



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/06573/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester

On 23 January 2018

**Decision & Reasons
Promulgated
On 19 February 2018**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

PS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Burns, Legal Representative instructed by Lei Dat & Baig Solicitors

For the Respondent: Ms H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India who has been in the United Kingdom since 1996. He was notified on 17th November 2016 that the Secretary of State had decided to make a deportation order against him. Various submissions were made in relation to human rights which were refused in a decision dated 23rd May 2017.
2. The appeal against that decision was lodged and came for hearing before First-tier Tribunal Judge Mather on 24th July 2017. The appeal was dismissed in all respects.

3. Permission to appeal to the Upper Tribunal was, however, granted on the issue as to whether or not the Judge had properly considered whether or not it was unduly harsh on any of his children that such a deportation should occur.
4. The appellant had two children by his first marriage to FS. Those children were his son S born on 24th July 2003 and A born on 7th December 2007. Those children live with his former wife and there is little evidence of much parental responsibility on behalf of the appellant.
5. The appellant commenced a relationship with Ms A. His daughter S was born on 7th December 2009 and his son Y was born on 13th August 2016.
6. It is clear that daughter S is now a qualified child for the purposes of Section 117C of the 2002 Act.
7. The issue in those circumstances is whether the effect of the appellant's deportation on his wife.
8. A further consideration in this case is whether it would be unduly harsh for the child S to remain in the United Kingdom without the person who is to be deported.
9. Mr Burns, who represents the appellant, asks me to note that the appellant is married to a British Muslim woman and he is a Sikh. Thus there is a mixed cultural family which is a factor to be borne in mind throughout. He submits that the children have committed no offences and that it would be unduly harsh in those circumstances for them to be deprived of their father.
10. In terms of the situation facing the children, my attention was drawn to a number of reports, particularly that from [..... School]and Nursery (undated), which speaks of S having a high attendance record and working to the expected level. It is said that S clearly has a good relationship with the appellant, who collects her from school on a regular basis. He has shown support in her education. S is well adjusted and enjoying her education. She does not have any special needs or emotional difficulties, which would make the absence of the appellant more difficult for her. Y is a baby with no special needs or medical condition.
11. There is a letter from the Ministry of Justice dated 22nd December 2016, confirming that the appellant has been referred to Lifeline which he has attended regularly for support about his drug misuse issues. There is a letter indeed from Lifeline on 20th December 2016 confirming that the appellant is focused upon his recovery from drugs.
12. The focus of this appeal is that relating to paragraph 399 of HC 395, namely whether it would be unduly harsh for the child to live in the country to which the person is to be deported and whether it would be unduly harsh on the child to remain in the United Kingdom without the person who is to be deported.

13. This is a case in which the findings were made that the appellant is a persistent offender, who has shown little indication that he is to amend his behaviour. The appellant claims that he has put his drug offending behind him, but it was the finding of the Immigration Judge that he tested positive for drugs in or about October 2016.
14. It was the specific finding of the Judge, at paragraph 29 of the determination that it would not be unduly harsh for the appellant's two youngest children to remain in the United Kingdom without him. Challenge is made to that decision which is that it is unreasoned. However there is little evidence that has been presented to support the contention that it would be unduly harsh for the children to remain in the United Kingdom without him.
15. Accepting that it is the desire of most children to be with their parents and that there is an emotional bond between them, there is nothing, however, to indicate that the appellant's absence from the children would be unduly harsh.
16. The appellant claims that he is a reformed character but it was the finding of the Judge that he was not. Indeed the whole issue of his having molested or threatened his wife was a matter concocted between the two of them in order to obtain further state assistance to sort out his drug problem. Indeed the appellant's wife agreed that she had in fact claimed to the authorities that he had molested her and made a false statement to that effect. The appellant's wife had confirmed that she had lied about the offences, which is a matter set out in paragraph (xiv) of the determination.
17. There is nothing before the Immigration Judge, or indeed before me, to indicate that the absence of the appellant would be unduly harsh either for the appellant's wife or for his relevant children. Even if the Judge had given more detailed consideration to the issue that is nothing, as I so find, which would have led to a different decision to the one made. In those circumstances this appeal is dismissed. The First-tier Tribunal decision shall therefore stand, namely that the appeal in respect of the Immigration Rules or Article 8 is dismissed.

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

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

P. Q. King

Signed
Upper Tribunal Judge King TD ____

Date 15 February 2018