Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06724/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6 January 2020	**On 13 January 2020**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

S H
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Clark, of Counsel, instructed by Luqmani Thompson & Partners Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before me following the grant of permission to appeal to the respondent by Upper Tribunal Judge Pickup on 14 October 2019 against the determination of First-tier Tribunal Judge Neville, promulgated on 21 August 2019 following a hearing at Taylor House on 25 February 2019. Although this appeal has been brought by the Secretary of State, I continue to refer to the parties as they were before the First-tier Tribunal.

2. The appellant is a Pakistani national born on 8 January 1983. He entered the UK on 12 November 2008 with entry clearance as a spouse and on 13 December 2010 he was granted indefinite leave to remain. The couple have four children, aged between 5 and 9 at the date of the hearing. All are British citizens.

3. On 28 May 2015, the appellant was convicted of paying for the sexual services and penetration of a child and sentenced on 11 December 2015 to 2 years in prison, made the subject of a sexual harm prevention order for 10 years and ordered to sign the sex offenders register for 10 years. On 4 February 2016, he was served with a decision to deport letter. On 9 February 2016, he claimed asylum. On 1 March 2016, he notified an Immigration Officer that he did not wish to claim asylum. On 2 March 2016, he made private and family life submissions and on 17 May 2016 he withdrew his asylum claim. On 22 July 2016 a deportation order was signed and served on him on 29 July 2016. The respondent also certified her decision to refuse the human rights claim. The appellant sought to bring judicial review proceedings against the certification, but this was refused on papers and on renewal at an oral hearing on 10 February 2017. Part of the challenge had been that the appellant would commit suicide if removed prior to the hearing of his appeal. Further submissions were subsequently made on 23 February 2017 and new evidence was submitted. On 23 May 2017, the respondent refused to revoke the deportation order.

4. Meanwhile, the appellant completed his custodial sentence on 1 August 2016 but remained in immigration detention until he was granted bail on 20 January 2017. He remained on licence until 1 August 2017 and resided with his sister whilst an assessment was undertaken as to the risk he posed to his four children. On 4 September 2017, he was allowed to return home and did so on 11 September 2017 under the terms of a Child Protection Plan. On 2 May 2018, Social Services closed the case on him.

5. The appeal was heard by Judge Neville and allowed on human rights grounds some six months later. The judge found that there was a high likelihood that the appellant would commit suicide on return in such a way as to engage article 3. He also found that if he was wrong about the suicide risk, the effect of the appellant's deportation would be unduly harsh on his wife and children and he therefore met the exception to deportation contained in s.117C(5).

The Hearing

6. The respondent puts forward two grounds which were relied on by Mr Whitwell although only brief submissions were made. The first criticism is that the judge had materially erred in finding that the

deportation would amount to a breach of article 3 (on suicide). Alternatively, it is argued that the judge was wrong to have found exception 2 of 117C(5) was met.

7. It is argued that the judge did not properly consider the leading authorities which made it clear that the article 3 threshold was very high. It is maintained that had he done so he would have found that the threshold had not been met because any deterioration in his condition would not be serious, rapid and irreversible. It was pointed out that the appellant had not suggested that psychiatric care and medical treatment for depression would not be available in Pakistan. The grounds also emphasise that only in very rare cases would removal constitute a breach of article 3 and there was no evidence to suggest that the appellant would make any suicide attempt before arrival in Pakistan and that he had never made any attempts in the past. Reliance was placed on KH (Afghanistan) [2009] EWCA Civ 1354. It was argued that it was not unusual for those faced with deportation to exhibit signs of depression (as per AE (Sri Lanka) [2002] UKIAT 05237.

8. The second ground is that having found that the appellant would be able to integrate in Pakistan, no cogent reasons were given as to why the whole family could not relocate there. Both parents were familiar with the culture and the children were still very young. Issues regarding educational support and financial hardships did not amount to unduly harsh consequences. It is argued that should the family choose to remain in the UK, the appellant's wife could manage as she had done when the appellant was in prison. It was maintained that there had been no consideration of the support the appellant's family could receive from social services or the school with respect to the child who had special needs.

9. In his oral submissions Mr Whitwell relied on the written grounds. He submitted that the first ground was parasitic upon the second. He argued that no consideration had been given to the possibility of the family remaining in the UK and obtaining support.

10. Mr Clarke disputed that the grounds were inter-linked. He submitted that the judge had considered the case at its highest but also on the basis that there was no risk of suicide. He stated that whilst the authorities cited by the respondent had not been mentioned, the judge had considered others which took account of them and also noted the high threshold in suicide cases. He submitted that the point about whether the family could access support from the authorities was a matter not raised by the respondent in her decision letter. It was not a Robinson obvious point and the judge was not obliged to consider it. Submissions were then made on further fresh evidence as to the case that might possibly be accessed; however, I indicated to Mr Clarke that the fresh evidence could not be admitted at this stage. Mr Clarke completed his submissions by stating that the judge had

considered the impact of deportation on the appellant's wife and children and had reached a sustainable decision.

11. Mr Whitwell was content to rely on the grounds and made no further response. At the conclusion of the hearing, I reserved my decision which I now give with reasons.

Discussion and Conclusions

12. Having considered all the evidence and the submissions made, I reach the following conclusions.

13. The respondent's grounds, albeit lengthy, essentially only challenge the finding of suicide risk on the limited basis that certain authorities relating to the high threshold applicable had not been considered. Whilst Mr Clarke readily accepted that the judge had not, in his determination, referred to the cases the respondent cited in her grounds, he pointed out that the judge had considered other leading cases on suicide, notably J [2005] EWCA Civ 629 and GJ [2013] UKUT 319 (IAC), which themselves address the cited authorities and the applicable threshold. He also correctly pointed to several parts of the determination where the judge had acknowledged the high threshold (at 41 and 42). The criticism that the correct threshold was not appreciated or recognised by the judge is, therefore, without merit. There is no challenge in ground 1 as to the judge's analysis of the evidence or the approach he followed using the J steps and guidance (at 24-42). Nor is there any challenge raised in respect of the medical evidence. The only slight reference to the medical reports is paragraph 5 of the grounds where it is maintained that depression is often common amongst those facing deportation. This does not, however, take account of the fact that the evidence gave many more reasons for the appellant's poor state of mind.

14. Mr Clarke is right to point out that the judge considered the appellant as a suicide risk and also in the alternative as someone without such a risk. I therefore now turn to the second ground which is that the judge erred in finding that the second exception of s.117C had been met. The challenge to this is that *"no cogent reasons"* were given by the judge for finding that the family could not relocate to Pakistan together.

15. The judge set out his conclusions on this at paragraphs 75-84. That has to, however, be read in conjunction with the judge's findings on the appellant's wife's vulnerability and past traumatic experiences set out over six pages at paragraphs 62 – 64. There has been no challenge to any of these findings or evidence and none was raised at the hearing before the First-tier Tribunal Judge. Whilst it is possible that another judge may have reached a different conclusion, that is

not the test before me. Judge Neville found that the appellant's wife should be treated as a victim of trafficking, that she was vulnerable and had serious issues of her own and that these issues would impact upon the well-being of the children. The judge relied on medical evidence in respect of the appellant's wife, the social worker's report on the family and the oral evidence. None of this was challenged at any stage. He also considered whether the appellant's presence would ameliorate that situation but, for the reasons set out at paragraph 79, found it would not. The situation of the children and their special needs were also considered at length (at 80-84). Whilst it could be argued that another Tribunal would not have reached the same conclusion as Judge Neville, it cannot be argued that his reasoning is inadequate. In the absence of any challenge by the respondent to any of the evidence in respect of the wife and to any of the findings made with respect to her emotional state and vulnerability, I cannot find that the judge's decision was perverse.

16. The last point, also raised in this ground, is that the judge failed to consider whether local authority support would be available to the appellant's family were they to remain here without him. Reliance is placed on BL (Jamaica) [2016] EWCA Civ 357. The difficulty for the respondent, however, is that this was not a point relied on at any previous stage of the proceedings. In contrast with BL, where the decision letter makes the point that state support would be available, the decision letter in the present case is silent on this. Nor was it a matter raised by the respondent at the hearing before Judge Neville. The respondent's case was that support would be available from the extended family and the judge addressed this point in his determination (at 72). Mr Clarke argued that the issue of local authority support was a matter of fact and not a point of law such as to come under the Robinson *obvious* category. That is a valid submission.

17. For all these reasons, I conclude that the respondent's challenge is not made out.

Decision

18. The decision of the First-tier Tribunal does not contain any errors of law and it stands.

Anonymity

19. I continue the anonymity order made by the First-tier Tribunal.

Signed

Upper Tribunal Judge
Date: 6 January 2020