Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/18277/2018

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice
On 18 February 2019

Decision & Reasons Promulgated
On 27 February 2019

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

MUHAMMAD [Y]
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Rana of Counsel, instructed by Malik Legal Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Davies promulgated on 7 December 2018, in which the Appellant's appeal against the decision to refuse his human rights claim in the context of deportation dated 29 March 2018 was dismissed.

2. The Appellant is a national of Pakistan who entered the United Kingdom in 2007 as the spouse of a person present and settled here. He was given leave to remain as such on two occasions and subsequently granted indefinite leave to remain on the

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same basis on 24 February 2011. On 18 March 2016, the Appellant was convicted of causing grievous bodily harm and sentenced to 6½ years' imprisonment. The Appellant made no specific submissions to the Respondent in response to the notification of intention to deport him, but did tell a prison officer that he wanted to stay with his British wife and children in the United Kingdom, the children being aged four and seven.

3. The Respondent refused the application the basis that the Appellant had given no evidence or details in relation to his family life, in particular, he had not specified the date of birth of his children and there was no evidence of their nationality or to establish any genuine and subsisting family relationships. On the basis of the information that was available, the Respondent found that it would not be unduly harsh on the Appellant's family to remain in the United Kingdom without him or to relocate with him to Pakistan if he was deported. The relationship between the Appellant and his wife was accepted based on his previous immigration history and grants of leave to remain on this basis, but it was noted that there was no evidence that the relationship was subsisting. The private life exceptions to deportation had not been met and there were no very compelling circumstances.

4. Judge Davies dismissed the appeal in a decision promulgated on 7 December 2018, having conducted an assessment only under Article 8 of the European Convention on Human Rights and finding that the Appellant's removal would not amount to a disproportionate interference with the right to respect for his private and family life. In particular, the Appellant's claimed relationships with his wife and children were not accepted and there was a finding of a lack of credible evidence in support of his claim.

The appeal

5. The Appellant appeals on ten grounds, for which permission was granted generally, albeit with comments as to the lack of merit in ground one in particular. The grounds are as follows. First, that the failure of the First-tier Tribunal to grant an adjournment of the hearing was unfair and amounted to an error of law. The second to fifth grounds of appeal are concerned with the finding that there was no family life between the appellant and his wife and children; which is challenged on the basis that the First-tier Tribunal erred in failing to consider the evidence before it of phone contact and visits to the appellant while he was in prison, a failure to give adequate reasons for the finding that there was no relationship and overall an error of law that there was no family life, particularly given that there was evidence of the Appellant's biological minor children. The sixth ground of appeal is that the First-tier Tribunal failed to consider the evidence of the Appellant's wife that she had been struggling to care for their children while the Appellant was in prison. The seventh ground of appeal is that the First-tier Tribunal misunderstood the oral evidence given about the Appellant's criminal offence, the misunderstanding being referred to was that the Appellant thought that the victim was having an affair with his wife, which is not a misunderstanding which goes to the issue of remorse. The eighth ground of appeal is that the First-tier Tribunal failed to give adequate reasons for dismissing the appeal. The ninth ground of appeal is that the First-tier Tribunal failed to apply the

relevant provisions in paragraph 398 and following of the Immigration Rules and the provisions in sections 117A to D of the Nationality, Immigration and Asylum Act 2002. The final ground of appeal is that the First-tier Tribunal failed to consider the best interests of the children pursuant to section 55 of the Borders, Citizenship and Immigration Act 2009.

6. At the oral hearing, Mr Rana relied on the grounds of appeal set out in writing, expanding upon those and the materiality or otherwise of the errors identified. I had indicated at the oral hearing that the decision of the First-tier Tribunal in this case was particularly poor and that the focus should be on whether the errors identified were material.

7. As to the first ground of challenge, Mr Rana accepted that the Appellant's request for an adjournment of the hearing made on 8 November 2018 was refused twice on the papers by the First-tier Tribunal and had not been renewed orally before Judge Davies, which caused him some difficulty with reliance on this ground. However, he suggested that in any event the Judge should have considered of his own motion whether an adjournment was required and granted one, even though not requested by either party. This should have been on the basis of the paucity of evidence before the First-tier Tribunal and despite the Appellant's solicitors expressly confirming to the First-tier Tribunal the day before the hearing that they were ready to proceed. It was submitted that this point becomes important given the consideration of materiality in light of the limited evidence before the First-tier Tribunal.

8. It is not necessary to rehearse the further submissions made on the remaining nine grounds of appeal, all of which have significant merit in identifying failings and errors of law in the First-tier Tribunal's decision. As to whether any or all of these errors are material, Mr Rana submitted that they were because the First-tier Tribunal had failed at the required starting point to consider the appeals on human rights grounds in the finding that there was no family life and in failing to make any assessment of the best interests of the children.

9. In light of the applicable test in an appeal of this sort, where the Appellant has been sentenced to a term of imprisonment of more than four years, that he would need to show very compelling circumstances to outweigh the significant public interest in his deportation pursuant to paragraph 398(c) of the Immigration Rules and/or section 117C(6) of the Nationality, Immigration and Asylum Act 2002, I asked Mr Rana on what factual basis the Appellant's appeal could have been allowed by the First-tier Tribunal. He submitted that there was evidence before the First-tier Tribunal of an adverse impact on the appellant's wife and children during his incarceration which could be sufficient to establish very compelling circumstances. It was accepted that there was only very limited documentary evidence before the First-tier Tribunal and no note had been provided of any oral evidence to supplement the same. At its highest, the only evidence that could be identified as before the First-tier Tribunal in this regard was contained in one sentence of the Appellant's wife's written statement which said, "I believe my children need a father and I have struggled enough in his absence and I want him to share the responsibility of parenthood.".

10. On behalf of the Respondent, Mr Bramble submitted that there was absolutely no merit in the grounds of appeal in relation to an adjournment and as to the other grounds of appeal, the errors identified were not material. It was accepted that the decision of the First-tier Tribunal was not a good one, however it did to deal with the issues under Article 8 on the basis of the evidence before it.

11. In relation to whether there were any very compelling circumstances identified by the Appellant before the First-tier tribunal, it was submitted that there were none. This is a high threshold which the Appellant could not possibly meet on the evidence which was incredibly limited. The Appellant had not sought to obtain any statement from his representative at the First-tier Tribunal hearing as to the oral evidence or anything further submitted as to whether there were very compelling circumstances to outweigh the public interest in deportation and no application had been made under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to rely on any further evidence support of the Appellant's claim.

Findings and reasons

12. As I indicated at the oral hearing and was accepted by both parties, the decision of the First-tier Tribunal in this appeal was particularly poor and with the exception of the ground of appeal in relation to an adjournment which I deal with below, all of the grounds of appeal have significant merit and identify errors of law in the decision. The First-tier Tribunal failed to have any regard to or apply the relevant provisions in the Immigration Rules for deportation nor the compulsory factors for a Tribunal to take into account set out in section 117A-D of the Nationality, Immigration and Asylum Act 2002. There are no proper findings of fact in relation to the Appellant's family, there was a failure to properly take into account even the limited evidence that was before the Tribunal in this regard and no assessment was made of the best interests of the children. This is a case in which the decision of the First-tier Tribunal is so poor and contains so many errors of law, it would normally be necessary for it to be set aside and the decision remade. However, I decline to do so on the particular facts of this appeal because given the extreme paucity of evidence relied upon by the Appellant, none of the errors, even taken cumulatively, are in fact material to the outcome of the appeal as on no legitimate view could the Appellant have succeeded on human rights grounds to resist his deportation from the United Kingdom.

13. As set out above, in accordance with paragraph 398(c) of the Immigration Rules and section 117C(6) of the Nationality, Immigration and Asylum Act 2002, for a person who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above the two express exceptions to deportation. Even if the Appellant's claim was taken at its absolute highest, there being an accepted genuine and subsisting relationship with his wife and children, all of whom are British Citizens and on the basis that it was in the best interests of the children to remain in the United Kingdom with the Appellant, there is nothing in the evidence to suggest even that the unduly harsh test would be met in this case, let alone that there are anything which could legitimately be described as very compelling circumstances.

14. The evidence before the First-tier Tribunal consisted of two short written statements from the Appellant and his wife, neither exceeding two pages and neither containing any specific details as to their relationship or in relation to the children; copies of the birth certificates for the Appellant's children and the identity pages of their passports. The record of proceedings shows that there was no detailed oral evidence given by either the Appellant or his wife in relation to the children either, nor as to the impact of deportation on any members of the family. The evidence from a single sentence in the Appellant's wife's statement that she struggled while the Appellant was in prison contains no detail whatsoever can not establish any basis on which the Appellant's claim could even arguably meet the high threshold and there was simply nothing else in evidence before the First-tier Tribunal, nor has any further evidence been filed with the Upper Tribunal under rule 15(2A) or otherwise.

15. In these circumstances, on no legitimate basis could the Appellant's appeal have been allowed as the evidence fell so far short of the high threshold applicable to him to resist deportation on human rights grounds. For these reasons, although the decision of the First-tier Tribunal is woefully inadequate and contains numerous errors of law, none of them are material to the outcome of the appeal.

16. Finally, there is no error of law in the First-tier Tribunal's failure to adjourn the appeal proceedings before it. Although an application had been made for an adjournment on 8 November 2018, it was refused on the papers on two separate occasions and not renewed orally before Judge Davies. The Appellant's legal representatives had expressly confirmed to the Tribunal the day before the hearing that they were ready to proceed. At the oral hearing before the First-tier Tribunal, there was absolutely nothing before the Judge to suggest that the hearing could not fairly proceed nor any basis upon which he should have considered whether to adjourn the hearing of his own motion. Even if an application for an adjournment had been renewed on the day of the oral hearing in the terms that it was made on the papers, I would not have found that it would be an error of law for the First-tier Tribunal to have refused it, given the lack of any substantive details as to what further evidence was being sought, from whom and when it would be available.

17. For all of these reasons, there are no material errors of law in the decision of the First-tier Tribunal and the decision to dismiss the appeal stands.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

No anonymity direction is made.

Signed

Date 22nd February 2019

Upper Tribunal Judge Jackson