



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

Appeal Number: HU/13895/2018

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre **Decision & Reasons Promulgated**

On: 21st June 2019

On: 23rd August 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SYED ASJID HUSSAIN SHAH
(NO ANONYMITY DIRECTION MADE)**

Respondent

For the Appellant: Mr A. McVeety, Senior Home Office Presenting Officer

For the Respondent: Ms A. Harvey, Counsel instructed by Farani Taylor Solicitors

DECISION AND REASONS

1. The Respondent is a national of Pakistan born on the 22nd August 1980. On the 30th September 2018 the First-tier Tribunal (Judge Foudy) allowed his human rights appeal. The Secretary of State was granted permission to appeal against that decision on the 22nd January 2019.
2. Permission was granted by Upper Tribunal Judge Hanson in narrow terms. The case concerned the decision to deport Mr Shah. It was

common ground that in order to defeat that decision Mr Shah had to demonstrate that he fell within one or more of the 'exceptions' set out in s33 of the Borders Act 2007, those exceptions being set out and explained at paragraphs 398-399A of the Immigration Rules. Mr Shah had been sentenced to two years' imprisonment, and relied on the presence of his children in the United Kingdom. The relevant parts of the Rules were therefore:

398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

(a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;

(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or

(c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law, the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

399. This paragraph applies where paragraph 398 (b) or (c) applies if -

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i) the child is a British Citizen; or

(ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case

(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and

(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or

....

3. Judge Foudy had found that Mr Shah's deportation would have unduly harsh consequences for his children should he be removed, but the determination was silent on the matter raised at 399(a)(i)(a): would it be 'unduly harsh' for the child(ren) to live in the country to which Mr Shah was to be deported, namely Pakistan. It was this omission that Judge Hanson considered to be an arguable error of law. As Mr McVeety agreed, that was the sole ground upon which permission was granted.
4. I accept that Judge Foudy did not expressly make a finding on whether it would be unduly harsh to expect the children to leave the United Kingdom and go to Pakistan with Mr Shah. I also find that there is good reason for that: this was a matter that had been conceded by the Secretary of State.
5. The factual matrix in this appeal was that Mr Shah is married to a British citizen of Somali origin. She and her son had come to the United Kingdom as refugees; they had been granted protection and subsequently naturalised as British nationals. It was not in dispute that Mr Shah had a genuine and subsisting relationship with his wife, and that he further had a genuine and subsisting parental relationship with his step-son, who had suffered badly when Mr Shah was absent from the family home during his imprisonment. The couple also had a child together.
6. Having had regard to those family relationships the Secretary of State, at the date of the decision to deport, had expressly conceded that it would be unduly harsh for Mr Shah's stepson to have to go and live in Pakistan with him. The 'reasons for refusal' letter contains the rather simplistic reasoning that this was because he is not Mr Shah's biological son: one might think it was actually because he was a British citizen of Somali origin, but whatever the reason for it, the concession was made. When the appeal came before Judge Foudy the Secretary of State was represented by a very experienced Presenting Officer, Mr T. Dillon. Mr Dillon noted the terms of that concession and decided that in view of it he would not argue that it would be reasonable for the boy's mother and half-brother to go: this would have the quite illogical effect of creating a family split between members of the family who had had no involvement in the criminality at the heart of the case. Accordingly the Secretary of State's case before the First-tier Tribunal was exclusively that Mr Shah's wife and the two children could reasonably be expected to remain in the United Kingdom without him.
7. On this matter, Judge Foudy's findings are clear. In a detailed and careful determination she assesses the evidence that Mr Shah's wife was suffering from significant mental health issues and that her eldest son was going through a very difficult time. He had failed his GCSEs, was truanting from school and had generally been exhibiting very troubled behaviour. The younger child was also presenting challenging

attitudes towards his mother who was not well placed to address these issues. Judge Foudy accepted the evidence that these children – and their mother- needed Mr Shah to remain with the family unit in the United Kingdom and it was on that basis that she allowed the appeal. As Judge Hanson notes, these were findings plainly open to Judge Foudy on the evidence; he found no arguable grounds to interfere with them.

8. It follows that the Secretary of State's appeal must be dismissed, since the sole ground upon which permission was granted was misconceived. Even if Mr Dillon's decision at hearing were to be disregarded the concession had already been made in respect of one child of the family, and that was enough.

Decisions

9. The determination of the First-tier Tribunal does not contain any material error of law and it is upheld.
10. There is no order for anonymity.

Upper Tribunal Judge Bruce
21st June 2019