Neutral Citation Number: [2021] EWCA Civ 788

Case No: C5/2020/0454

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
UPPER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER) (UPPER TRIBUNAL JUDGES SMITH AND O'CALLAGHAN)
HU/13396/2017

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/05/2021

Before :

LADY JUSTICE KING
LORD JUSTICE BAKER
and
LORD JUSTICE LEWIS

- -

Between:

MUSTAPHA JALLOW	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -
- -

Jay Gajjar and Mohammed Zahab Jamali (instructed by **SMA Solicitors**) for the **Appellant**
Rob Harland (instructed by **Government Legal Department**) for the **Respondent**

Hearing date: 11 May 2021

- -

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be on 24 May 2021.

Lord Justice Lewis:

Introduction

1. This is an appeal against a decision of the Upper Tribunal dated 20 December 2019 dismissing an appeal against a decision of the First-tier Tribunal dated 22 July 2019. That decision had, in turn, dismissed an appeal against a decision of the respondent to deport the appellant.

2. The appellant, Mustapha Jallow, is a national of Gambia, although he has lived in the United Kingdom since he was nine years old. He was convicted of four offences, including two offences of possession of Class A drugs (crack cocaine and heroin respectively). He was sentenced to three years and eight months' imprisonment. As such he was a foreign criminal within the meaning of section 33 of the UK Borders Act 2007 ("the 2007 Act"). The respondent made a deportation order and rejected the claim that deportation would be incompatible with the appellant's right to family guaranteed by Article 8 of the Convention on the Protection of Human Rights and Fundamental Freedoms ("the Convention").

3. The sole issue on this appeal is whether the Upper Tribunal erred in holding that the First-tier Tribunal had dealt correctly with the appellant's rehabilitative work in the community once he had left prison when it decided that there were no very compelling circumstances outweighing the public interest in deportation.

The Legal Framework

4. Section 32 of the 2007 Act provides that the deportation of a foreign criminal is conducive to the public good. Foreign criminals are defined to include non-British citizens who are convicted in the United Kingdom of a criminal offence and sentenced to at least 12 months' imprisonment. The Secretary of State must make a deportation order unless certain exceptions apply (see section 32(5) of the 2007 Act). The relevant exception is that in subsection 33(2), namely where removal of the foreign criminal would breach a person's Convention rights, here the right under Article 8 of the Convention. That guarantees the right to respect for family and private life and provides that there is no be interference with the exercise of that right except in accordance with law and where the interference is necessary in pursuance of one of a number of specified legitimate aims. In summary, deportation of foreign criminals is recognised as pursuing a legitimate aim and the question is whether deportation is proportionate in the circumstances: see, generally, *Ali v Secretary of State for the Home Department* [2016] UKSC 60, [2016] 1 WLR 4799 at paragraphs 24 to 35.

5. Part 5A of the Immigration, Nationality and Asylum Act 2002 ("the 2002 Act") applies when a court or tribunal is deciding whether a decision of the respondent breaches the right guaranteed by Article 8 of the Convention. Section 117B sets out considerations that are applicable in all cases. Section 117C is headed "Article 8: additional considerations in cases involving foreign criminals" and provides as follows:

> "(1) The deportation of foreign criminals is in the public interest.

> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
>
> (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
>
> (4) Exception 1 applies where—
>
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
>
> (b) C is socially and culturally integrated in the United Kingdom, and
>
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
>
> (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
>
> (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
>
> (7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted."

6. Furthermore, in cases involving foreign criminals sentenced to less than four years' imprisonment and where the exceptions in subsections (4) and (5) are not met, the court must still assess whether deportation is a proportionate interference with any person's rights under Article 8 of the Convention. In such circumstances, the public interest in deportation will only be outweighed by very compelling circumstances. See generally, *HA (Iraq) v Secretary of State for the Home Department* [2020] EWCA Civ 1176, [2021] 1 WLR 1327 at paragraphs 20 to 22 and 31.

7. The provisions of Part 5A of the 2002 Act are reflected in paragraphs 398 to 399A of the Immigration Rules.

The Factual Background

8. The appellant is a Gambian national born on 11 October 1990. His father and mother came to the United Kingdom in 1994 and 1995 respectively. The appellant joined them in the UK when he was nine years old in September 2000. He entered the UK on a visitor's visa which expired on 1 February 2001. He was granted indefinite leave to remain on 30 April 2008 (the application having been made on 15 May 2004).

9. On 28 April 2014, the appellant was convicted of four offences. Two were offences of possession of class A drugs, namely crack cocaine and heroin, with intent to supply, and he was sentenced to three years and eight months' imprisonment on each offence, to be served concurrently. The offences involved possession of 82 packages of crack cocaine and 68 packages of heroin. The appellant drove from London to Brighton, with another man, intending to sell the drugs on the streets of Brighton. The appellant was also convicted of possession of criminal property, namely a sum of £2,000, for which he was sentenced to two years' imprisonment to be served concurrently. He was also convicted of driving whilst disqualified and sentenced to six months' imprisonment to be served concurrently and was disqualified from driving for two years.

10. On 24 June 2014, the appellant was served with a notice of his liability to deportation. The appellant made representations as to why he should not be deported. The respondent did not accept those representations and made a deportation order on 15 February 2015.

11. In 2016, the appellant formed a relationship, and underwent a form of religious marriage, with Ms Eskelius. She was a Swedish national and came to the United Kingdom when she was six. They had a son born on 7 April 2017.

12. The appellant made a human rights claim contending that deportation would be incompatible with the rights conferred by Article 8 of the Convention. By a decision dated 19 September 2017, that claim was refused and the deportation order maintained. The appellant appealed against the decision. The initial hearing was adjourned to enable the respondent to consider the appellant's family circumstances. By a decision dated 17 April 2019, the respondent maintained the decision to deport the appellant. The appellant has a second child born on 22 May 2019.

The decision of the First-tier Tribunal

13. The First-tier Tribunal heard oral evidence from the appellant, his partner and his sister. It described the offences. It noted that the appellant had given evidence that he had participated in rehabilitative work whilst in prison involving following certain courses. It also noted that the appellant had not committed any further offences or been the subject of police intelligence and, in the view of his probation officer, he would be likely to be assessed as posing a low risk of re-offending. In addition, the First-tier Tribunal dealt with voluntary work that he had done in the community following his release from prison. Given the importance of that issue to this appeal, it is helpful to set out paragraph 21 of the judgment which describes that work:

> "21. Though the Appellant is unable to participate in paid or unpaid work as a result of his bail condition, he has undertaken some voluntary activities in the form of talks to children about his own personal experiences in order to encourage them not to commit crime. He has completed the following talks:

> In 2016 he participated in a talk at Arsenal Community Hub attended by police officers and young people who were visiting from Northern Ireland. Mr Keyes, who works for the Hub, wrote a letter stating that he has known the Appellant for about seven years, that the Appellant has been a regular participant with the Hub and that, once the Appellant's immigration status is regularised, Mr Keyes will help him look for employment with one of the Hub's partner organisations.
>
> He gave a talk to college students in Haringey in November 2017. One of the police officers involved in organising the talk sent an email to the Appellant's probation officer stating that he had been impressed by the by the transformation that the Appellant must have undergone.
>
> In oral evidence he stated that he gave a talk at his local mosque to two different age groups of young people, as part of a program to nurture children."

14. The First-tier Tribunal judgment then deals with the appellant's life in the United Kingdom, his partner and his family, and considered the extent of his connections with Gambia. The tribunal set out the legal framework. It considered first whether Exception 1 in section 117C(4) of the 2002 Act was satisfied. It was satisfied that the appellant was socially and culturally integrated in the United Kingdom. The tribunal was satisfied that the appellant had made significant efforts to re-establish his cultural and social ties in the UK following his conviction and based that conclusion on, amongst other facts,

> "His participation in programs designed to encourage young people not to commit criminal offences. I find that this participation is genuine and substantial, based on the number of talks he has given and the feedback from the professionals involved in arranging the programs. I give this factor significant weight because it takes effort to involve oneself in such activities and because of the beneficial effect for the wider community."

15. However, the appellant did not meet the other requirements in Exception 1. He had not been lawfully resident in the UK for most of his life at the date of singing of the deportation order on 15 February 2015. He was 24 years and 8 months old at that date and had been granted indefinite leave to remain on 30 April 2008. Consequently, he had been lawfully resident for only 6 years and 10 months. Further there were not very significant obstacles to his re-integration in Gambia. He did not meet the requirements of Exception 2 as it would not be unduly harsh for his partner and child to return to the Gambia or for them to remain in the UK without him. Those findings were upheld by the Upper Tribunal and have not been the subject of an appeal to this court.

16. The First-Tier Tribunal then considered whether there were very compelling circumstances. The material paragraphs for this appeal are paragraphs 60 to 64 which are in the following terms:

> "Factors relevant to the public interest

"60. My starting point is section 117C(1), namely that the deportation of foreign criminals is in the public interest. Section 117C(2), requires an assessment of the seriousness of the offence because the greater the seriousness, the greater the public interest in deportation. In making this assessment, I take into account:

(1) the nature of the offence. In my view, it is particularly serious given the fact that drug supply with all its resulting societal ills, would not take place without people like the Appellant. Those ills are varied and widespread: the violence that occurs in the operation of the drug trade involves violence, the criminal offences committed by those addicted to drugs in order to fund that addition, the damage to the heath of addicts and the misery that addicts cause their own family and friends;

(2) the length of sentence. Whilst the Appellant's sentence is at the upper end of the 1-4 year bracket, it is in the Appellant's favour that it does not exceed four years.

"61. I take into account that this was his only serious criminal offence, the other matter being a relative minor driving offence. This is a factor that would been treated as the absence of an aggravating factor for the purpose of sentencing but it is a positive factor in terms of my assessment of the public interest because in my view, there is less public interest in the deportation of someone who was effectively a one-off offender than one who is a recidivist.

"62 I give some, though limited, weight to the fact that I find that the Appellant has done all he could to demonstrate that he takes his rehabilitation seriously and intends not to re-offend. I take into account that I have accepted that the risk of re-offending is low and that the probation officer's assessment is corroborated by the fact that he has been out of detention for approximately four years and has not re-offended or appeared on any police intelligence databases. I find, based on the evidence of the courses he completed, that he did all he could whilst in custody to make the most of his time. I also take into account that there is positive evidence of rehabilitation following his release from custody, in the form of his participation in programs designed to encourage young people not to commit criminal offences. As previously stated, I find this participation is genuine and substantial, based on the number of talks [he has] given and feedback back from the professionals involved in arranging the programs and the fact that he has maintained contact with his probation officer after the end of his licence.

"63 I take into account in the Appellant's favour those factors in section 117B, namely that:

> he was in the UK lawfully with a grant of indefinite leave to remain;
>
> he is financially independent in the sense that he is supported by his family and
>
> he is a fluent English speaker.
>
> "64. When balancing all those factors, in my view the public interest in his deportation is very significant as I place far greater weight on the nature and seriousness of his offence, deterring others from committing crime and the need to express society's view about criminality and those who offend than those factors which [I] have assessed as mitigating."

17. The First-tier Tribunal then considered the extent of his family and private life in the United Kingdom and, at paragraph 70, considered again the degree of the appellant's social and cultural integration in the UK including the findings in relation to his genuine efforts in relation to rehabilitation. At paragraph 72, the First-tier Tribunal concluded that:

> "72. However, when I balance those factors which I find in the Appellant's favour in relation to his family and private life, against the very significant public interest, I conclude that they are not very compelling."

18. The First-tier Tribunal, therefore, dismissed the appeal.

The decision of the Upper Tribunal

19. The appellant appealed to the Upper Tribunal. The relevant ground of appeal for present purposes was the first ground, namely that the First-tier Tribunal had failed to give proper or sufficient weight to the appellant's rehabilitation. He submitted that the rehabilitative activities he had engaged in had a positive impact on society and that reduced the public interest in deportation.

20. At paragraph 18 of its judgment, the Upper Tribunal noted that the First-tier Tribunal had considered the appellant's rehabilitative work in the community in its assessment of his social and cultural integration and had accepted that the appellant had made significant efforts to restore his cultural and social ties in the UK and quoted the observation set out above at paragraph 14. The Upper Tribunal then continued in the following terms:

> "19. We find that the Judge then proceeded to lawfully incorporate this finding into her assessment of the public interest at [70] of her decision where she concluded that though the Appellant is socially and culturally integrated into this country such evidence as demonstrates such integration is not so remarkable, either alone or in combination with any other factor, to amount to very compelling circumstances. Such a decision

> was reasonably open to the Judge and cannot be considered to be unlawful.
>
> "20. Mr Gajjar accepted, rightfully, that the issue of weight is for the Judge. He said though that the Judge should have recognised that personal rehabilitation generally carries little weight, rehabilitation by means of societal betterment going towards reintegration is different in nature and has to be distinguished and considered separately. We observe that the Judge did separate the two elements in her consideration, being mindful of their personal and societal attributes. The issue of rehabilitation is relevant so far as it concerns risk. In that sense, the two elements are no different to each other as they address risk. The Judge rightly considered Mr Gajjar's "societal betterment" element as also being an aspect of reintegration but was not required to consider it as requiring a different approach, and weight, to that it enjoys under general rehabilitation. Society expects its citizens to express its revulsion at a life of crime and to encourage fellow citizens to be law-abiding. To take such steps simply establishes that the Appellant has returned to the place where society expects him, and everyone else, to be. The Judge did not therefore err in law and this ground of appeal must fail."

21. The Upper Tribunal dismissed the appeal.

The Appeal

22. The appellant appealed to this Court with permission granted by Males LJ. There is one ground of appeal relating to the treatment of the appellant's rehabilitative work in the form of his work in the community. The ground of appeal is, essentially, that the Upper Tribunal erred in concluding that the appellant's rehabilitative work in the community did not require any different treatment or weight from that which is attached to personal rehabilitation.

The Submissions

23. Mr Gajjar, with Mr Jamali, for the appellant, submitted that there is a distinction between matters going to the personal rehabilitation of an offender, such as taking courses in prison which reduced that offender's risk of re-offending, and activities undertaken in the community after the offender had left prison and which were intended to dissuade others from engaging in crime. The latter is a factor which is relevant to the extent of the public interest in deportation, as appears from the dicta of Underhill LJ in *HA (Iraq)* at paragraph 135. Mr Gajjar further relied on the recognition in *Akinyemi v Secretary of State for the Home Department* [2019] EWCA Civ 2326, [2020] 1 WLR 1843 at paragraphs 39 to 50, that the public interest is a flexible, not a fixed, concept. He submitted that the public interest is capable of accommodating the contribution made by the appellant to the community. He submitted that the Upper Tribunal erred in paragraph 20 of its judgment in indicating that activities involving a benefit to the community did not require any different treatment or weight than that which is attached to personal rehabilitation. Further, he submitted that it erred in concluding that the

contribution to the community made by the appellant fell to be assessed on the basis that society expects people to express its revulsion at a life of crime and to encourage others to be law-abiding. That may be the expectation in relation to a person's own offending but that reasoning did not apply to carrying out voluntary activity in the community, which conferred a positive benefit on society as that went beyond what society expected of individuals. Mr Gajjar submitted that the First-tier Tribunal had also erred in failing to address the impact of the appellant's positive contribution to society in its assessment of the public interest in deterrence and failed to give adequate weight to that contribution.

24. Mr Harland, for the respondent, accepted that the public interest was a flexible concept capable of accommodating, and reflecting, relevant considerations which affected the weight to be accorded to the public interest. The assessment of whether there were very compelling circumstances outweighing the public interest involved an holistic assessment of all relevant considerations. Nonetheless, he submitted, the need to establish that there were very compelling circumstances set a very high threshold which was likely to be satisfied in only a small number of cases, as recognised in *Ali* at paragraph 38. In the light of those considerations, Mr Harland submitted that the activities undertaken by the appellant were not to be disregarded, and he accepted they were genuine and substantial activities. They did not, however, establish that there were very compelling circumstances outweighing the public interest in deportation.

Discussion and Decision

25. The starting point is the recognition in section 117C of the 2002 Act that the deportation of foreign criminals is in the public interest. A number of considerations may be relevant to assessing the strength of the public interest. Section 117C(2) of the 2002 Act itself recognises that the "more serious the offence committed by a foreign criminal, the greater is the public interest in deportation".

26. Other factors may also bear on the weight of the public interest in the deportation of a particular offender: see *Ali* at paragraph 38, and *Akinyemi* at paragraph 39. Those factors include what has been described as rehabilitation. That, in turn, has been used to encompasses a number of different situations. Rehabilitation may be used to describe steps taken to reduce the risk of the particular offender re-offending. That may involve consideration of matters such as courses undertaken in prison to reduce the risk of re-offending or the offender's conduct since release, or any relevant assessment of the risk of the offender re-offending. The fact that an offender presents a low risk of re-offending may be a factor in assessing the strength of the public interest in deporting that particular offender. In practice, however, such factors will not generally carry much weight for the reasons identified by Moore-Bick LJ in *Danso v Secretary of State for the Home Department* [2015] EWCA Civ 596. There, a prisoner had undergone courses in prison designed to address aspects of his offending and there were reports indicating that the risk of further re-offending was low. At paragraph 20 Moore-Bick LJ, with whom Underhill and Christopher Clarke LJJ agreed, said:

> "20. [Counsel for the appellant] submitted that the tribunal should have placed much greater weight on the appellant's rehabilitation and the fact that he did not pose a significant risk of re-offending. He suggested that far too little importance is attached to factors of that kind, with the result that those who

> commit offences have little incentive to co-operate with the authorities and make a positive effort to change their ways. I have some sympathy with that argument and I should not wish to diminish the importance of rehabilitation. It may be that in a few cases it will amount to an important factor, but the fact is that there is nothing unusual about the appellant's case. Most sex offenders who are sentenced to substantial terms of imprisonment are offered courses designed to help them avoid re-offending in future and in many cases the risk of doing so is reduced. It must be borne in mind, however, that the protection of the public from harm by way of future offending is only one of the factors that makes it conducive to the public good to deport criminals. Other factors include the need to mark the public's revulsion at the offender's conduct and the need to deter others from acting in a similar way. Fortunately, rehabilitation of the kind exhibited by the appellant in this case is not uncommon and cannot in my view contribute greatly to the existence of the very compelling circumstances required to outweigh the public interest in deportation."

27. That approach is endorsed by Underhill LJ at paragraph 141 of his judgment in *HA (Iraq)* where, having reviewed the case law, he said:

> "141. What those authorities seem to me to establish is that the fact that a potential deportee has shown positive evidence of rehabilitation, and thus of a reduced risk of re-offending, cannot be excluded from the overall proportionality exercise. The authorities say so, and it must be right in principle in view of the holistic nature of that exercise. Where a tribunal is able to make an assessment that the foreign criminal is unlikely to re-offend, that is a factor which can carry some weight in the balance when considering very compelling circumstances. The weight which it will bear will vary from case to case, but it will rarely be of great weight bearing in mind that, as Moore-Bick LJ says in *Danso*, the public interest in the deportation of criminals is not based only on the need to protect the public from further offending by the foreign criminal in question but also on wider policy considerations of deterrence and public concern. I would add that tribunals will properly be cautious about their ability to make findings on the risk of re-offending, and will usually be unable to do so with any confidence based on no more than the undertaking of prison courses or mere assertions of reform by the offender or the absence of subsequent offending for what will typically be a relatively short period."

28. The reason underlying the approach to the treatment of personal rehabilitation has, on occasions, been said to be that such rehabilitation will "normally do no more than show that the individual has returned to the place where society… expects him to be" (per Hamblen LJ as he then was in *Binbuga v Secretary of State for the Home Department*

[2019] EWCA 551, [2019] Imm AR 1026 at paragraph 84). With respect, however, I agree with the observations of Underhill LJ at paragraph 142 of his judgment in *HA (Iraq)* that that:

> "does not properly reflect the reason why rehabilitation is in principle relevant in this context, which is that it goes to reduce (one element) in the weight of the public interest in deportation which forms one side of the proportionality balance. It is not generally to do with being given credit for being a law-abiding citizen; as the UT says, that is expected of everybody, but the fact that that that is so is not a good reason for denying to an appellant such weight as his rehabilitation would otherwise carry."

29. Rehabilitation has also been used to describe positive contributions made to society by an offender following release from prison. In dicta in *HA (Iraq)*, Underhill LJ observed that evidence of exceptional positive contributions to society since release could be described as rehabilitation and observed at paragraph 135 of his judgment that:

> "135. I should say by way of preliminary that the core idea behind the concept of "rehabilitation" in this context is the elimination, or at least the substantial reduction, of the risk of future offending. That can of course never be definitively assessed, but various forms of evidence of it, of varying cogency, may be adduced. One is simply that the criminal has committed no offences since his release: how cogent that is will depend on the circumstances. Others may include formal assessments of the risk of future offending and/or the taking of courses or other measures designed to address the causes of the offending behaviour. Occasionally, foreign criminals may be able to show evidence of exceptional positive contributions to society since release: that too can be described as "rehabilitation" but it may involve different considerations."

30. I agree that a positive contribution to society arising from activities undertaken by an offender in the community to encourage others not to engage in crime is a factor that may be relevant to the assessment of whether there are very compelling circumstances which outweigh the public interest in deportation. It is unlikely that this factor, of itself, will be of much significance for the reasons given by Moore-Bick LJ in *Danso*, and adopted by Underhill LJ in *HA (Iraq)* in the context of personal rehabilitation, namely that the public interest in deportation of foreign criminals is based on, amongst other considerations, the need to deter others from committing crimes and public concern. That is also reflected in the fact that Underhill LJ referred to foreign criminals being able to show evidence of "exceptional positive contribution to society". That is not to be read as imposing a test of "exceptionality" before positive contributions to society can be taken into account. It does, however, reflect the fact that, in general, such contributions are unlikely to contribute greatly to the existence of the very compelling circumstances required to outweigh the public interest in deportation. Unless the positive contribution was very significant for some reason, it is unlikely, in practice, to bear much weight in the overall assessment.

31. I turn then to the decision of the First-tier Tribunal. That tribunal approached the issue correctly. It began by considering the factors relevant to the public interest in

deportation as appears from the heading above paragraph 60. It considered the seriousness of the offence and considered, as it was entitled to, that these offences, involving as they did the possession with intent to supply of class A drugs in the form of crack cocaine and heroin, were particularly serious: see paragraph 60 of its decision. It considered that the appellant was a one-off offender and considered that that reduced the public interest in deportation.

32. At paragraph 62, the First-tier Tribunal took into account first the personal rehabilitation of the appellant and the fact that the risk of his re-offending was low and gave some, though limited, weight to that factor. It then considered, separately, that there was positive evidence of rehabilitation in the form of the appellant's participation in programs designed to encourage young people not to commit criminal offences and described that participation as "genuine and substantial". It also took into account other factors in the appellant's favour. The First-tier Tribunal considered, however, that when balancing all those factors the public interest in the deportation of the appellant was "very significant" as it placed "far greater weight" on the nature and seriousness of the offence, deterring others from committing crime and the need to express society's view about criminality and those who offend" (see paragraph 64 of the judgment). Thereafter, the First-tier Tribunal considered all the other relevant factors and decided that they did not provide the very compelling circumstances required to outweigh the very significant public interest in the deportation of this offender.

33. The First-tier Tribunal adopted the correct approach to the assessment of the strength of the public interest in the deportation of the appellant and reached a view on the weight to be attached in the public interest which it was entitled to reach on the evidence before it. It was entitled to reach the conclusion that, having regard to all the relevant circumstances, they did not amount to very compelling circumstances which outweighed the public interest, which it assessed as "very significant", in the deportation of the appellant. For those reasons, there was no error in the approach or the conclusion of the First-tier Tribunal.

34. In those circumstances, the Upper Tribunal did not err in dismissing the appeal and upholding the decision of the First-tier Tribunal. There was no basis on which it could, properly, have allowed an appeal. As it held at paragraph 19 of its judgment, the First-tier Tribunal had incorporated its finding on the appellant's rehabilitative work in the community in its finding of the public interest and had then considered that the degree of integration, and the other relevant factors did not amount to very compelling circumstances. It held, correctly, that such a decision was reasonably open to the First-tier Tribunal. In other words, the Upper Tribunal correctly held that there was no error of law in the approach, and the conclusions, of the First-tier Tribunal.

35. In relation to the criticisms made at paragraph 20 of its judgment, the Upper Tribunal noted, correctly, that the weight to be attributed to the contribution was a matter for the First-tier Tribunal. It observed that the First-tier Tribunal did separate out the two elements of personal rehabilitation and contribution in its consideration of the issues. Those observations are correct. It stated that the First-tier Tribunal was not required to adopt a different approach and weight to societal benefits as opposed to personal rehabilitation. At one level, that is correct. In each case, the approach is the same: the factor is not to be excluded from the assessment and the weight which any particular factor attracts may vary from case to case but, ultimately, personal rehabilitation and a contribution to activities intended to discourage others from committing crimes, are

unlikely in most cases to carry much weight. The reason given by the Upper Tribunal for that – that society expects people to express revulsion at crime and encourage others to be law-abiding – does not accurately express the reason why that is the case. Rather, it is the fact that the public interest in deportation is based not only on reduction in the risk of re-offending, but also on wider considerations of deterrence and public concern. However, the fact that the rationale underlying the reason underlying the public interest was inaccurately expressed does not in this case (and would not generally) amount to a material misdirection or a material error of law. In any event, the First-tier Tribunal did not use this form of words in its judgment and this sentence of paragraph 20 of the Upper Tribunal judgment does not in any way cast doubt upon the correctness of the approach or the conclusions of the First-tier Tribunal.

Conclusion

36. The First-tier Tribunal adopted the correct approach to assessing the strength of the public interest in this case. It was entitled to reach the conclusion that the public interest in deportation was very significant, particularly given the serious nature of the offences that the appellant had committed and notwithstanding the fact that the appellant presented a low risk of re-offending and the positive contribution he had made to encouraging others not to commit crimes. It was entitled to conclude that there were no very compelling circumstances to outweigh that public interest. In those circumstances, the Upper Tribunal was correct to dismiss the appeal and to uphold the First-tier Tribunal's decision. For those reasons, I would dismiss the appeal against the decision of the Upper Tribunal.

Lord Justice Baker

37. I agree.

Lady Justice King

38. I also agree.