



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

HU/16547/2018

THE IMMIGRATION ACTS

Heard at Glasgow

Decision & Reasons  
Promulgated

On 7 November 2019

**On 13 November 2019**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

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

Appellant

and

**K Z**

Respondent

For the Appellant: Mr A Govan, Senior Home Office Presenting Officer  
For the Respondent: Mr H Ndubuisi, of Drummond Miller, Solicitors

**DETERMINATION AND REASONS**

1. Parties are as above, but the rest of this decision refers to them as they were in the FtT.
2. FtT Judge Farrelly heard the appellant's appeal on 7 November 2018 and allowed it by a decision promulgated on 11 March 2019.
3. The SSHD's grounds of appeal to the UT are (1) failing to attach correct weight to the public interest and to the appellant's criminal conviction and (2) reaching a perverse conclusion.
4. Mr Govan's submission was along these lines. Although the appellant's case had not qualified for consideration on the "insurmountable obstacles" test within the rules, because he failed on suitability, that test remained the appropriate starting point; the judge had not applied that test, but made a finding only of "a considerable challenge" for the appellant's wife;

there were no considerations which rationally amounted to insurmountable obstacles; the test outside the rules was no less; the decision had to be reversed.

5. It emerged from the submission of Mr Ndubuisi that the FtT was asked primarily to hold that the appellant's conviction, applying the respondent's guidance and case law, was not such that he failed the suitability requirement; and that his application otherwise met the terms of the rules, so that he had a right on family and private life grounds to remain in the UK, and the "insurmountable obstacles" test did not apply.
6. I indicated that the outcome would be as follows.
7. The decision does not reflect the case as it was put. The judge muddled together the suitability requirements and the insurmountable obstacles test, particularly at [21], without resolving either in clear terms; and he reached his conclusion at [28] by way of a cumulative balancing exercise, on no clear legal basis.
8. There may be errors in these respects, but they are not caught by the grounds. The judge did attach weight both to the public interest and to the appellant's conviction. On suitability, the case might rationally have been decided either way. The FtT appears from [12, 20 & 28] to have been on the appellant's side on that point, and if so, further considerations were irrelevant.
9. The respondent might have shown the outcome to be inadequately explained, but ground 1 is only a disagreement about weight, and ground 2 falls short of showing the outcome to be perverse.
10. The decision should have explained the delay between hearing and decision, but does not mention it. The delay may be linked to the lack of clarity of approach. However, the outcome was within the FtT's rational scope, and the grounds do not identify error on points of law by which it falls to be set aside. The decision shall stand.
11. The FtT made an anonymity direction, without saying why. There does not appear to be any pressing need for one, but as the matter was not addressed in the UT, this decision is anonymised.



8 November 2019  
UT Judge Macleman