, and his residence in the United Kingdom was relatively short. There is little or no evidence of social integration into the United Kingdom; on the contrary, he has shown by his conduct and blatant disregard for court orders put in place to protect his wife that he has not integrated into the United Kingdom.

20. Taking all of these factors into account and viewing them in the round, I find the Secretary of State has satisfied me that the decision that the deportation of the appellant is proportionate and justified.

**SUMMARY OF CONCLUSIONS**

1. The decision of the First- tier Tribunal involved the making of an error of law and I set it aside

2. I remake the decision by dismissing the appeal on all grounds.

3. No anonymity direction is made.

Signed Date 7 December 2018

Upper Tribunal Judge Rintoul