IAC-AH-SC-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/16838/2018

<u>THE IMMIGRATION ACTS</u>

Heard at Field House	**Decision & Reasons Promulgated**
On 17 March 2020	**On 19 May 2020**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

SHAKEB IMRAN
(ANONYMITY DIRECTION NOT MADE)

<u>Appellant</u>

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

<u>Respondent</u>

<u>Representation</u>:
For the Appellant: Mr Z Mughal, instructed by Osmans Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

<u>DECISION AND REASONS</u>

1. The appellant is a national of Pakistan. He appealed to a Judge of the First-tier Tribunal against decisions of the Secretary of State to make a deportation order and also refusing a human rights claim.

2. The appellant was given indefinite leave to remain in the United Kingdom on 6 May 2004 as a dependant of an EEA national, his father, who is a Dutch national exercising treaty rights in the United Kingdom.

3. Between 28 May 2008 and 8 June 2017, the appellant was convicted of eighteen separate offences. On 8 June 2017 he was convicted of

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possession with intent to supply a controlled drug, class A heroin and was sentenced to four years' imprisonment.

4. The judge heard evidence from the appellant's parents and siblings. He noted the evidence of the family members concerning efforts they had put in to assist the appellant to move away from crime and specifically from drugs, but, the judge concluded, they had failed in their endeavours. The appellant lived in his parents' home yet according to their evidence they were completely unaware that he had been dealing in drugs on a significant scale. Although in his father's evidence it was said that the appellant was keen to help the police to identify drug suppliers this, the judge commented, was not compatible with the appellant's evidence in that he denied knowledge of supplying drugs, claiming merely in fact to have found them and taken them home. The judge noted also that the appellant had previously faced deportation and had a successful appeal against the deportation decision following a hearing in the Upper Tribunal on 14 June 2010. He had expressed remorse for his actions as, indeed, he had done throughout the current hearing, but the judge rejected the claim that that expression of remorse was genuine. The family had said at the previous proceedings that they were convinced that he could now subsist without the use of drugs. The family had clearly made some effort, or at least gave assurances that they would make efforts with the appellant following the last appeal, but it had proved in vain. He had not only returned to using drugs himself but had been convicted of a much more serious offence of dealing in class A drugs.

5. The judge accepted the appellant's evidence that he had found some employment and was attending his counselling sessions once a week and had been tested and found to be free from drugs, but the judge bore very much in mind that the appellant had made all of these assurances previously, and commented that of course it was very much in his interest with the hearing pending that he should behave himself. The judge said that he had no confidence at all that once the hearing was over, should it go the appellant's way, he would not return to old habits, and he was reinforced in this view by the content of the OASys Report. At page 65 of that report it was suggested that the appellant acted without considering the consequences of his behaviour, though the officer assessed that there was no current significant risk posed by him to the public. The judge remarked that the appellant was a person with poor decision making skills who lacked consequential thinking around his antisocial behaviour, had an established pattern for dishonest, acquisitive and drug-related offending and had very little insight into the serious nature of his antisocial behaviour and would give into temptation to carry acts of criminality and associated offending behaviour on occasions that presented themselves. He was assessed as presenting a medium risk to the public and the community according to the synopsis at pages 66 and 68 in the report, but in the judge's view, on the evidence, the risk of reoffending was high. According to the passage at page 61 the offending was financially motivated. The judge noted that the OASys report had only partially been

reproduced and so he was not fully aware of the supervising officer's view of the likelihood of future conviction as against risk of harm to the public.

6. The judge also noted that the appellant had completed his heroin and crack awareness course. It was assessed in the report that the appellant's desire to receive help in the area was genuine and that his motivation to tackle the issue was very high, but it was also recorded that prior to his arrest he had misused crack cocaine and heroin on a daily basis using fairly large amounts of both substances. On the evidence it was also clear that the appellant had been resorting to drugs since school days. Whilst the judge accepted that the appellant had a period of about seven years since the last hearing without coming to the police's attention, he considered that it was impossible to say when his drug habit resumed because his parents claimed they were completely unaware of what was going on, even though he was living in their house. He also remarked that, notwithstanding the length of time the appellant did not come to police attention, when he did reoffend the offence was very much more serious and that of course was reflected in the four year prison sentence.

7. As regards the appellant's position under the EEA Regulations, it was common ground that he had permanent residence as a family member of an EEA national exercising treaty rights in the United Kingdom. It was not argued that imperative grounds of public security applied. As a consequence, it was necessary to establish that there were serious grounds of public policy or public security in issue.

8. The judge found that there were serious grounds of public policy. The decision was based exclusively on the conduct of the appellant and this was judged to represent a genuine, present and sufficiently serious risk threatening one of the fundamental interests of society. The judge remarked that the question of rehabilitation was of course important, but though the appellant had committed to a course with Turning Point, and it was judged by Spinney Hill Recovery House that this would be of benefit to him, he had had earlier opportunities to rehabilitate himself with family support and had failed to make good on that. Given the nature and seriousness of the most recent offence, his long-standing association with drugs, the previous opportunities to rehabilitate himself that had been spurned and the failure of his family effectively to deal with his criminal behaviour, the judge found that he represented a genuine, present and sufficiently serious threat.

9. As regards integration, the judge noted the appellant was now 35 and had been living in the United Kingdom for twenty years. He had had past employment and had been educated in the United Kingdom and spoke English. His economic situation was not such as to prevent him from committing offences of dishonesty to fund his drug habit. He lived with his parents. The judge considered that there was little evidence of any real, social or cultural integration into the United Kingdom, and was not satisfied that he had been told the truth about the extent of any links the

appellant might have with Pakistan. He considered that for obvious reasons the appellant and his parents had said that he had no such links, but he noted the appellant's father had been in Pakistan for a period of three weeks at the time of the previous hearing because of the death of a friend. That was a commitment that had been considered so important that he was unable to attend the first hearing. An application for an adjournment had been made on the basis that the appellant's father had a business interest in Pakistan. The appellant had admitted that he spoke the language, as a national of Pakistan and the judge was not persuaded that he had no links with Pakistan.

10. The judge noted that the appellant also relied on Article 8. Counsel before him did not seek to argue that the finding of the Tribunal previously that he did not have family life in the United Kingdom could be departed from, but that he did have a private life in the United Kingdom, having lived here for twenty years and that part of that private life was his connection to other adult family members. He had employment and had begun to engage in a rehabilitation course. The judge accepted that Article 8 was engaged and that the decision to deport represented an interference with his right to private life. The judge noted that the appellant was subject to automatic deportation under section 32 of the UK Borders Act 2007. Deportation of a foreign criminal was conducive to the public good, though an exception arose where deportation would breach a person's Convention rights. The decision was in accordance with the law and in pursuit of a legitimate aim, and the judge went on then to consider proportionality. He acknowledged that the appellant's private life had been established whilst he had been present with leave, but noted that under section 117C(1) of the 2002 Act, the deportation of foreign criminals was in the public interest and the more serious the offence the greater the public interest in deportation. In the case of a foreign criminal who had been sentenced to a period of imprisonment of at least four years, as here the public interest required deportation unless there were very compelling circumstances over and above those described in sections 1 and 2 of section 117C.

11. The judge went on to consider the issue of "very compelling circumstances", noting what had been said by the Upper Tribunal in MS [2019] UKUT 00122 (IAC). A case specific analysis was required as to the nature of the public interest to be weighed against any factor on the foreign criminal's side in the balance. The judged noted that there were no medical issues at play in this case and nor was it necessary to take into account the welfare of any children or impact on a spouse or partner. The appellant had had the benefit of practical support from his family whilst he had been living in the United Kingdom, and the judge saw no reason why they should not make some provision for him in Pakistan to help him re-establish himself. He would be deprived of attending the counselling course he was currently undertaking and it had been asserted that no such course was available in Pakistan, though there was no independent evidence of that. The judge noted also that the appellant said in his most recent statement that he genuinely believed that he no longer was

dependent on drugs and did not suffer from withdrawal symptoms. The judge concluded there was nothing by way of very compelling circumstances applying in this case. He bore in mind the health problems of the appellant's mother and the impact on her of his deportation, but he considered this was not a sufficiently strong reason taken alone or in conjunction with other matters to outweigh the public interest in having the appellant removed from the United Kingdom. The proportionality balance fell on the side of the public interest. The appeal was dismissed.

12. The appellant sought and was granted permission to appeal on the basis that the judge should have adjourned the hearing to enable the respondent to produce the complete OASys Report, that he had failed to consider Exception 1 of section 117C, had erred with regard to the issue of very significant obstacles to integration and with regard to the issue of very compelling circumstances.

13. Mr Mughal provided a skeleton argument. He did not pursue the adjournment issue, but otherwise the grounds were relied on and developed. Mr Mughal argued that in line with what had been said in AM [2012] EWCA Civ 1634, the OASys assessment had to be properly considered and it was necessary to engage with the evidence which caused the probation officer to reach the conclusion he did and with the appellant's conduct since his release. The judge had therefore failed to give proper weight to the OASys assessment and failed to consider the evidence of the information leading to the probation officer's conclusion as to the genuineness of the desire to receive help. In the absence of such an assessment there was no basis to conclude that the appellant would return to his old habits should the hearing go his way.

14. Also, at paragraph 48 of his decision where the judge referred to page 65 of the OASys Report there was no current significant risk posed by the appellant to the public and again there was no consideration of the evidence which led to the probation officer's conclusions as to low risk, so no basis to conclude that the appellant posed a high risk of reoffending. There was therefore no basis for the judge to conclude, as he did at paragraph 54, that the appellant was a sufficiently serious threat, and no basis to conclude as he did to the grounds of public policy requiring his deportation.

15. As regards the point made in the grounds about Exception 1, the Article 8 element of the claim was addressed at paragraph 58 onwards of the judge's decision. Prior to that there was no consideration of Article 8. Mr Mughal referred to paragraph 9 of his skeleton argument and the reference there to NA (Pakistan) [2016] EWCA Civ 662. It was necessary to consider the exceptions before considering whether there were compelling circumstances going beyond. In NA it was emphasised that all the factors in the Exceptions had to be considered. At paragraph 55 the judge considered the integration point on the question of any significant obstacles to integration, and that seemed to conclude on the basis entirely

of rejecting that the appellant had no links in Pakistan. It was solely on that point that the judge found the appellant would not have very significant obstacles to integrating into Pakistan. Reliance was placed on paragraphs 18 and 20 of the grounds, in particular what was said about the idea of "integration" in Kamara [2016] EWCA Civ 813. Reliance was also placed on what had been said by the Court of Appeal in Sanambar [2017] EWCA Civ 1284. The issue of integration was not limited to links to the country of return. Overall, it was argued with respect to the exemption that no proper consideration had been given to whether the appellant satisfied Exemption 1. He had spent more than half of his life lawfully in the United Kingdom and hence it was necessary to consider integration into Pakistan. So even if the Tribunal found the judge did in principle look at Exception 1, that assessment was incomplete and confusing. It was unclear on what principles the judge had acted in respect of very compelling circumstances beyond the exceptions. With regard to the Secretary of State's skeleton argument, the point was reiterated that consideration by the judge of Exception 1 was inadequate.

16. In her submissions Ms Cunha argued that the case concerned the EEA Regulations and in combining what was said about section 1 the judge might not have applied Schedule 2 to the Regulations. It was not necessary for Article 8 to be considered. The decision of the Court of Appeal in Shrestha [2018] EWCA Civ 2810 was put in. Particular reference was made to paragraphs 30 to 34. The Tribunal had to decide whether the judge had made a safe decision about risk and the appellant representing a threat to fundamental interest of society. Anything about Article 8 was irrelevant as this was not an Article 8 appeal.

17. As to how Regulation 27 worked, it was necessary to look at the risk that the appellant posed and balance it out proportionately and take into account the risk of reoffending.

18. Ground 1 argued that there was an error at paragraphs 47 and 48 of the judge's decision concerning the less weight attached to the OASys Report. This was not true however. The judge had not attached less weight but dealt with the report in the context of the overall appeal, including the 2010 appeal. The appellant had an ongoing drug problem and he had tried and failed to stop it and hence there had been persistent offending and these were egregious offences. Therefore, notwithstanding the OASys Report, the judge took the view he did of the appellant's likelihood of reoffending if he were successful in his appeal. It was said in the OASys Report that the appellant lacked consequential thinking around his antisocial behaviour. This was relevant to the question of Treaty integration whether his pattern and history showed he would change his ways.

19. It could be seen at paragraph 43 of the judge's decision that the appellant did not accept his recent conviction. Paragraph 44 addressed the family context, and this was an argument similarly made in 2010. So the

appellant had already been through this process once. The judge highlighted this. The appellant lived at his parents' but they were unaware of his drug activities. They were unclear what was going on when he was living under their roof. So they had no control over him and he was not seeking their help: he could not have done as they would have known.

20. As regards rehabilitation there was a contradiction. He had said he did not commit the offence so he would not help the police, as noted by the judge at paragraph 44. Weight was attached to the OASys Report but the judge looked at the documents and the wider scope of things and considered them in the context of the correct legal test. This was a drugs crime and as had been held in Bouchereau drugs on their own could amount to a sufficiently serious offence. The judge's conclusions at paragraph 54 were wholly appropriate.

21. For completeness Article 8 was considered in Exception 1 and the compelling circumstances test and integration of the very significant obstacles. The decision in AS (Iran) put Kamara into context. A person had to be considered in the capacity of being an insider and whether they would be able to move there, so even if this was necessary to be considered the judge had done so properly. The appellant would be enough of an insider if he returned. His spoke English and had a work history. The judge had considered the evidence about links, at paragraph 55 of his decision. No reasons had been given as to why the appellant could not return. He was aged 35 and was capable of working and his father had business interests in Pakistan. He could be an insider and good reasons had been given. Offending could not be considered with regard to evidence of integration, as held in Binbuga. He had shown disregard to the law and authority and demonstrated little integration. The judge gave proper consideration to very compelling circumstances. The appellant did not meet the exceptions. But the judge did not need to address these matters anywhere as it was an EEA deportation appeal.

22. By way of reply Mr Mughal pointed to paragraph 1 of the judge's decision and the fact there had been a decision to refuse a human rights claim and the appeal had been against a human rights decision so the judge had to consider section 117C properly. Certainly EEA law was relevant to the appeal but there was the human rights element also.

23. The cases that Ms Cunha relied on did not deal with the situation where there was a human rights decision with an EEA element. She had argued that the judge had properly assessed the appellant but then said that there was no evidence that he would not return to his old habits and he denied the offence. Again, reference was made to what had been said in AM quoted at paragraph 6 of the grounds to the context of an appellant who was anxious to minimise and even deny his criminality and nevertheless the report had to be addressed properly, as had been held there. There had to be an analysis of the reasons or information leading to

the Probation Officer's conclusion that the desire to rehabilitate was genuine. This ought to have been assessed before the decision that the appellant would return to his old ways. The absence of such an assessment meant the overall assessment was inadequate.

24. With regard to the issue of very significant obstacles to integration, it was quite clearly not just answered on deciding whether the appellant had links to Pakistan or not. The judge had done so erroneously and found no links so there were not very significant obstacles to integration. Kamara was relied on in this context. There were clearly other considerations which had to be considered and determined with regard to obstacles to integration.

25. I reserved my decision.

26. At the outset, it is clear that there was not just an EEA decision which was appealed but also a human rights decision. As Mr Mughal pointed out, the decision was made to refuse the appellant's human rights claim on 31 July 2018, there having been a decision on 30 July 2018 to make a deportation order by virtue of section 32(5) of the UK Borders Act, and the EEA Regulations element comes in because of the act of the appellant being a dependant of an EEA national, his father, who is a Dutch national. Accordingly, it must be right that there was an Article 8 appeal to be considered as well as an EEA appeal.

27. I have set out above the appellant's history and the reasons the judge gave for dismissing his appeal. Ground 1 is concerned with the judge's findings about risk of reoffending in light of the OASys assessment and the guidance in AM from which I have quoted above. In essence it is argued that there was an unacceptable contrast between the OASys assessment, noted by the judge at paragraph 48 of his decision, that the appellant posed no current significant risk to the public and presented a medium risk to the public and the community and the judge's conclusion at paragraph 54 of his decision that the appellant posed a genuine, present and sufficiently serious threat.

28. It does not seem to me that the judge erred as contended or at all. The conclusion in the OASys Report was that the appellant presents a medium risk to the public and the community, the judge noting the pages of the report where that was set out, and also noted what was said in the report that the appellant acted without considering the consequences of his behaviour, and although there was no current significant risk posed by him to the public he was a person with poor decision making skills who lacks consequential thinking around his antisocial behaviour, has an established pattern for dishonest, acquisitive and drug-related offending and has very little insight into the serious nature of his antisocial behaviour and will give in to temptation to carry out acts of criminality and associated offending behaviour on occasions that present themselves. The judge therefore gave detailed consideration to the contents of the OASys Report. I do not

consider that the judge can properly be said to have come to a conflicting view from that in the report in concluding, as he did, at paragraph 54 of the level of threat the appellant poses bearing in mind that the OASys Report concluded that the appellant presents a medium risk to the public and the community. The judge was entitled to take the view he did at paragraph 48 of the heightened risk of offending bearing in mind his careful and detailed overall assessment of the appellant's history and behaviour, and, as he noted at paragraph 48, the OASys Report had only been partially reproduced so he was not fully aware of the supervising officer's view of the likelihood of future conviction as against risk of harm to the public.

29. As a consequence, I consider the judge did not err as contended in respect of ground 1.

30. Ground 2 is concerned with the contention that the judge erred in respect of Exception 1 as set out at section 117C of the Nationality, Immigration and Asylum Act 2002. This applies where, as in this case, the appellant has been lawfully resident in the United Kingdom for most of his life. In such a case the appellant has to be socially and culturally integrated in the United Kingdom and there would be very significant obstacles to his integration into the country to which it is proposed that he would be deported. It is clear from section 117C(6) that in the case of a foreign criminal such a this appellant 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 those described in Exceptions 1 and 2. It is argued that the judge erred in not addressing Exception 1 and in any event in what he said with regard to very significant obstacles to integration, noting that the appellant had admitted he spoke the language as a national of Pakistan and the judge was not persuaded he had no links with that country in that the whole notion of integration was a more complex and nuanced matter than had been done by the judge.

31. Thus, in Kamara, to which I have referred above, it was said as follows:

> "The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

32. The judge considered the issue of integration essentially in the context of his evaluation of the EEA element of the claim. He noted that the appellant was now 35 and had been living in the United Kingdom for twenty years. He had been employed in the past and had been educated

in the United Kingdom and spoke English. The judge observed that his economic situation was not such as to prevent him from committing offences of dishonesty to fund his drug habit. The judge considered there was little evidence of any real, social or cultural integration in the United Kingdom and was not satisfied he had been told the truth about any links the appellant might have with Pakistan. It was said that he had no links but his father had been in Pakistan for a period of three weeks at the time of the last hearing because of the death of a friend and an application for an adjournment had been made that he had business interests in Pakistan. The appellant had admitted he spoke the language, was a national of Pakistan and the judge was not persuaded that he had no links with that country.

33. The judge went on thereafter to address Article 8. He addressed the question of whether there were very compelling circumstances, at paragraph 58 and paragraph 59 of his decision. He noted that what constitutes "very compelling circumstances" requires a case specific analysis of the nature of the public interest to be weighed against any factor on the foreign criminal's side of the balance. The judge noted that there were no medical issues in play nor is it necessary to take into account the welfare of any children or impact on a spouse or partner. The appellant had the benefit of practical support from his family whilst living in the United Kingdom and the judge saw no reason why they should not make some provision for him in Pakistan to help him re-establish himself. He noted that the appellant would be deprived of attending the counselling course he was currently undertaking and though it had been asserted that no such course was available in Pakistan, there was no independent evidence of that. The judge's conclusion was that there was really nothing by way of very compelling circumstances applying in this case.

34. Although clearly it would have been preferable if the judge had addressed the issues of integration in the United Kingdom and very significant obstacles to the appellant's integration into Pakistan in the context of the Article 8 evaluation, it is clear that these issues were in his mind and were given consideration, in particular at paragraph 55 of his decision. It is clear that he concluded that the appellant is not socially and culturally integrated into the United Kingdom, and he gave reasons for this, as he did in respect of his conclusion that he was not persuaded the appellant has no links with Pakistan bearing in mind he speaks the language and is a national of that country. It is relevant to note, with regard to the guidance in Sanambar, that the judge had observed earlier in that paragraph that the appellant had had past employment and had been educated in the United Kingdom and spoke English. It seems to me that the points the judge made at paragraph 55 of his decision taken as a whole are such as to satisfy the requirement as set out in Kamara and in Sanambar of the need to make a broad evaluative judgment, as to the appellant, will be enough of an insider in terms of understanding how life is lived in Pakistan

and a capacity to participate in it so as to be able to operate there on a day-to-day basis.

35. But in any event, the judge considered as he was required to whether there are very compelling circumstances over and above those described in Exceptions 1 and 2, and, as I have noted above, found that there were none. Again, it seems to me that these were conclusions to which he was entitled to come. It is, as the judge properly noted, a matter acquiring a case specific analysis for the relevant factors on either side of the balance, and in my view the judge came to proper conclusions in this regard in his evaluation of this element of the claim at paragraphs 58 and 59 of his decision.

36. Accordingly, the appeal is dismissed on all grounds.

No anonymity direction is made.

Signed	Date
Upper Tribunal Judge Allen	12 May 2020