Neutral Citation Number: [2018] EWCA Civ 329

Case No: C5/2016/2570

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM the UPPER TRIBUNAL (Immigration & Asylum Chamber)
DEPUTY UPPER TRIBUNAL JUDGE SYMES
IA/31681/2014

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/03/2018

Before :

LADY JUSTICE ARDEN
LORD JUSTICE SINGH
and
SIR PATRICK ELIAS

- -

Between :

TANVIR BABAR	**Claimants/ Respondents**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant/ Appellant**

- -

Ms Julie Anderson (instructed by **Government Legal Department**) for the **Appellant**
Mr Zane Malik (instructed by **Malik Law Chambers**) for the **Respondent**

Hearing date : 1 February 2018

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Approved Judgment

Sir Patrick Elias :

1. The Respondent is a national of Pakistan, born on 17th March 1961. He entered the UK at some point during 2000 and 2001 and claimed asylum on 29 January 2001. His application was refused but on appeal it was found that although he should not be granted asylum, his removal would be a breach of Article 3 ECHR. Accordingly, he was granted exceptional leave to remain. We have not seen that ruling but it appears that the adjudicator of the old Immigration Appellate Authority accepted that the Respondent had been granted bail in Pakistan with respect to some kind of criminal offence, and that if returned to Pakistan there was a real risk that he would be detained and thereafter subjected to inhuman or degrading treatment due both to the prison conditions and the fact that there was a likelihood of mistreatment by the police and prison guards.

2. The precise history of his subsequent applications is not clear. However, it seems that he made an application for indefinite leave to remain ("ILR") outside the rules in October 2005 but this was rejected by a decision made in October 2008. The basis of that decision was that he was excluded from the scope of the Refugee Convention because there were serious reasons for believing that he had been a party to serious criminal wrongdoing, namely crimes against humanity. Article 1F of the Convention provides that the provisions shall not apply to:

> "any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee…."

3. Reports from the US State Department and Human Rights Watch noted that the police in Pakistan were highly politicised and routinely and systematically used brutal investigation procedures including torture to obtain confessions, and some suspected criminals were killed. Mr Babar had been in the police for some seventeen years and ended up commanding a squad of 20-30 people in the anti-narcotics division. He himself admitted in interview to beating and threatening arrested persons in order to obtain information and to permitting those under his command to do so. The Secretary of State was satisfied that this constituted a pattern of widespread and systematic crimes against the civilian population which satisfied the definition of crimes against humanity. Mr Babar was therefore excluded from the protection of the Geneva Convention by Article 1F(a) and could claim neither asylum nor humanitarian protection.

4. The fact that he was excluded from refugee status did not mean that he could be returned to his country of origin if to do so would infringe his rights under the ECHR. The Secretary of State accepted that this would be the position here. He would be at risk of article 3 ill treatment if returned either from the authorities or fellow prisoners. He was given discretionary leave to remain for six months. A timely application for further leave was made and he was granted further leave to remain by way of six months' restricted leave.

5. On 17th September 2012 the Respondent made an in-time application for ILR pursuant to paragraph 276B of the Immigration Rules which permits an application on the basis of 10 years' lawful residence. It was not disputed that he satisfied the requirement of being lawfully in the country for ten years. The Respondent's wife and three children had followed him to the UK and had already been granted ILR. The Secretary of State requested further information about any human rights claim Mr Babar might wish to make under article 3. Mr Babar responded in a short statement in which he claimed still to fear that he would be detained and ill treated if returned to Pakistan. This was despite the fact that in his application form for indefinite leave he disclosed the fact that he had returned to Pakistan for holidays twice in 2009 and again on three occasions in 2012, in each case without any difficulty and without the authorities showing any interest in him.

6. The application for indefinite leave was essentially based on the fact that he had been in the UK without incident for 14 years; that he had worked hard and not been a drain on public funds; and that he had very close family ties with his wife and his children, who were at school and university.

7. On 18 July 2014 the Secretary of State refused the application and simultaneously made a decision to remove the Respondent to Pakistan. The Secretary of State took the view that in the light of the serious criminal conduct there was a strong public interest in removal which was not outweighed by other considerations. The article 3 claim was rejected on the grounds that Mr Babar had been able to return to Pakistan without the authorities showing any interest in him. He would not have returned had he feared article 3 ill treatment, and the authorities would have picked him up had they wished to do so.

8. Mr Babar appealed against the refusal to grant indefinite leave, but not the rejection of the article 3 claim.

The relevant law

9. This case concerns the application of rule 276B to someone who has been given restricted leave to remain because it would be contrary to his human rights to remove him.

10. Article 276B, so far as is relevant to this appeal, is as follows:

> "276B. The requirements to be met by an applicant for indefinite leave to remain on the ground of long residence in the United Kingdom are that:
>
> (i) (a) he has had at least 10 years continuous lawful residence in the United Kingdom
>
> (ii) having regard to the public interest there are no reasons why it would be undesirable for him to be given indefinite leave to remain on the ground of long residence, taking into account his:
>
> (a) age; and
>
> (b) strength of connections in the United Kingdom; and

(c) personal history, including character, conduct, associations and employment record; and

(d) domestic circumstances; and

(e) compassionate circumstances; and

(f) any representations received on the person's behalf; and

(iii) the applicant does not fall for refusal under the general grounds for refusal."

11. Paragraph 276D provides that "leave to remain is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 276B are met."

12. Paragraph 276B(ii) is poorly drafted; the words "there are no reasons why" are confusing. There will often be something in the character or conduct of the applicant which, taken on its own, would constitute a reason why it would be undesirable to grant ILR. But it is well established that rules of this nature should be read sensibly, recognising that they are statements of the Secretary of State's administrative policy (see the observations of Lord Browne JSC in *Mahad v Entry Clearance Officer* [2009] UKSC 16; [2010] 1 WLR 48, para. 10) and the paragraph plainly envisages that there will be cases where, assessing the factors as a whole, it would not be in the public interest to refuse indefinite leave even though some factors may point in favour of refusing it. A recent policy statement from the Secretary of State issued to staff and entitled "Long Residence" confirms that this is the correct approach. When dealing with the public interest it states:

> "You must assess the factors in paragraph 276B(ii) to decide whether a grant of indefinite leave would be against the public interest. You must look at reasons for and against granting indefinite leave using the factors listed and, where necessary, weigh up whether a grant of indefinite leave would be in the public interest."

13. If, contrary to my view, it could be said that there is any real ambiguity about the proper construction of paragraph 276B(ii), it would be appropriate to interpret it in accordance with this published policy, given that it is the construction which is more favourable to the applicant: see *Pokhriyal v Secretary of State for the Home Department* [2013] EWCA Civ 1568 paras. 42-43 per Jackson LJ.

14. Where there are aspects of character or conduct which tell against granting ILR, the weight to be given to those factors is likely to depend heavily upon the nature of the conduct and character in issue. Persons who are excluded from the Refugee Convention by Article 1F because they are reasonably suspected of having committed serious crimes could expect to be refused any leave to remain at all save where to remove them would contravene their human rights. In order to safeguard those rights, they are given discretionary leave to remain. Over the years there have been a series of policies regulating their situation. These policies were considered in some detail by Underhill LJ, giving the judgment of the Court of Appeal in *MS (India) v Secretary of State for the Home Department* [2017] EWCA Civ 1190; [2018] 1 WLR 389 paras. 11-36. At the time of the hearing before the FTT the relevant policy was the 2015 Asylum Policy Instruction which came into effect on 23 January 2015. It notes that

usually someone falling within this category should be given only restricted discretionary leave for a maximum of six months and restrictions may be imposed regulating a person's employment or occupation and place of residence; requiring regular reporting to the authorities; and prohibiting study at an educational institution. The rationale for imposing the conditions was said to be the public interest in maintaining the integrity of immigration control justified removing at the earliest opportunity; public protection; and upholding the rule of law internationally by ensuring that those guilty of committing crimes abroad cannot establish a new life in the UK.

15. The background to the policy is set out in paragraph 1.2 which, so far as is relevant, states:

> "1.2.3 This policy applies to anyone where there is an ECHR barrier to removal ...
>
> 1.2.4 As those who fall within the scope of this policy have committed serious international crimes and/or represent a danger to the security of the UK, only Article 3 considerations will normally outweigh the public interest in removing them because it is an absolute right and the extent of the public interest cannot be taken into account. Where qualified rights are engaged, such as Article 8 ECHR, only in the most compelling compassionate circumstances could their family or private life, or medical considerations, outweigh the public interest in removal in these cases. It is expected there will be very few such cases, but where there are such cases this policy applies.
>
> 1.2.5 Such cases will be reviewed regularly with a view to removal as soon as possible and only in exceptional circumstances will individuals on restricted leave ever become eligible for settlement or citizenship. Such exceptional circumstances are likely to be very rare."

16. Paragraph 4.12 is headed "Applications for indefinite leave to remain". It is important because it applies to Mr Babar who made his application at the time when he was subject to restricted leave to remain. It is as follows:

> "4.12.1 Those excluded from the Refugee Convention and/or Humanitarian Protection may make applications for indefinite leave to remain on the basis of long residence, for example because they have lived in the UK lawfully for 10 years or more. The requirements are at paragraph 276B of the Immigration Rules. Consideration must be given to all the factors listed in paragraph 276B (ii) and in particular consideration must be given to the person's conduct which led to them being excluded from the Refugee Convention and/or Humanitarian Protection when looking at character, conduct and associations under paragraph 276B (ii)(c). Usually, given our international obligations to prevent the UK from becoming a safe haven for those who have committed very serious crimes, the conduct will mean that the application should be refused, but decisions must be taken on a case-by-case basis.

4.12.2 Consideration must be given to each of the general grounds for refusal under paragraph 276B (iii). Paragraph 322 (1C) sets out the grounds for refusing indefinite leave to remain where a person has a criminal conviction. For the purposes of this rule, the conviction does not have to be a UK conviction, but any overseas conviction must be for an offence which has an equivalent in the UK. For example, overseas convictions for homosexuality or proselytising would be disregarded. Consideration must also be given to the rest of the general grounds for refusal at paragraph 322.

4.12.3 Excluded individuals may seek to rely on *N, R (on the application of) v Secretary of State for the Home Department* [2009] EWHC 1581 in which it was held at paragraphs 21 and 22:

> "21. This policy relating to those who are not within the protection of the Refugee Convention because of Article 1 F (b) seems to me to be entirely reasonable. The rationale behind it I have not had spelled out before me, but it seems obvious that what is desired is to keep open the possibility of return and the need to consider at regular and relatively short intervals whether return can be effected because, as a general approach, those who would not qualify because of the commission of a serious offence should not generally be considered to be able to remain within this country. One can understand why that policy has been adopted.
>
> 22. Accordingly, in principle, to award only six months is not in the least unreasonable. But the policy has, as it were, a cap. It is recognised that there will come a time when - provided the individual has behaved himself in this country - it would be proper to regard him as having put behind him, as it were, the original offending. Thus if someone has been here for ten years and subjected to a series of discretionary leaves for that period he will normally be able to remain here indefinitely. He will, after all, be expected by then to have made his life in this country, to have settled here, perhaps to have established family life here. The view is, again as it seems to me, entirely reasonably taken that generally speaking - and of course each case has to be considered on its own merits - such an individual will have leave to remain indefinitely and thus will be entitled to settle here."

"4.12.4 Decision-makers must carefully consider the facts of an individual case against the specific facts in the case of *R on the application of N* to determine whether they are analogous and whether the principles set out in that case are applicable to the case under consideration.

> 4.12.5 Where a person does not qualify for indefinite leave to remain, consideration must be given to whether there continues to be an ECHR barrier to removal. If there is not, then the case must be prioritised for removal. If there is, then the person must be granted restricted leave within the terms of this policy."

17. As Underhill LJ pointed out in MS, there is what he described as "evident tension" between paragraph 1.2.5, which envisages that the grant of ILR will be only "in exceptional circumstances" and will be "very rare" and the more liberal formula in para. 4.12 which envisages only that such applications will "usually" be refused (para. 4.12.1). The potential confusion is exacerbated by the reference to the principle enunciated by Collins J in *N*, in which he expresses his understanding of the policy, because his view seems to have been (para. 22 in *N*) that once someone has been here ten years, that would normally lead to the grant of ILR - which is far from being very exceptional or rare.

18. Underhill LJ addressed the conundrum in his judgment in MS and concluded (para.39) that whilst the drafting of the clause was "extremely clumsy".

> "In my view the policy should be read as prescribing that ILR should, for all the policy reasons stated elsewhere in section 1, only in exceptional circumstances be granted to migrants who were excluded but irremovable. Para. 22 of Collins J's judgment, and in particular the reference to a ten-year norm, is not being referred to as stating the usual rule but only as applicable in a case on exceptional facts such as those of *N."*

19. Underhill LJ then focused on what is meant by the phrase "in exceptional circumstances" (paras. 40-41):

> "40 That puts the focus on the phrase "in exceptional circumstances". That language is of course very familiar in the immigration context because of the debate about its meaning in paragraph 398 of the Immigration Rules, where it is used to describe when the public interest in the deportation of a foreign criminal will be outweighed by other factors. In *MF (Nigeria) v Secretary of State for the Home Department* [2013] EWCA Civ 1192, [2014] 1 WLR 544, this Court held that the phrase did not connote "a test of exceptionality" but rather a situation involving a departure from the general rule, which was only to be justified in compelling circumstances: see paras. 40-41 in the judgment of the Court delivered by Lord Dyson MR (p. 560). That approach was endorsed by the Supreme Court in *Ali v Secretary of State for the Home Department* [2016] UKSC 60, [2016] 1 WLR 4799: see paras. 37-38 of the judgment of Lord Reed (pp. 4815-6)."

> "41. Although the Court was in those cases concerned with a rule and not a policy, that is not a material difference for our purposes, and I think the phrase must have the same meaning here. The statement that exceptional circumstances are likely

> to be very rare is a prediction and does not as such qualify the nature of the approach required (cf. the distinction made by the Appellate Committee in para. 20 of its opinion in *Huang v Secretary of State for the Home Department* [2007] UKHL 11, [2007] AC 167, at p. 188 A-B)."

20. Neither the FTT nor the UT had the benefit of Underhill LJ's judgment when reaching their decision, but it lays down in unequivocal terms the appropriate test to adopt when applying public interest considerations to rule 276B adjudications in cases of this nature: there must be compelling circumstances to justify a departure from the general rule, namely that for those excluded from the Refugee Convention, the public interest in removal will be so strong that it would make granting indefinite leave to remain inappropriate. The observations by Collins J in *N*, if they are to be considered at all, must be read as Underhill LJ interpreted them. (Indeed, we were told that the policy has now been revised and no longer refers to the judgment in *N* at all.)

The hearings below

21. In the hearing before the FTT, Mr Babar sought to distance himself from the finding made by the adjudicator in 2008. He claimed that he did not understand the questions posed in his interview, and that he had been subject to leading questions. He denied that he had beaten anyone or that he knew that other policemen under his command used force or threats as an investigative technique.

22. The FTT judge rejected these submissions and held, giving reasons for his conclusion, that he could rely upon the 2006 interview record containing the admission by Mr Babar that he had beaten suspects when interviewing them, and was in control of a squad of men who acted in a similar way. This had gone on for a number of years. It was in the judge's view a mitigating factor, albeit not an excuse, that his conduct was no more than the norm for police officers in Pakistan at the time. Also he accepted that Mr Babar had told the truth in that interview and had not been involved in any more serious ill-treatment of detainees. The judge also found that whilst he had not sought to conceal his visits to Pakistan from the Secretary of State, he had been untruthful in his witness statement in September 2013 when he claimed to fear ill treatment if he were returned to Pakistan. (Para. 41).

23. The judge then considered the factors referred to in paragraph 276B(ii). The Respondent's behaviour whilst serving as a police officer in Pakistan was held to be a significant factor against him in the public interest assessment (para. 48). However, the judge said that he did not wish to "concentrate on placing a label on the behaviour of the appellant" (para.43). The judge found that, in agreement with findings of the Independent Safeguarding Authority, it was unlikely that the Respondent would commit crime in the future (para. 49). He had "turned over a new leaf". He noted that the Respondent had worked and run a business and had not relied upon public funds. In addition he had developed strong connections with the UK over fourteen years, and very close links with his immediate family (save for a daughter who remains in Pakistan.)

24. The judge noted that this was a finely balanced case (para. 56), but found that on balance the positive considerations outweighed the Respondent's behaviour in Pakistan (para. 58). He summarised his conclusion by saying that "the Respondent's behaviour is not so bad that it would be undesirable in the public interest to grant him

indefinite leave to remain bearing in mind the positive factors in his favour and the impact upon his innocent family that would be the effect of a refusal." In view of this finding in the applicant's favour, the judge did not find it necessary to consider a separate argument based on article 8 of the European Convention.

25. The Secretary of State appealed to the UT and the case was heard by DUTJ Symes. He found that for the most part the Appellant was seeking to re-argue the factual findings made by the first instance judge and had not identified errors of law in the decision. However, he did accept that the FTT judge was wrong to direct himself that it was not necessary to make a finding on whether or not the Respondent's conduct amounted to a crime against humanity (para. 20). He observed that the Asylum Policy Instruction on Restricted Leave (which was surprisingly not put before the UT) made it clear in para. 1.2.2 that the Secretary of State's policy was to resist the grant of relief in such cases where possible.

26. No further evidence was provided by either party at the continuation hearing. The judge then reviewed the Appellant's Restrictive leave policy of 2015 and cited in particular paras. 4.12.3 and 4.12.4 which are reproduced above, para. 16. As we have seen, those provisions place emphasis on the judgment of Collins J in the case of *N*, and as I have explained in paragraphs 16-17 above, at least on one reading of Collins J's judgment, he adopted a more generous approach to granting ILR to those who have committed serious offences than the policy in fact warrants. The judge then summarised his understanding of the relevant policy and his conclusion on its application to the facts as follows:

> 37. The upshot of those policy positions is that consideration of further leave and settlement applications for excluded persons is always subject to the active review process which assesses their ongoing protection needs. From September 2011 all future consideration of these applications should be under the restricted leave policy rather than DLR rubric. The test is one of "exceptional circumstances" and the benchmark is clearly intended to be a high one, encapsulated in the general warning given to decision makers that such cases are anticipated as being "very rare". Whilst the public policy position of putting roadblocks in the way of the settlement of such individuals is firmly entrenched and must be given appropriate weight, the proviso in *N* has been adopted within the guidance, acknowledging that there will be cases where a person has nevertheless established themselves so firmly in this country and conducted themselves such that it would be right to treat the original offending as being firmly behind them.
>
> 38. No challenge has been made to the findings of the First-tier tribunal as to the facts of the case. In the light of those facts, and drawing together the threads identified above, I consider that the decision to refuse indefinite leave to remain was wrong. This is because

i) The Appellant has now lived in this country for many years, including an initial period of some seven years in which it appears no exclusion point was raised against him;

ii) His family, with whom he has lived throughout his life in Pakistan and in this country, have put down roots here, his daughters in particular having grown up and spent their formative years here, and now being wholly assimilated in the United Kingdom where they have pursued their legal studies with success and have cause to look forwards to careers here, confident as to the full support of their parents;

iii) His wife and daughters see him as the head of the family and absolutely central to their lives here;

iv) He has worked here in the past and run a business, and been assessed by the Independent Safeguarding Authority as posing no risk to the public;

v) His probable command responsibility for violence against suspects with the police force in Pakistan in the 1990s, whilst utterly reprehensible and rightly censured by the international community (as has been firmly recognised in his case by repeated short grants of leave to remain integration) is nevertheless at the lower end of those international crimes that the law stigmatises. Given that the Respondent's policy itself recognises the *possibility* of the grant of leave to remain in this class of cases, however rare in practice, this makes it clear that it is not intended that the bare commission of any *international* crime is not itself seen as ruling out that possibility.

39. Like the First-tier Tribunal, therefore, though for more nuanced reasons, it is my conclusion that the balance under the Rules should have been struck in his favour and that the grant of indefinite leave to remain is appropriate, given that the roots he has put down here for many years have become firmly established notwithstanding the roadblocks placed in his path, making this one of the "very rare" cases which the policy positions struck by the Secretary of State recognise as apposite to the grant of settlement.

Grounds of appeal.

27. The Appellant emphasises that this appeal is only about the grant of ILR and not the decision to remove the Respondent. She accepts that the latter decision may in principle be challenged on human rights grounds.

28. The Appellant submits that the UT made three errors of law when applying para. 276B. First, the UT in effect carried out an article 8 balancing exercise whereas once it was found that the respondent had committed crimes against humanity, it could not be said that there were "no reasons" which made it undesirable to grant ILR, and the judge was wrong to have regard to any other considerations. They were irrelevant once it was established that he had committed such serious offences.

29. Second, even if the other factors could be taken into account as relevant considerations, the UT judge gave insufficient weight to the importance of ensuring that those who commit crimes against humanity should not be granted settlement in the UK. It was appropriate to give them only such leave to remain as would protect them from being removed contrary to their human rights. He did not properly recognise that there had to be compelling circumstances to override the very powerful public interest in refusing settlement so that Mr Babar could be removed as soon as this could be achieved in accordance with his human rights.

30. Third, if the judge did give proper weight to the very strong public interest in refusing ILR to someone who has committed offences which exclude him from the Refugee Convention, he must have reached a decision which was perverse. The factors relied upon fell far short of the compelling circumstances necessary to justify granting settlement.

31. A distinct ground of appeal was that the judge had failed to weigh in the balance the fact that the FTT had found that Mr Babar had acted dishonestly in claiming that he was in fear of returning to Pakistan when that was manifestly not the case, as his regular trips to Pakistan demonstrated. Not only should this have been a factor relating to his character and conduct when carrying out the assessment under paragraph 276B(ii), but in addition it was relevant to the requirement in para. (iii) that an applicant for ILR should not fall for refusal under the general grounds for refusal. These general grounds include, in para. 322(1A), "where false representations have been made or false documents or information have been submitted." Ms Anderson, counsel for the Secretary of State, submitted that the finding that Mr Babar had falsely claimed to be in fear of returning to Pakistan was a false representation of the kind covered by this provision and accordingly there was a breach of paragraph 276B(iii) which was of itself sufficient to defeat the application.

Discussion.

32. I do not accept that the commission of these offences against humanity necessarily and inevitably meant that Mr Babar could in no circumstances be granted ILR. For reasons I have set out above, paragraph 276B envisages the possibility that even where such very serious offences have been committed in the past, all the relevant factors should be considered and the circumstances may be sufficiently compelling to justify granting ILR.

33. However, in my judgment the UT judge did not give proper weight to the very powerful justification for denying settlement to those who have committed crimes against humanity. The UK should not be a safe haven for those who have committed such offences, and it would be a breach of the UK's international obligations, and would undermine its international standing, to be seen to give protection to such individuals save in very exceptional circumstances. As para. 3.1.1 of the 2015 Asylum Policy Instruction on Restricted Leave points out, article 1F is intended to protect the integrity of the asylum process and is designed to ensure that individuals should not be allowed to avoid being returned to their country of origin where they may be held accountable for their actions. Upholding the international rule of law requires no less.

34. The weight to be given to this factor is reflected in the fact that only very compelling considerations can outweigh the strong public interest in denying settlement to such persons. In my judgment the judge did not apply that test. It is true that he did refer to the fact that there must be exceptional circumstances and he recognised that

granting ILR in a case where the applicant had been excluded from the Refugee Convention would be very rare. But in my judgment he did not fully appreciate that the circumstances must be truly compelling before it could be appropriate to grant ILR. In fairness to the judge, he relied upon the discussion by Collins J in the *N* case without the benefit of the judgment of Underhill LJ in *MS* which explained that the appropriate test for someone excluded from the Refugee Convention is in fact far more stringent than Collin J's words might suggest. It is perhaps not surprising that the UT judge failed to give the powerful weight to this factor which the conduct of the applicant required.

35. I would add that if, contrary to my view, the judge did give appropriate weight to this factor, then his assessment of where the public interest lay was perverse. I reach this conclusion bearing in mind the injunction that this court should be reluctant to set aside decisions of the expert tribunal particularly when making assessments of this nature: see Lady Hale in *AH (Sudan) v Secretary of State for the Home Department* [2008] 1 AC 678, para. 30. But there was nothing truly exceptional in the considerations which told in Mr Babar's favour and they do not in my view begin to compel the conclusion that ILR should be granted. The fact that an applicant has a good work record, years of blameless residence in the UK, and close knit family relationships is by no means unusual in a case of this nature. If these considerations were sufficient to claim ILR for all those excluded from the Refugee Convention, it would significantly undermine the important public interest in the UK acting in accordance with its international obligations and maintaining its international reputation.

36. In view of this conclusion, I need not deal at any length with the submission that the judge failed to give proper regard to the fact that in his application for ILR Mr Babar had knowingly sought to deceive the authorities. Suffice it to say that in my view this was a significant factor which goes to the character or conduct of the applicant and should have weighed heavily in the assessment of the public interest carried out by the tribunals below. The UT judge made no reference to it at all in his assessment of the public interest. That fact reinforces my conclusion that the judge failed properly to carry out that assessment.

37. I would prefer not to reach a concluded view on the separate issue whether this was a factor which in any event should have been taken into account when considering whether paragraph 276B(iii) was complied with. Had this argument been directly raised by the Secretary of State before the tribunals below, then in my view they would have been justified in concluding that this provision had not been satisfied. But this was not a matter raised specifically before either tribunal. Although Ms Anderson raised in passing the argument that this was a *Robinson* obvious point which the UT should have considered of its own motion, this was not a matter which was properly argued before us and Mr Malik, counsel for Mr Babar, suggested that it may raise issues of fairness. If, on the other hand, it is not an obvious point, it may be difficult to show that the UT committed an error of law in failing to consider it. In the circumstances I would prefer not to reach a concluded view about that issue.

38. I should also add that at the request of the court, the parties provided an agreed post-hearing note on the United Kingdom's Public International Law Obligations in relation to torture and crimes against humanity, but without any specific arguments raised with respect to the facts of this case. I am grateful to both counsel but in the event I have not found it necessary to rely on the note in the context of this judgment. However, its content might well be relevant in other circumstances.

39. For the reasons summarised above, I would allow the Secretary of State's appeal and declare that Mr Babar has no entitlement to ILR. Given that he now has no leave to remain in the UK at all, he may be removed subject to his argument based on article 8 of the European Convention which was raised before the FTT but not determined. It is agreed between the parties that that we should remit that issue to the UT.

Lord Justice Singh

40. I agree.

Lady Justice Arden

41. I also agree.