**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: DA/00621/2014

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 2 April 2015** | **On 22 April 2015** |

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**JK**
(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**
For the Appellant: Ms E Savage, Senior Home Office Presenting Officer
For the Respondent: Mr M Blundell, Counsel instructed by UK Immigration Lawyers

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I 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. I make this order because the respondent's wife and their children might be at risk of violence in the United Kingdom if their identities are known. This order is not intended to restrict publication of the issues in the case except in so far as is necessary to comply with the order.

2. The respondent to this appeal, hereinafter "the claimant", is a citizen of Bangladesh who was born on 21 January 1991 and so is now 24 years old. He appealed successfully to the First-tier Tribunal a decision of the appellant, hereinafter "the Secretary of State", to make him the subject of a deportation order on 2 April 2014. The Secretary of State was given permission to appeal the First-tier Tribunal's decision because it was thought arguable that the First-tier Tribunal erred in its approach in assessing whether it was unduly harsh to expect the claimant to return to Bangladesh and that the Tribunal had given insufficient weight to the public interest in conducting a balancing exercise for the purposes of assessing the impact of Article 8 of the European Convention on Human Rights.

3. The First-tier Tribunal's determination is short. Indeed it is not very much longer, if at all, than the grounds supporting the application for permission to appeal but brevity is a virtue provided it is sufficient. I consider now exactly what the First-tier Tribunal said in its determination.

4. The Secretary of State's decision that was subject to appeal was made on 2 April 2014. The Tribunal outlined the "legal framework". The Tribunal reminded itself, correctly, that where a foreign national had been sentenced to a single term of at least twelve months' imprisonment the Secretary of State "must make a deportation order" and that in those circumstances deportation is conducive to the public good.

5. The Tribunal then picked its way meticulously through the relevant statute and Rules and also reminded itself that Section 55 of the Borders, Nationality and Immigration Act 2009 applied so the best interests of the appellant's children are a "primary consideration".

6. The passages headed "background" are particularly apposite and I set them out in full below:

> "12. The [claimant's] history is set out in the decision letter, there is no dispute about the chronology a summary of which follows. Born on 21 January 1991 and a national of Bangladesh he claimed to have entered the UK in August 2000 but there was no record of this. He applied for ILR in June 2010 but was granted LTR on 2 November 2013. He met his partner, who is British, in 2011 and they went through an Islamic marriage ceremony, but not a legal ceremony, on 31 January 2012. They had a daughter on 22 October 2012 and their son was born on 22 August 2013 by which time the [claimant] was serving a prison sentence.
>
> 13. On 3 June 2013 the [claimant] pleaded guilty to two offences of sexual assault, on the more serious charge he was sentenced to eighteen months' imprisonment and on the other charge he received six months' imprisonment to run concurrently. The first offence was committed on 11 February 2011 but he was not arrested for that until after the second offence was committed on 24 January 2013. It is clear from the sentencing remarks that the [claimant] pleaded guilty only on the day set down for trial.
>
> 14. There are no offences recorded against the [claimant] that predate his first offence or since his release from prison. Dated 1 April 2014 there is an OASys Assessment that gives his risk of serious harm to the public in the community as medium and he is a low risk to children. A medium risk is defined as there being identifiable indicators or

> risk of serious harm and the offender has the potential to cause serious harm but is unlikely to do so unless there is a change in his circumstances."

7. The Tribunal found that the claimant was living with his partner and their children in their family home. It appeared that there was a good relationship between the claimant and his children. The claimant had lived in the United Kingdom since he was aged 7 and would only see his children if they went with him. The Tribunal noted that the claimant spoke English fluently and accepted he had only returned to Bangladesh on one occasion but did not remain there for long.

8. The Tribunal found that the claimant went through an Islamic marriage ceremony at a time when his immigration status was "precarious". Paragraph 399(b) of HC 395 did not apply when considering the claimant's relationship with his partner. Nevertheless the claimant was in a genuine and subsisting parental relationship with his children, who were British citizens, and the Tribunal had to decide if it would be unduly harsh for the child to live in Bangladesh or to remain in the United Kingdom without the claimant.

9. Paragraph 17 of the determination includes important findings about the claimant's family circumstances and again I set it out in full:

> "The [claimant's] partner's circumstances are unusual and a cause of some difficulties for them. She is estranged from her family having left the family home under police protection to avoid an unwanted arranged marriage to her first cousin in Bangladesh. There is an injunction against her mother and she has no contact with any members of her family. It is her case that she cannot go to Bangladesh as she would be in danger from her first cousin there and would be unable to integrate having lived her whole life in the UK and not speaking any other language."

10. At paragraphs 24 and 25 of the determination the Tribunal found that the situation of the claimant's partner and their children was "a matter of concern". She was "positively estranged from her family and at risk to the extent that she left under police protection and has an injunction against her mother". It was also found that there was "limited contact" with the claimant's aunt and uncle in the United Kingdom. There is reference to them having one brief meeting. The Tribunal said at paragraph 25:

> "The deportation of the [claimant] would deprive the children and his partner of his support and the protection that he could provide against further family interference. There is a risk of contact through community channels between the [claimant's] aunt and uncle and his partner's family although we accept that is speculative and there is no evidence that problems have arisen through that route yet."

11. The Tribunal reminded itself that Bangladesh is a "large country" and was clearly not impressed with the argument that the claimant's partner would be at risk because of her first cousin or members of his family who had been slighted by her refusal to marry him but also noted the claimant's partner's would not live in Bangladesh and concluded it would be "unduly harsh" to expect the family to live with the claimant in Bangladesh. The Tribunal also found that it would be "unduly

harsh and could not be justified under the Rules" for the claimant's children to live without him.

12. The Tribunal clearly did not find this an easy case and said that it was "not straightforward by any means" before it decided that, on balance, it was right to allow the appeal.

13. Before I consider the Secretary of State's grounds I remind myself that the "litmus test" for determining if a decision is sufficiently reasoned is if the original judge's thought processes can be understood (see, for example, **R (Iran) & Ors v Secretary of State for the Home Department [2005] EWCA Civ 982**).

14. As far as I am concerned, and with appropriate respect to Ms Savage's measured and firm submissions, this question is clearly answered in the affirmative. The Tribunal was persuaded, not without hesitation, that it was unduly harsh to the claimant's children, now aged about 2½ and about 20 months, to be brought up in the United Kingdom solely by their mother, who was socially isolated without any community or family support and whose circumstances had already attracted the attention of the claimant's probation officer even though their circumstances would be on the very peripheries of, if not outside, the probation officer's sphere of work.

15. In my experience appeals involving deportation are almost never allowed because of the impact of removal on the offender. When they succeed it is because the Tribunal has decided that the offender's removal would impact too harshly on someone else, usually a life partner or a child. Although I certainly did not reach my conclusion until considering the case as a whole I make plain now that I am satisfied that this is a case where, far from being wrong in law, the Tribunal has done its job and I will not interfere with their decision.

16. I consider first ground 2 of the Secretary of State's grounds because I regard this as the least satisfactory of the grounds before me. I reject emphatically the contention that the Tribunal failed to appreciate that the public interest lay in deporting a foreign criminal. The contrary is plainly the case. The Tribunal directed itself expressly that the public interest lies in the removal or deporting a foreign criminal. This is expressed in the Rules and in statute and was clearly in the Tribunal's mind. The Tribunal did not indulge in a display of judicial handwringing setting out the circumstances of the claimant's offending and saying how appalling the offences were but it is absurd to suggest that the Tribunal was not aware of the offences. They are identified as "two offences of sexual assault" at paragraph 13 and the sentencing remarks of the judge were clearly in the mind of the Tribunal albeit not mentioned in a context that deals with the severity of the offence rather then the lateness of the plea. The finding about the risk of future offending was based closely on the OASys assessment and was recognised as a "medium risk" which means that the claimant is thought to be *unlikely* to cause serious harm unless there is a change in his circumstances. It is the Secretary of State that is trying to change the claimant's circumstances, not the claimant.

17. It is right that the Tribunal did not expressly acknowledge that deportation reflects public revulsion but, as it had found that the claimant was unlikely to re-offend even though it recognised that the public interest was in favour of deportation, I really see no basis at all for suggesting that the Tribunal gave improper weight to the public interest requiring the claimant's deportation.

18. Mr Blundell drew my attention to the decision of **Masih (deportation - public interest - basic principles) Pakistan [2012] UKUT 00046 (IAC)** where at paragraph 11 the Tribunal set out the basic principles in "the public interest side of the balancing exercise" with the observation that there was no need for divisions of the Tribunal to make further reference to them. This point is echoed in the decision of the Court of Appeal in **AK (Pakistan) v Secretary of State for the Home Department [2014] 1642** where Longmore LJ at paragraph 13 emphasised that the Rules are a code and contain all that needs to be said and it is not generally desirable to make reference to the old law.

19. I decline to say that the Tribunal would have been wrong to have given more details about the offences and the need for deportation. I note that paragraph 117C(2) of the Nationality, Immigration and Asylum Act 2002 says "the more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal". Determining the level of seriousness of an offence is an imprecise act but the degree of punishment it attracted must be a telling factor and might sometimes require express consideration. For example, sometimes a sentence is much less than might at first seem appropriate and that might prompt the Tribunal to consider if the offence is a serious as it sounds. Here the Tribunal clearly and rightly recognised that this was a case punished by between one year and four years' imprisonment where the public interest required deportation unless certain circumstances applied.

20. Ground 1 of the Secretary of State's grounds makes two intertwined points. To the extent that it contends the Tribunal did not have proper regard to the public interest then for the reasons given above I disagree. In my judgment that is a contention that cannot be sustained.

21. The grounds also contend that there was "no evidence that the [claimant's] partner or children were unable to cope in his absence or that the children were affected in any way while he was in prison". That is not right. The evidence was that the claimant's partner found it difficult, which is why the claimant's probation officer got involved. There is no basis for criticising the Tribunal's finding that this claimant's partner has to manage on her own and that is difficult. Anyone with any experience whatsoever of managing children of this age would not need very much evidence that a woman entirely on her own would find it difficult.

22. Point 4 of ground 1 complains that the Tribunal used the nationality of the claimant's children as a "trump card" and it is not unduly harsh to expect the claimant's immediate family members to leave the United Kingdom. I agree with Mr Blundell that this ground was based on a misreading of the decision in **LC (China) [2014]**

**EWCA Civ 1310**. There the Court of Appeal was concerned with a case where the person had been sent to four years' imprisonment or more and therefore where "exceptional circumstances" were needed before public interest in removal could be outweighed by other factors. The instant appeal is not an "exceptional circumstances" case and the ruling in **LC (China)** is not particularly illuminating in this appeal. The Tribunal did not regard the nationality of the children as a trump card. It was clearly more concerned with the fact that the claimant's mother had no experience of living in Bangladesh and indeed had set her heart very firmly against living in Bangladesh. She was plainly frightened to go there because she cherished the belief that she would be found a victim. That might be an unfounded belief but additionally, she told the Tribunal that she spoke only a smattering of any Bangladeshi language. It would be extremely difficult for her to cope in that country and although the finding that it was unduly harsh to expect the children to establish themselves in Bangladesh might be thought the weakest part of the First-tier Tribunal's reasoning I am wholly unpersuaded that it is a decision that was neither open to the First-tier Tribunal nor explained insufficiently in the determination.

23. The Tribunal made it very plain that this case was very fact-specific. It referred at paragraph 27 to the "almost unique circumstances".

24. The Tribunal did have evidence that the claimant was facing up to his criminality and resolving not to re-offend. That came from his own mouth and although such evidence can rarely be given a great deal of weight on its own it was there and there was no reason why the Tribunal should reject it.

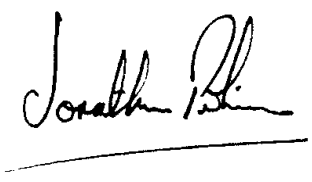
25. With respect to the First-tier Tribunal its decision was tightly drawn and had to be read carefully to be understood properly. This is not because the decision was careless and the reasons disguised. On the contrary, the determination had been considered carefully and every word was there for a reason. It is plain to me that this is a decision in accordance with the law that is reasoned adequately and is within the range of decisions that the Tribunal could have reached rationally.

26. It follows therefore that I dismiss the Secretary of State's appeal and the decision of the First-tier Tribunal shall stand.

**Notice of Decision**

27. The Secretary of State's appeal is dismissed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 20 April 2015