



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/22373/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at The Royal Courts of Justice

**Decision & Reasons
Promulgated**

On 6 November 2017

On 8 November 2017

Before

UPPER TRIBUNAL JUDGE PITT

Between

**SYED AWAIS ALI HAIDER
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Bazini of Counsel instructed by Gulbenkian Andonian Solicitors

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision dated 24 August 2017 of First-tier Tribunal Judge I Ross which refused the appeal against deportation on Article 8 ECHR grounds.
2. The background to this matter is that the appellant is a citizen of Pakistan, born on 4 March 1980. On 10 October 2003 he entered the United Kingdom having been granted entry clearance as the spouse of a British citizen. That leave was valid until 1 January 2005. On 17 December 2004

the appellant applied for indefinite leave to remain (ILR) as the spouse of a settled person and was granted ILR on 6 April 2005.

3. On 18 September 2015 the appellant was convicted of importation of a controlled drug class A with intent to evade a prohibition/restriction. He was sentenced on the same day to six years' imprisonment.
4. Following that conviction, on 12 October 2015 the respondent notified the appellant of a decision to deport him and invited representations as to why he should not be deported.
5. The appellant's objection to deportation centres on his three children. He has a son born on 4 June 2003, a daughter born on 15 April 2006 and a second daughter born on 20 May 2010. The children are all British nationals, as is the appellant's partner.
6. In his decision, First-tier Tribunal Judge Ross identified correctly at [25] that because the appellant had received a sentence of more than four years he could only defeat the public interest in deportation if he could show very compelling circumstances over and above those described in paragraphs 399 and 399A of the Immigration Rules.
7. At [29]-[42] the judge considered the appellant's family life with his wife and children. At the date of the hearing the children were aged 14, 11 and 7 years old respectively. At [29] the judge referred to the independent social work report setting out the difficulties the children had experienced after their father was sent to prison. That consideration continues over paragraphs [29]-[34]. At [36] he considers the index offence in which the appellant played a leading role in the importation of a large amount of heroin.
8. At [37], the First-tier Tribunal Judge indicates that the appellant's "very serious criminal offending" had caused significant damage to the family. This damage was noted to be particularly serious for the 14-year-old son. The judge concluded at [38], however, that the children were cared for and supported financially by their mother albeit their best interests were for their father not to be deported. At [40] the judge concluded that the adverse effects on the children was not sufficient to show very compelling circumstances when weighed against the very high degree of public interest given the appellant's offending behaviour.
9. The grounds of appeal submit firstly, at paragraph 3, that the First-tier Tribunal Judge failed to consider at all a further social work report contained at pages 100 to 133 of the bundle which gave detailed consideration to the difficulties faced by the appellant's family and the adverse impact his absence was having on his wife and children. The serious concerns raised in the second social work report were capable of having led the judge to make a different decision in the very compelling circumstances assessment.
10. The grounds at paragraph 3 note that the judge also had reservations about the independent social work report that was considered, that of Ms

Seymour. In that context, the second report which was not addressed was additionally capable of making a material difference.

11. Further, paragraph 14 of the grounds challenges the reduction of weight at [34] given to the independent social work report of Ms Seymour, that finding being made as “this is not an independent report, having been commissioned by the children’s mother”. That, argue the grounds, was in contradiction of the declaration by the social worker as to her independence in preparing her report.
12. A further ground of appeal is contained in paragraph 4 of the written grounds and submits that the determination discloses legal error for failing to take into account another report that of a psychologist, contained at pages 1 to 22 of the supplementary bundle, prepared by Dr Latif in June 2017.
13. Amongst the conclusions reached by the psychologist, paragraph 13.1(ix) stated:

“If Mr Haider was removed to Pakistan, it is more than likely that the family situation could worsen drastically and the children’s behaviour and emotions would further deteriorate, causing Mrs S to experience further deterioration in her own wellbeing. There is also a risk that in the event that she is unable to provide sufficient care for her children, due to her own mental health being poor, that the children would be at risk of being removed by the local authority.”
14. A third ground is contained in paragraph 9 of the written grounds and concerns the absence of consideration of the physical medical condition of the appellant’s 12-year-old son. The First-tier Tribunal had evidence about that condition at page 100 of the bundle from the child’s consultant paediatrician confirming that he has an enzyme deficiency which “can cause him to become very unwell needing urgent medical attention”. The grounds maintain that no consideration was given to this further material factor in the “very compelling circumstances” consideration.
15. Argument at the hearing before me focused on these aspects of the written grounds. Mr Duffy accepted that the First-tier Tribunal at times took an incorrect approach to the evidence. There were obvious mistakes in failing to address the additional social work and psychology reports but they were not material errors as the contents of those reports at their highest could not have outweighed the appellant’s very serious 6 year sentence.
16. Having set out the written grounds in some detail above, I can set out my error of law decision relatively briefly. The report of Dr Latif dated 23 June 2017 on the psychological difficulties faced by the appellant’s family as a result of the appellant being imprisoned and facing deportation was potentially material to the very compelling circumstances assessment. As set out above, she raised concerns about the family breaking down to the extent that the children might go into care. The First-tier Tribunal was not obliged to accept that conclusion but it was evidence capable of having a

material impact on the very compelling circumstances assessment. The same is so of the second social worker report contained at pages 100 to 113 of the bundle from two registered social workers, both of whom declare at page 113 their independence and proper approach as expert witnesses in preparing their report. The decision of the First-tier Tribunal omitted consideration of both of those potentially material documents and for that reasons discloses a material error on a point of law.

17. It is also my judgment that placing less weight on Ms Seymour's social work report might have been an option open to the First-tier Tribunal but not without taking into account her declaration as to her independence rather than presuming an absence of independence because of instructions coming from the appellant's wife and assessing the contents of the report in light of that declaration.
18. Having found an error in those terms it is not necessary to look further at the alternative grounds as the error is sufficient for the holistic assessment of whether very compelling circumstances to be set aside and all of the evidence and arguments from both sides taken into account in a re-making *de novo* in the First-tier Tribunal.
19. For these reasons I find that the decision of the First-tier Tribunal discloses an error on a point of law such that it is set aside to be remade in the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal discloses an error on a point of law and is set aside.

The appeal is remitted to the First-tier Tribunal to be re-made *de novo*.

Signed 
Upper Tribunal Judge Pitt

Date 7 November 2017