



IAC-AH-SAR-V1

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

Appeal Number: HU/24953/2018

THE IMMIGRATION ACTS

**Heard at Birmingham
On 22 November 2019**

**Decision & Reasons Promulgated
On 16 January 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**FA
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Mills, Senior Home Office Presenting Officer

For the Respondent: Mr Yusuf, Kingswood, Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born in 1993 and is a male citizen of Afghanistan. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 11 October 2018 to refuse his human rights claim. He was served with a notice of intention to deport him on 1 October 2018. The appellant had entered the United Kingdom in December 2007 when he claimed asylum. He was granted discretionary leave on account of his age

until 1 July 2010. Following refusal of an application for further leave to remain, an appeal to the First-tier Tribunal against that refusal was dismissed by a decision dated 27 January 2011. In March to 2017, the appellant was granted limited leave to remain and, in July 2015, he married his British citizen partner in an Islamic ceremony. In April 2018, the appellant was sentenced to 16 months imprisonment having pleaded guilty to the charge of actual bodily harm. He had previously been convicted in 2015 of resisting a police officer. The First-tier Tribunal, in a decision promulgated on 7 June 2019, allowed the appellant's appeal on Article 8 ECHR grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The appellant and his British partner have three children now aged four, three and one years respectively. The judge found that it would be unduly harsh for the children to remain in the United Kingdom without the appellant. The Secretary of State challenges that decision on the basis that the analysis is flawed and the reasons given for allowing the appeal inadequate. Mr Mills, who appeared for the Secretary of State, referred me to the decision at [62]:

The decision has all sorts of implications for these children's futures, financial practical emotional and psychological. Children find themselves in a single-parent family in the care of a young mother who will struggle to cope. Even this may not be enough to meet the unduly harsh test will stop but it is the fact that visits to spend time with their father in Afghanistan will be practically impossible and potentially dangerous, that tips the case into the unduly harsh category.

3. As the judge herself plainly states, but for the 'practical impossibility' of any contact visits taking place, the deportation of the appellant would not result in and unduly harsh consequences for the children and partner remaining behind in the United Kingdom. Mr Mills submitted that the judge had completely failed to consider the possibility of contact visits taking place in a third (less dangerous) country, for example Pakistan. I agree with that submission. I find that the judge has been hasty in concluding that contacts visits simply cannot take place at all, particularly given that the previous Tribunal in January 2011 had clearly found [35] that the appellant still has family living in Pakistan, a finding which has not subsequently been contradicted.
4. There are other problems with the First-tier Tribunal's decision. At [48], the judge found that the appellant and his partner had not been 'entirely honest when they denied that they had received help from [the partner's] family members while the appellant was in prison.' Notwithstanding that finding, judge went on to find at [52] that such support would not 'be available...in the longer term due to the other commitments in her extended family.' No reasons have been given by the judge for, on the one hand, refusing to accept what the partner had said about help extended by the family in the past whilst, on the other hand, accepting her claim that such help would not be forthcoming in the future. In the light of the errors which I have identified, the judge's conclusion that the effect of

deportation upon the children would be unduly harsh is rendered unsafe. Indeed, for reasons which do not emerge clearly from the decision, the judge appears to have formed the view that the separation of the children from the appellant would be nothing short of emotionally and financially catastrophic for them, a conclusion which, given the availability of family support in the United Kingdom and the possibility of contact visits taking place in Pakistan and in the absence of any support for such a view in the evidence, including the social workers report, is difficult, on the current evidence, to sustain.

5. I have decided to set aside the decision of the First-tier Tribunal. I have considered the matter of disposal. Mr Mills submitted that, if there is any fresh evidence regarding the family circumstances, then the appropriate course would be to remit the appeal to the First-tier Tribunal for the decision to be remade. He also submitted that, on the basis of the existing evidence, it would be appropriate for the Upper Tribunal to remake the decision dismissing the appeal. Unfortunately, the appellant's representative was not forthcoming regarding the existence of fresh evidence. However, I am concerned that any failings in respect of the preparation of this appeal on the part of the representatives should not result in any unfairness for the appellant and his family. Moreover, the primary error of the judge lay in her failure to consider relevant aspects of the appeal, namely the feasibility of contact taking place in a third country. I am satisfied that that is an aspect of the appeal which requires further examination and fact-finding. For that reason, I have decided to return the appeal to the First-tier Tribunal for the decision to be remade at or following a hearing.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Ford) for that Tribunal to remake the decision.

Signed
2019

Date 31 December

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

