



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-003389

First-tier Tribunal Nos: PA/53611/2023  
LP/02808/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 6<sup>th</sup> of December 2024

**Before**

**UPPER TRIBUNAL JUDGE LOUGHRAN**

**Between**

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

Appellant

**and**

**RS**

**(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Ms S McKenzie, Senior Home Office Presenting Officer  
For the Respondent: Mr S Bellara, Counsel, instructed by Talal & Co Solicitors

**Heard at Field House on 21 October 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant, his wife and child are granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant, his wife or child. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Secretary of State for the Home Department ('SSHD') appeals with permission of Designated First-tier Tribunal Judge Shaerf against a decision of First-tier Tribunal Judge Suffield-Thompson ('the judge') dated 23 June 2024 allowing the appellant's appeal.

2. I shall refer to RS as the appellant and the SSHD as the respondent as they were in the First tier Tribunal. I shall refer to the appellant's child as "T" as in the First tier Tribunal determination.

### **Background**

3. The appellant is a national of India born in 20 April 1974.
4. The judge found at [42] the following facts were proven on the balance of probabilities:
  - (i) The Appellant is a citizen of India.
  - (ii) He was granted ILR in the UK on 30 March 2001.
  - (iii) He was sentenced to 12 years custody and 3 years on licence.
  - (iv) He was served with a deportation notice on 5 December 2008.
  - (v) He was granted parole in July 2011.
  - (vi) He complied with his licence conditions.
  - (vii) His deportation was deferred in 2012 due to self-harm and a suicide attempts due to his poor mental health.
  - (viii) He claimed asylum in August 2012 and this was refused.
  - (ix) He was removed in 2016 to India.
  - (x) His wife and child visited him twice in the period of 2016 and 2020.
  - (xi) He re-entered the UK and claimed asylum again on 9 May 2020.
  - (xii) On 26 August 2021 the NRM concluded that he had been a victim of modern day slavery in both India and Europe.
  - (xiii) He is married.
  - (xiv) He has a child diagnosed with autism and other cognitive conditions.
  - (xv) He lives with his wife and their child "T" who is eleven at the time of this hearing."
5. On 16 June 2023 the respondent made a decision refusing to revoke the deportation made in respect of the appellant and refusing his protection and human rights claim.

### **The appeal to the First tier Tribunal**

6. The appellant appealed against that decision and the appeal came before the judge remotely on 19 June 2024. The appellant was represented by Mr Bellara of Counsel, and the respondent was represented by Mr Malcolm, a Home Office Presenting Officer. Both the appellant and his wife were called to give evidence.
7. In a decision dated 23 June 2024, the judge dismissed the appellant's appeal against the refusal of his protection claim but allowed it on human rights grounds under Article 8 ECHR.
8. The judge found at [55] that there were "real issues with his credibility due to significant inconsistencies in changing accounts that he presents at various times

in his protection claims” and that the appellant had therefore not proved to the required standard of proof that he is at risk on return.

9. The judge addressed the “credibility of the appellant aside from his asylum claim” at [63]-[80] and the “credibility of the witness” (the appellant’s wife) at [81] expressing concerns about both.
10. The judge outlined the private life rules at [82]-[85] and concluded that there were not very significant obstacles to the appellant’s integration to India at [94]. The judge considered the appellant’s offending history at [95]-[98], the evidence of rehabilitation and risk of reoffending at [99]-[109], the appellant’s cultural and social integration into the UK at [110]-[111]. The judge found that the appellant was integrated into life in the UK.
11. The judge considered T’s best interests at [113]-[129]. The judge accepted at [127] that the separation from her father and the negative effect on her behaviour would have an emotional impact on T. At [129] the judge found that T’s ASD means that she struggles with change and thrives with consistency so removing the appellant would cause a huge disruption in T’s life which was not in her best interests in the short or long term.
12. The judge noted that the appellant relied on a report from an independent social worker. Having considered her qualifications he noted at [115] that he relied “solely on the parts of the report that relate to the child and her needs and best interests.” The judge also expressed concerns at [125] that “there were elements in the report that suggested that the Appellant and his wife had misled the SW.” The judge considered at [120] that “much of the report deals with studies and research into children who are separated from their parents and this was of great assistance to the Tribunal.”
13. The judge listed factors that fell in the appellant’s favour at [135]:
  - (i) The Appellant came to the UK in 1998 at the age of 22 and has lived here until 2016. He then returned in 2020 and has been here since. He is now over 50 years of age so the UK is his home.
  - (ii) He has a wife and disabled child in the UK.
  - (iii) Although I have not found that there are very significant obstacles I do find that the Appellant may initially find it hard to make a new life India and I do accept it will take a while for him to establish himself. However, I do not find that his wife and daughter could live in India due to T’s disability and the support she receives here.
  - (iv) I find that he is rehabilitated and that he is unlikely to commit a further violent offence.
  - (v) He is no longer involved in drugs.”
14. The judge listed the factors that fell in the public interest in the appellant’s deportation at [136]:
  - (i) I find that he has shown some remorse for the offence but that it is limited.

- (ii) The seriousness of the offence is a relevant consideration. The Appellant's index offence is very serious as reflected in the length of sentence and the sentencing remarks.
- (iii) There is a significant public interest in the deterrent effect of deporting foreign criminals
- (iv) I remind myself of **N (Kenya) v SSHD** [2004] EWCA Civ 1094 and **OH (Serbia)** [2008] EWCA Civ 694. I find that the expression of society's revulsion at the particular crimes committed by this Appellant and the building of public confidence in the treatment of foreign citizens who commit serious crimes is a relevant feature of this appeal.

15. At [137] the judge found that:

"Looking at all of the evidence in the round, I find that he does have an autistic child with whom he has a very close bond and who I find he is devoted to and plays a very significant role in her day to day care. He is, I find, an excellent father and his child derives significant benefit from her relationship with him. He is clearly a massive part of her support system and due to her disabilities will continue to be so for the rest of her life".

16. The judge made the following conclusions at [140]-[41] and [146]:

"I find that this is not just a case of a child who will miss her father, as this is naturally the result of all deportations if a child and parent are separated. I agree with the SW (AB page 126) that removing the Appellant would not be in the child's best interests but far more than that I find that separating T, a child with long term complex needs, and the Appellant will significantly adversely affect her future welfare, her development and mental health.

Having regard to these factors cumulatively I conclude that in this case there are very compelling circumstances that can and do outweigh the very strong public interest test in this particular appeal.

[...]

I acknowledge that the current Immigration Rules are not a complete code for claims brought under Article 8 of the ECHR. The Tribunal will first assess whether the decision under appeal satisfied the Immigration Rules and then consider the Appeal under Article 8 of the ECHR. However, in approaching the Human Rights appeal outside the rules, I find that the same factors apply that I have considered under Very Compelling Circumstances, such that my Article 8 assessment is fully considered within my assessment of very compelling circumstances. It follows that I find the Respondent's decision is unlawful and it is not a proportionate interference with the Appellant's rights or his child's rights under Article 8 of the ECHR. Accordingly, the Appellant's appeal pursuant to Article 8 is allowed."

### **The appeal to the Upper Tribunal**

17. The respondent made an application for permission to appeal.

18. The respondent submitted that the judge failed to give adequate reasons for findings on a material matter, i.e. that there were very compelling circumstances outweighing the public interest in the appellant's deportation because:

- a. There was insufficient evidence for the judge to find that there were very compelling circumstances on the basis of the

appellant's relationship with T in the circumstances where the appellant failed to provide T's medical notes or autism assessment and the judge had concluded that the appellant and his wife exaggerated other elements of their evidence and sought to mislead the independent social worker;

- b. The judge failed to address why care could not be provided by T's mother or public services particularly in the circumstances where the independent social worker's findings were vitiated by the judge's finding the appellant and his wife gave her misleading information.

19. The First-tier Tribunal granted permission to appeal in a decision dated 22 July 2024.
20. I heard submissions from Mr Bellara on behalf of the appellant and Ms McKenzie on behalf of the respondent.

### **Discussion**

21. Having considered the arguments made by the parties and the evidence before the First tier Tribunal I am not persuaded that the judge materially erred in law.
22. I am satisfied that it was open to the judge to find that there were very compelling circumstances outweighing the public interest in the appellant's deportation on the evidence before her and that she gave adequate reasons for her conclusion.
23. The judge gave detailed consideration to T's best interests. She concluded that this is not just a case of a child who will miss her father as this is naturally the result of all deportations if a child and a parent are separated, but that removing the appellant would significantly adversely affect T's future welfare, her development and mental health.
24. I am not persuaded that it was not open to the judge to come to that conclusion having expressed concerns about both the appellant and his wife's credibility and having found that they misled the independent social worker report. It was open to the judge to accept aspects of the independent social worker's evidence notwithstanding that finding. It is clear which aspects of the evidence she accepted and which she rejected.
25. In addition to the independent social worker report, there was other evidence in respect of T that demonstrated that she had significant difficulties. The evidence relied on by the appellant at the hearing included an EHC Report and letters from the appellant's school. The EHC Report comments specifically on the impact of separation that the appellant's previous separation had on T.
26. The judge records at [137] that she had considered "all of the evidence in the round" and I am satisfied that she did so. The judge was entitled to come to her conclusions on the evidence that she accepted.
27. It is clear that given the judge's findings as to the nature of T's relationship with the appellant why the care T receives from him could not be provided by her mother (alone) or public services. For example, at [137] the judge finds that the

appellant and T have “a very close bond”, the appellant is “devoted” to T, he “plays a significant role in her day to day care”, is “an excellent father” and T “derives significant benefit from her relationship with him.”

28. The judge identified the factors that weighed in the appellant’s favour and the factors that weighed in favour of the public interest in his deportation. The judge gave careful consideration to the evidence before her and gave adequately clear reasons for her decision.
29. For those reasons the decision is maintained as I do not accept the First-tier Tribunal Judge made a material error of law.

**Notice of Decision**

30. The SSHD’s appeal is dismissed. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
31. The decision allowing the Appellants appeal stands.

**G. Loughran**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

4 December 2024