Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA 25449 2011

THE IMMIGRATION ACTS

Heard at Piccadilly Exchange	**Determination Promulgated**
On 25 March 2014	**On 20 May 2014**
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Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY TRIBUNAL JUDGE PICKUP

Between

CHAUDHRY NAEEM YOUSAF

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr I Ali, Counsel instructed by M and K Solicitors
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This has proved to be a surprisingly difficult case. It concerns an appeal by a citizen of Pakistan against a decision of the First-tier Tribunal dismissing his appeal against a decision refusing to revoke a deportation order made against him.
2. This case has a long history. A deportation order was originally contemplated following the appellant being sentenced to four years' imprisonment when he was one of a group of men indulging in a self-help remedy in pursuance of rent due from recalcitrant tenants. The Crown Court took a particularly dim view of the appellant's conduct because the tenants were themselves very vulnerable people being asylum seekers without much understanding of their rights in the United Kingdom.
3. The First-tier Tribunal dismissed an appeal against a decision to make the appellant the subject of a deportation order and that decision stood but

there was a subsequent appeal against a decision refusing to revoke the deportation order and that appeal was successful before the First-tier Tribunal. It is clear there had been some change in circumstances between the two events and the First-tier Tribunal hearing the appeal against the revocation decision was impressed by evidence about the appellant's role in his family and the dependency of his children and sick wife.

4. This decision was criticised not for what it decided but for what it failed to do. It did not have proper regard to the public interest in reaching the decision and for that reason an appeal to the Upper Tribunal was successful. A Deputy Judge of the Upper Tribunal allowed the Secretary of State's appeal and made a decision which proved to be somewhat troublesome. The Deputy Upper Tribunal Judge remitted the case to the First-tier with certain directions which are set out at paragraph 18 of the determination of 5 September 2012 and this required further submissions to be made on the existing evidence.

5. With the benefit of hindsight we find it surprising that the Deputy Judge did not make provision for providing up-to-date evidence on human rights issues but it is right to say that both parties agreed that no further oral evidence would be called.

6. We note that the decision of the Deputy Upper Tribunal Judge was dated 5 September 2012 and was promulgated on 6 September 2012. This followed a hearing on 3 September 2012 and so far at least the Tribunal was looking quite efficient. For reasons we have not been able to ascertain that determination was re-promulgated and went out for the second time on 26 June 2013. This led to a hearing in the First-tier Tribunal on 3 October 2013. On that occasion there was clearly considerable misunderstanding. Mr Ali, who appears before us, appeared on that occasion and he wanted to argue the case on the basis of the existing findings of fact but the First-tier Tribunal Judge decided that it was open to him to re-make all of the findings because of the way in which the case had been put before him by the directions of the Upper Tribunal.

7. Mr Harrison says that the approach taken by the First-tier Tribunal Judge was the approach agreed by the Secretary of State and followed points made in the skeleton argument submitted by the Secretary of State in accordance with directions. He said that the case took its likely course and this should have been obvious to Mr Ali or those instructing him. They should have come along prepared to deal with it. We see some force in that but the fact remains that none of the findings of the determination allowing the appeal had been criticised and we understand Mr Ali's sense of grievance on behalf of his client when he found that points were in issue that he was not expecting to be in issue. Not only were they in issue they were resolved against him.

8. However the real point of concern is that the Tribunal did not receive up-to-date evidence dealing with the present relationship between the appellant and his wife and the present relationship between the appellant

and his children. The elder child now has achieved her majority but the younger child is not yet 18.

9. We wish to make it plain that we do not in any way want to prejudice the outcome of any further hearing but it is trite law to say that these relationships could at least be very important matters in any Article 8 balancing exercise even in the context of a deportation appeal.

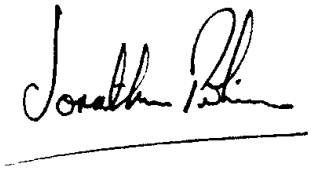
10. Although we have very considerable sympathy for the First-tier Tribunal Judge who was conspicuously trying to do the right thing in accordance with directions we find that the need for up-to-date evidence on Article 8 matters is so imperative that it outweighed the directions of the Tribunal and the judge erred by not allowing up-to-date evidence to be introduced into proceedings.

11. There had been a gap of about thirteen months between the first and second promulgations of the Upper Tribunal's decision and this unexplained delay must have played its part in this confusion.

12. We find therefore that the First-tier Tribunal did err and we set aside that decision and we direct the case be heard again in the First-tier Tribunal which will no doubt issue its own standard directions in the expectation that all issues will be at large subject to usual principles relating to matters being reheard.

13. We do not wish to predict the outcome of that case but it seems to us that the past findings are of limited value what will matter is the present evidence of what is going on in that family although all matters that need to be introduced can.

14. Therefore we find the First-tier Tribunal erred in law, set aside that decision and substitute a decision allowing the appeal to the extent that we direct the case be heard again in the First-tier Tribunal. This must be decided by a judge who has not yet determined this appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal  Dated 19 May 2014