Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10966/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 31 January 2019	**On 21 May 2019**

Before

THE HONOURABLE LORD BECKETT
(sitting as a Judge of Upper Tribunal)
UPPER TRIBUNAL JUDGE PERKINS

Between

F H
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Claire, Counsel instructed by Linder Myers Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 we make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. We make this order because the Appellant seeks international protection. We have dismissed his appeal but it is possible that publicity could create a risk that does not otherwise exist.

2. This is an appeal against a decision of the First-tier Tribunal dismissing the appellant's appeal against a decision dated 9 October 2017 refusing him international protection and leave to remain on human rights grounds. A copy of the decision accompanies the grounds.

3. The appellant is a citizen of Afghanistan. He was born in January 1992. He arrived in the United Kingdom in 2000. His mother claimed asylum and he was her dependant. His mother's claim for asylum was refused but she was given exceptional leave to remain until 8 June 2005 which led to his mother being given indefinite leave to remain in July 2005 and the applicant was given indefinite leave to remain as her dependant.

4. The appellant has not behaved himself. His application for naturalisation was refused because of his conduct. The Secretary of State noted that he had "accumulated nineteen convictions for 30 offences". This is rather clumsy. We assume that it means that the appellant has been convicted of 30 offences on nineteen occasions between January 2008 and August 2015. Most significantly on 14 May 2010 he was convicted at the Crown Court at Southampton on two counts of "being concerned with the supply of controlled drugs, class A (crack cocaine and heroin)". He was sentenced to concurrent terms of eighteen months' detention in a young offender's institution. He was told that he was liable for deportation and he applied for asylum. The asylum claim was unsuccessful and a deportation order was signed. He appealed to the First-tier Tribunal and the appeal was dismissed. His appeal rights were exhausted in May 2016.

5. In June 2016 further submissions were made on his behalf but held not to amount to a fresh claim in September 2016. Still further submissions were made in March 2017 and this led to the decision complained of.

6. The respondent summarised the further submissions at paragraph 20 of the refusal letter in the following way:

> "Below is a summary of your further submissions:
>
> - The situation in Afghanistan has deteriorated since refusal of your asylum claim;
> - Family life with child – WAH (– December 2016);
> - Family life with child – I – M – (– June 2015);
> - Family life with child – A – SH – (– March 2013);
> - Family life with partner – MMC;
> - Private life in the UK;
> - Application to revoke the deportation order against you."

7. The respondent then considered those submissions. He was assisted with the decision of the First-tier Tribunal dated 18 March 2016. The respondent did not accept that the appellant was so far removed from life in Afghanistan that he could not re-establish himself there. In particular the Secretary of State found that the appellant had retained some understanding of the Muslim religion and could communicate in Afghanistan and that there was no danger to him in the event of return.

8. The Secretary of State found nothing significant in the "private life" component of his private and family life. The Secretary of State was conspicuously careful to have regard to the best interests of the children who are all British citizens. The Secretary of State found that the appellant had no contact with the child ASM and that he had not established a genuine and subsisting parental relationship with ASM. It was the appellant's case that ASM had now been adopted and although it was possible that she might want some contact with the appellant after she had achieved her majority the Secretary of State found nothing of much assistance to the appellant in that relationship.

9. The circumstances of IM are different. IM lives with his mother and although he had been allowed some contact that had stopped. Again, the Secretary of State found that the appellant had not established a genuine and subsisting parental relationship.

10. The circumstances of the child WOAH are different again. It was accepted that there was there a genuine and subsisting relationship and that had included cohabitation although the Secretary of State was concerned that the mother identified on the birth certificate was not the person who the appellant said was the child's mother.

11. The Secretary of State accepted the finding of the judge in the first hearing that it would be unduly harsh for W to relocate to Afghanistan but also found it would not be unduly harsh for the child to remain in the United Kingdom with her mother and although there would be an emotional impact it would not be one that would be unduly harsh.

12. The respondent found nothing new in the relationship with the appellant's present partner. It was formed when his immigration status was precarious and although it would be unduly harsh to expect her to travel to Afghanistan and establish herself there it was not found unduly harsh for them both to remain in the United Kingdom in the event of the appellant's deportation.

13. The respondent then, correctly, considered the Rules and looked for very compelling circumstances that would support a decision that he should not be deported. However, the appellant has been convicted of serious drug based offences leading to eighteen months' detention and the Secretary of State found no such circumstances.

14. The Secretary of State accepted that the appellant had not committed further offences but did not find that a particularly helpful additional factor.

15. The First-tier Tribunal heard evidence from the appellant's partner and his mother. The appellant did not pursue his asylum claim before the First-tier Tribunal.

16. The judge found no significant change since the appellant's case was last before the First-tier Tribunal. He found there were no "very significant obstacles in the appellant re-establishing himself in Afghanistan".

17. He then looked carefully at the relationship with the children. He accepted the appellant was trying to resume contact with IM but matters had gone no further than that.

18. The judge accepted that the appellant had been out of trouble for some time but did not accept that he had completely stopped taking drugs although the occasions seemed to be rare.

19. The judge considered the impact of removal on the partner and their child and found the public interest in removing the appellant outweighed the harm to them and dismissed the appeal.

20. Permission to appeal was refused by the First-tier Tribunal but granted on renewal by a Deputy Upper Tribunal Judge. The Deputy Judge was particularly concerned that the First-tier Tribunal had not given proper reasoning for his conclusion that it would be unduly harsh for the appellant's partner and child for him to be removed leaving them without his support and that it had not shown that there were very significant obstacle to his integration.

21. The Deputy Judge was also concerned that the First-tier Tribunal Judge was looking for "very significantly compelling circumstances" which is not a phrase that appears in the Rule or the Act. She assumed that the First-tier Tribunal Judge was looking for "very compelling circumstances," which the First-tier Tribunal Judge correctly identified as the issue at para 18 of the determination. Additionally the Deputy Judge was concerned that insufficient regard had been given to the order of a Family Court in April 2019 directing Social Services to provide information about the child I and her mother.

22. Before us Mr Claire submitted that the grant of permission set out matters in some detail. It seems to us that the Deputy Judge's biggest concern when she gave permission was the effect of the removal on his present partner and their child.

23. Given its importance to the case the information about the relationship between the appellant and his partner is surprisingly thin. The statements show that it began at the end of 2014 and they have continued to live together supporting each other and having a daughter who was born in December 2016. Both statements say that the appellant's partner has health problems which the appellant's partner describes in the following terms:

> "As a result of this skeletal defect, I now have long-term health and mobility issues. Over the years, my health has been a concern to my family, GP and friends. I have suffered nerve damage in both my feet and legs which has resulted in me being dependent on my family for help and support my entire life."

24. That is a tantalisingly vague claim. The statements do not explain the nature of that dependency or its extent. The claim is supported by medical evidence. Certainly there is confirmation of the claim that the appellant's partner suffers from bilateral metatarsus varus deformitis. There was also evidence of minor surgery being done to the feet.

25. We note as well that the medical reports use the name of the mother on the birth certificate which is not the same name by which the partner is known. The date of birth and addresses are the same and we assume that the appellant's partner, as she is perfectly entitled to do, uses two different names in different circumstances.

26. The medical report dated 13 May 2015 says that the appellant's partner's foot has not responded as well as was hoped.

27. What we are not able to do from the medical evidence is form a picture of a woman who is wholly dependent on the appellant for her day-to-day care. She had some problems with her feet and the evidence is that having the appellant around helps but that is as far as it

goes. We must assume that we are not told more because there is not more to tell and this is not a weighty point.

28. It is supportive of the appellant but does not illuminate much, if at all, the adverse effects of removal.

29. The grounds of appeal supporting the application are more expansive. They say that the appellant's partner's feet were damaged in attempts at corrective surgery. They point out that the First-tier Tribunal on the previous occasion accepted that the partner was bedbound for two or three days a week and that she was awarded the maximum personal independent payment, then in the range of £100 to £110 a week. The partner's statement does explain that she is supported by her parents.

30. We have considered the submissions. Although we were taken to case law by Mr Claire he accepted that the decisions were illustrative and he was not advancing any new points of principle.

31. We see no basis for attacking the finding that the appellant can return to Afghanistan. Although there will be difficulties very large numbers of young men from Afghanistan are considered to be able to return. There is economic activity in Kabul and the advantages of some experience in the west, as well as reasonable health, give people returned from the United Kingdom the chance to establish themselves. No-one pretends that it is easy but it is achievable and there is no basis for criticising the judge's decision to that effect.

32. Clearly the relationship with the older children is non-existent or barely made out and they cannot feature.

33. The appellant's partner formed the relationship when his immigration status was precarious. By statute (Section 117B(4)(b) of the Nationality, Immigration and Asylum Act 2002) little weight should be given to a relationship formed with a qualifying partner when the person was in the United Kingdom unlawfully. It is unclear when the relationship was "formed" and so we must assume that it was not at a time when the appellant was in the United Kingdom unlawfully but his status was precarious because he has known about the intention to deport him since 2010 and a deportation order was signed in December 2015. Even though the relationship is one that should be respected the judge was entitled to give it little weight because of the circumstances in which it developed.

34. The judge rightly identified the need for the appellant to satisfy the "unduly harsh test" when considering the effect of deportation on the partner or the child. Deportation is a severe sanction. The evidence is that the appellant with his partner and child are living together as a nuclear family and supporting each other. The support goes beyond the ordinary support between husband and wife because of the particular health needs of the appellant's partner. These are not exaggerated and it was clear that she is assisted by her own parents. However she is a little bit more dependent on the appellant than might otherwise be the case and that is important. There must be some concern about the prospect of his partner in less than perfect health having to manage on her own and bring up their infant daughter. It is well accepted that she could not go to him in Afghanistan and he would not be allowed back to her. Communication will be possible from time to

time but nothing close to day-to-day support is possible. It must be likely that their relationship will diminish.

35. We have reflected on this. Deportation can be expected to interrupt significantly very important human relationships and will often sever them but it is what Parliament says is required. The position is different if the effect is "unduly harsh". It follows that some harshness is expected. Having regard to the judgment of the Supreme Court in KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53, at para 27, we are not persuaded that the effect of deportation would be unduly harsh.

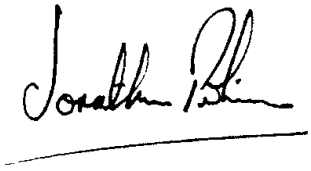
36. We also note that there is nothing in the relationship between the appellant and his mother which amounts to much on an Article 8 balancing exercise. She is an independent adult. No doubt she would prefer her son to be in the United Kingdom but that is not relevant.

37. With respect the First-tier Tribunal Judge's reasoning was, in places, thin and we understand why the Deputy Judge gave permission but it is clear enough and when we dig deeper we find that nothing of merit has been overlooked.

Notice of Decision

It follows that we dismiss the appeal against the First-tier Tribunal's decision.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 20 May 2019