



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: RP/00157/2016

THE IMMIGRATION ACTS

Heard at Manchester  
On 10 July 2017

Decision & Reasons Promulgated  
On 13 July 2018

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

TRUONG [D]

Respondent

**Representation:**

For the appellant: Mr Ell, Counsel

For the respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

**Introduction**

1. Mr [D] is a citizen of Vietnam who was born in 1973 and is therefore 45 years old. On 3 November 2016, the SSHD made a decision to deport him to Vietnam. In a decision dated 27 July 2017, I found that the decision of the First-tier Tribunal ('FTT') allowing the appeal on Article 8 grounds dated 17 January

2017, contained an error of law and should be remade by me. I now remake the decision.

## **Background facts**

2. Mr [D] arrived in the United Kingdom ('UK') when he was a 13-year-old child, in 1986 on a settlement/refugee visa, together with his family, as one of the 'boat people'. The difficult and traumatic circumstances of the 'boat people' are well known. They were granted leave to enter for an indefinite period. He has therefore been in the UK for 32 years alongside his parents and siblings (three sisters and two brothers), with settled status.
3. Mr [D] has been convicted of a range of criminal offences between 1995 and 2007. More recently, in 2012, he was sentenced to two years and three months imprisonment for the production of cannabis. He has explained that his offending took place at a time when he was young and with drug, alcohol and gambling dependencies. Since his release from prison in February 2013, he has not reoffended.

## **Hearing**

### *Issues in dispute*

4. At the beginning of the hearing Mr Ell clarified that given the FTT's preserved findings, the only ground relied upon to challenge Mr [D]'s deportation is Article 8 of the ECHR. Both representatives agreed that the only remaining issues in dispute, relevant to Article 8, given the preserved findings of the FTT together with the updated evidence available to me, are as follows:
  - (i) does Mr [D] meet the requirements of section 117C(4)(c)?
  - (ii) if not, are there 'very compelling circumstances' to nevertheless justify allowing the appeal on Article 8 grounds?

### *Oral evidence*

5. I then heard evidence from the appellant who was cross-examined by Mr Bates. Mr [D] gave his evidence in fluent English. He explained that he had been running a small take-away business called 'Sea Breeze' in Warrington from April 2018. He paid £10,000 for the business, and was paying for this in instalments of £300 per month. He therefore did not have any capital from the business to take with him to Vietnam. He worked long hours, seven days a week. He closed the business once a fortnight to visit his mother and disabled brother ('B'), who both continue to reside in Birmingham.
6. Mr [D] confirmed that he speaks to his mother in Vietnamese and is therefore able to understand and speak basic Vietnamese. Mr Bates pressed Mr [D] to

acknowledge that with his English / Vietnamese, long experience as a chef and recent experience running a business, he would be well-placed to secure employment or start a business in Vietnam. Mr [D] simply said that he did not know anything about Vietnam and had not thought about looking into jobs in Vietnam that required English skills.

### Submissions

7. Mr Bates submitted that although reintegration to Vietnam may well be difficult, Mr [D] has demonstrated resilience in recent years and has the requisite experience and skills to overcome obstacles. Mr Bates also submitted that the circumstances relied upon by Mr [D] cannot properly be described as 'very compelling', because Mr [D]'s mother and B clearly had significant support from the other siblings, and would be adequately cared for by them. Mr Bates also invited me to find that there remains a strong public interest in deporting Mr [D] given his long history of offending and relied upon the FTT's observation at [40] this is "*not a story of juvenile offending that peters out as the person gets older and more mature. His first offence was in his early 20s and thereafter the offences continued and escalated in seriousness*".
8. Mr Ell invited me to find that when the FTT's preserved findings are considered alongside the updated evidence, Mr [D] would face very significant obstacles reintegrating in Vietnam. Mr Ell submitted in the alternative that when Mr [D]'s circumstances are viewed cumulatively, including the circumstances of his departure from Vietnam, the length of time he has been in the UK and the strong private life he has developed here, his family life particularly with his mother and B, they can be described as are very compelling and are not outweighed by the public interest, given Mr [D]'s low risk of reoffending and the passage of time. After hearing from both representatives, I reserved my decision which I now provide with reasons.

### Legal framework

9. Part 5A of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act'), as inserted by section 19 of the Immigration Act 2014 includes the following:
 

*"117C Article 8 additional considerations in cases involving foreign criminals.*

  - (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."

Since Mr [D]'s sentence was for imprisonment of more than 12 months but less than 4 years, it is sections 117C(3) and (4) which are applicable. The correct approach to section 117C(4)(c) is set out in SSH D v Kamara [2016] EWCA Civ 813, wherein, Sales LJ said this at [14]:

"In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

10. In NA (Pakistan) v Home Secretary [2016] EWCA Civ 662, [2017] 1 WLR 207, Jackson LJ, giving the judgment of the Court of Appeal, noted at [24] that it is a "*curious feature of section 117C(3) [of the 2002 Act] ... that it does not make any provision for medium offenders who fall outside Exceptions 1 and 2*". The Court concluded at [28] that, on a proper construction of section 117C(3), it provides that for 'medium offenders' (i.e. those with sentences of between one and four years' imprisonment):

"the public interest requires C's deportation unless Exception 1 or Exception 2 applies or unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2". (Emphasis added.)

11. So construed, section 117C of the 2002 Act chimes with the relevant Immigration Rules at paragraphs 398 and 399.
12. The Court of Appeal considered the meaning of 'very compelling circumstances, over and above those described in Exceptions 1 and 2' in NA (Pakistan). The Court concluded at [29] that a foreign criminal facing deportation is not "*altogether disentitled from seeking to rely on matters falling within*

*the scope of the circumstances described in Exceptions 1 and 2 when seeking to contend that 'there are very compelling circumstances, over and above those described in Exceptions 1 and 2'. The position is rather that:*

"a foreign criminal is entitled to rely upon such matters, but he would need to be able to point to features of his case of a kind mentioned in Exceptions 1 and 2 (and in paragraphs 399 or 399A of the 2014 rules), or features falling outside the circumstances described in those exceptions and those paragraphs, which made his claim based on article 8 especially strong".

13. In the case of a medium offender like Mr [D], therefore as explained at [32]:

"if all he could advance in support of his article 8 claim was a 'near miss' case in which he fell short of bringing himself within either Exception 1 or Exception 2, it would not be possible to say that he had shown that there were 'very compelling circumstances, over and above those described in Exceptions 1 and 2'. He would need to have a far stronger case than that by reference to the interests protected by article 8 to bring himself within that fall back protection. But again, in principle there may be cases in which such an offender can say that features of his case of a kind described in Exceptions 1 and 2 have such great force for article 8 purposes that they do constitute such very compelling circumstances, whether taken by themselves or in conjunction with other factors relevant to article 8 but not falling within the factors described in Exceptions 1 and 2. The decision-maker, be it the Secretary of State or a tribunal, must look at all the matters relied upon collectively, in order to determine whether they are sufficiently compelling to outweigh the high public interest in deportation."

14. The law relating to the deportation of foreign criminals was considered by the Supreme Court in Hasham Ali v Home Secretary [2016] UKSC 60, [2016] 1 WLR 4799. At the dates with which it was concerned, sections 117A to 117D of the 2002 Act were not yet in force, and the Immigration Rules in force at the time was the focus of the consideration of the relevant principles. However, as observed by Hickinbottom LJ in KE (Nigeria) v SSHD [2017] EWCA Civ 1382, [2018] WLR 2610 (19 September 2017) at [35] since Hasham Ali, the relevant Government policy has been encapsulated in statute rather than merely Immigration Rules, but the principles and approach expounded by Lord Reed still apply; although, in considering the appropriate weight to be given to the assessment of the strength of the general public interest in the deportation of foreign offenders, any decision-maker, court or tribunal conducting the article 8(2) exercise has to bear in mind that that is now incorporated into statute, and so, even more starkly, reflects the will of Parliament. This can be contrasted with the approach in NE-A (Nigeria) v SSHD [2017] EWCA Civ 239 (11 April 2017) at [14-15], albeit this case entirely focussed upon long term and not medium term offenders, and is not referred to in KE (Nigeria).
15. The statutory provisions thus provide a "*particularly strong statement of public policy*" (NA (Pakistan) at [22]), such that "*great weight*" should generally be given

to it and cases in which that public interest will be outweighed, other than those specified in the statutory provisions and Rules themselves, "are likely to be a very small minority (particular in non-settled cases)" (Ali at [38]), i.e. will be rare (NA (Pakistan) at [33]).

16. Notwithstanding this heavily structured analysis, it remains the case that relative human rights, such as the right to respect for family and private life under Article 8 can only ultimately be considered on the facts of the particular case. Ultimately, the question is whether deportation is proportionate in the particular case before it, balancing the strength of the public interest in deportation against the impact on private and family life. In doing so, appropriate weight must be given to Parliament's and the Secretary of State's assessments of the strength of the general public interest in the deportation of foreign offenders but consideration must also be given to all factors relevant to the specific case in question.
17. The Strasbourg jurisprudence indicates relevant factors to consider. Lord Reed summarised the Strasbourg jurisprudence earlier in his judgment in Hasham Ali at [26] as follows:

"In a well known series of judgments the [European Court of Human Rights] has set out the guiding principles which it applies when assessing the likelihood that the deportation of a settled migrant would interfere with family life and, if so, its proportionality to the legitimate aim pursued. In *Boultif v Switzerland* (2001) 33 EHRR 50, para 48, the court said that it would consider the nature and seriousness of the offence committed by the applicant; the length of the applicant's stay in the country from which he or she is to be expelled; the time elapsed since the offence was committed and the applicant's conduct during that period; the nationalities of the various persons concerned; the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life; whether the spouse knew about the offence at the time when he or she entered into a family relationship; whether there are children of the marriage, and if so, their age; and the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled. Two further factors were mentioned in *Üner v The Netherlands* (2006) 45 EHRR 14, para 58: the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and the solidity of the social, cultural and family ties with the host country and with the country of destination. In *Maslov v Austria* [2009] INLR 47, paras 72-75, the court added that the age of the person concerned can play a role when applying some of these criteria. For instance, when assessing the nature and seriousness of the offences, it has to be taken into account whether the person committed them as a juvenile or as an adult. Equally, when assessing the length of the person's stay in the country from which he or she is to be expelled and the solidity of the social, cultural and family ties with the host country, it makes a difference whether the person came to the country during his or her childhood or youth, or was even born there, or whether he or she

only came as an adult. Some of the factors listed in these cases relate to the strength of the public interest in deportation: that is to say, the extent to which the deportation of the person concerned will promote the legitimate aim pursued. Others relate to the strength of the countervailing interests in private and family life. They are not exhaustive."

18. The Court of Appeal addressed the significance of rehabilitation in Taylor v Home Secretary [2015] EWCA Civ 845. Moore-Bick LJ said at [21]:

"I would certainly not wish to diminish the importance of rehabilitation in itself, but the cases in which it can make a significant contribution to establishing the compelling reasons sufficient to outweigh the public interest in deportation are likely to be rare. The fact that rehabilitation has begun but is as yet incomplete has been held in general not to be a relevant factor: see *SE (Zimbabwe) v Secretary of State for the Home Department* [2014] EWCA Civ 256 and *PF (Nigeria) v Secretary of State for the Home Department* [2015] EWCA Civ 596. Moreover, as was recognised in *SU (Bangladesh) v Secretary of State for the Home Department* [2013] EWCA Civ 427, rehabilitation is relevant primarily to the reduction in the risk of re-offending. It is less relevant to the other factors which contribute to the public interest in deportation."

19. With regard to that last sentence, in *OH (Serbia) v Home Secretary* [2008] EWCA Civ 694, [2009] INLR 109, Wilson LJ (as he then was) derived (in paragraph 15) the following propositions from earlier case-law:

(a) The risk of reoffending is one facet of the public interest but, in the case of very serious crimes, not the most important facet.  
(b) Another important facet is the need to deter foreign nationals from committing serious crimes by leading them to understand that, whatever the other circumstances, one consequence of them may well be deportation.  
(c) A further important facet is the role of a deportation order as an expression of society's revulsion at serious crimes and in building public confidence in the treatment of foreign citizens who have committed serious crimes.  
(d) Primary responsibility for the public interest, whose view of it is likely to be wider and better informed than that of a tribunal, resides in the respondent and accordingly a tribunal hearing an appeal against a decision to deport should not only consider for itself all the facets of the public interest but should weigh, as a linked but independent feature, the approach to them adopted by the respondent in the context of the facts of the case. Speaking for myself, I would not however describe the tribunal's duty in this regard as being higher than 'to weigh' this feature."

20. In Hasham Ali Lord Wilson JSC said at [70] that he now regretted his reference in sub-paragraph (c) to society's "revulsion" (that being, he considered, "too emotive a concept to figure in this analysis"), but he adhered to the view that he was "entitled to refer to the importance of public confidence in our determination of these issues".

## Findings

### *Assessment of further evidence*

21. It is important to acknowledge, as Mr Ell invited me to do, the preserved factual findings from the FTT decision. These include: Mr [D]'s history as a child refugee [30-35]; he is part of a closely knit and loving family in the UK [43-44]; he has developed a very significant private life in the United Kingdom over an extended period of time [46]; his deportation would constitute a very significant interference with his private life [48]; he will have significant difficulties in adapting to life in Vietnam given the time he has been away for and his limited employment skills [46].
22. These findings were reached after a hearing on 22 December 2016. I heard evidence from Mr [D] in July 2018 together with updated evidence in a 128-page bundle. The representatives agreed that the evidence provided was mostly uncontroversial. Having considered all the evidence in the round, I make the following factual findings:
  - (i) Mr [D] remains part of a close-knit family. However, most of his family including his mother and B, his disabled brother, residing in a residential home, live in Birmingham. He has lived in Manchester in recent years and moved to Warrington to open his own business in April 2018. He used to visit his family in Birmingham every Monday but needs to shut his business in order to visit, and for this understandable reason visits them on a fortnightly basis. There is no obvious element of dependency beyond normal family ties between Mr [D] and his relatives given the geographical distance.
  - (ii) Mr [D] contributes to his mother's bills and gives her £50 per week but that does not mean that she is financially dependent upon him. She must have her own source of income. In any event, after a fall two months ago, Mr [D] told me during his oral evidence that she has been looked after by social services.
  - (iii) A letter regarding B from the Brain Injury Rehabilitation Trust dated 28 November 2016 is not addressed to the respondent, Mr Truong [D], but his elder brother. This suggests that it is not this Mr [D] who takes a lead role in overseeing B's care.
  - (iv) Mr [D], his mother and B are each living independent lives and there is no 'family life' within the meaning of Article 8(1). Even if there is, any particular dependence the mother and B have upon Mr [D] can be easily replaced by the other siblings in the family, some of whom live nearer in Birmingham. Although the



other siblings have their own independent family units, this does not prevent them from playing an important role in the lives of their mother and B. As Mr Bates observed, the family all seem to meet up on a fortnightly basis when Mr [D] visits Birmingham and he no longer plays a particularly important practical role in caring for his mother and B.

- (v) Mr [D] has opened his own Vietnamese take-away business in April 2018 after many years spent working as a chef. Mr [D] has clearly worked very hard to make the business profitable and I accept his evidence that the business is doing relatively well, but that he does not have any substantial capital to take from the business.
- (vi) Mr [D] accepted in cross-examination that he speaks to his mother in Vietnamese and therefore has a good working knowledge of the language.
- (vii) I do not accept that Mr [D]'s family will be completely unable to provide him with any financial support in order to assist him initially in Vietnam. They may have their own responsibilities but it is difficult to see why they are unable to each contribute a small amount for a limited period of time, given the close-knit nature of the family.
- (viii) I accept the assessment in a letter dated 3 October 2014 from the National Probation Service, that Mr [D] fully complied with the probation service such that his risk of reconviction at that time was assessed at 17% within two years. Mr [D] has demonstrated through his sustained good behavior and employment record since then that his risk of re-offending is low.

### *Very significant obstacles*

- 23. It was common ground before the FTT that Mr [D] had been lawfully resident with settled status in the UK for most of his life and after careful consideration of the facts, the FTT found that he was socially and culturally integrated in the UK at [55]. The SSHD made no complaint about the decision on this point. It follows that the only issue in dispute regarding Exception 1 before me is (c), i.e. whether there would be very significant obstacles to Mr [D]'s integration to Vietnam.
- 24. I have taken into account Professor Sidel's report dated 4 February 2014 on the likely conditions Mr [D] will face in Vietnam. I have noted the conclusion that Mr [D] would have "*extremely severe obstacles to surmount to be able to integrate into Vietnamese society that has changed so dramatically since he left*" and would

have “*considerable employment difficulties*”. I also bear in mind that although the FTT accepted aspects of Professor Sidel’s report, it did not entirely accept his conclusions and was only prepared to find that Mr [D] would have difficulties at least initially in employment given his reasonable history of employment as a cook and his English skills - see [47].

25. Professor Sidel’s report is now over four years old. At the time Mr [D] was recently out of prison. As at the date of the hearing before me, Mr [D] was able to demonstrate that since his release from prison he has been able to return to steady and sustained employment. He has also evidenced resilience in opening his own apparently successful business and in not re-offending since his release in 2013. Professor Sidel commented that it appeared from the documents that he was sent that Mr [D] did not have significant job skills. If that is a true reflection of the position in 2014, it is no longer accurate. I note the persistent high unemployment levels in Vietnam but do not accept that Mr [D] will find employment difficult given his fluent English, adequate Vietnamese, long history of working as a chef and demonstrated resilience.
26. I accept, as Professor Sidel outlines in his report (as accepted by the FTT at [47]) that Mr [D] will face initial difficulties and will not have the benefit of state or family support in Vietnam. However, he is a relatively young, fit and healthy person and at least in the short term and when initially re-settling, will be able to have the combined support of family members based in the UK. Although Mr [D] maintained that his family members would be completely unable to help him financially I do not accept this, as set out above. Mr Ell relied upon the findings upheld in KE (Nigeria) that there would be very significant obstacles for Mr KE’s integration to Nigeria. However, in that case the Tribunal accepted that Mr KE’s medical condition might relapse in Nigeria absent the requisite support. By contrast, Mr [D] has no health concerns.
27. I acknowledge, as Professor Sidel highlights in his report, that Vietnam is a country that has very much changed, albeit challenges to democracy remain under the Communist regime, as set out in the most recent US State Department report. I also note, as Mr Ell submitted, that life in Vietnam will be very different to that which Mr [D] has become accustomed to in the UK. However, Mr [D] has grown up surrounded by his large Vietnamese family and as such he is very familiar with Vietnamese culture, language and food. When all the circumstances are considered together, I am satisfied that after initial difficulties but within a relatively short period of time, Mr [D] will be enough of an insider in terms of understanding and participating in Vietnamese life, so as to have a reasonable opportunity to be accepted there, and given this together with his employment experience and resilience will be able to operate on a day-to-day basis and to build up within a reasonable time a variety of human relationships.
28. I bear in mind that Mr [D] will be leaving behind an extended and extensive private life in the UK and a close-knit family who he sees on a fortnightly basis.

I acknowledge that it is unlikely that the family members he remains closest to, his mother and B, will be able to visit him in Vietnam because of their respective health conditions. Whilst he has family in Vietnam, he has not remained in contact with them. Mr [D]'s ties to Vietnam are limited to the time he spent there as a young child and the experience of growing up in a large Vietnamese family in the UK. These ties are limited because Mr [D] has not himself visited Vietnam after leaving and has no experience of adult life in that country. I nonetheless conclude that there would not be very significant obstacles to his reintegration to Vietnam when his familiarity with Vietnamese language and culture together with his employment skills and demonstrated determination to make good use of these are taken into account. I do not accept Professor Sidel's conclusion that Mr [D] will face "*extremely severe obstacles*" in Vietnam. This is not an assessment that is based upon Mr [D]'s current circumstances, including his sustained determination and resilience since he was released from prison in 2013.

### *Very compelling circumstances*

#### *Public interest*

29. I begin by addressing the public interest. Mr Ell invited me to consider the public interest with the following in mind: a lengthy period of time has elapsed since the 2012 conviction and Mr [D] has demonstrated that he is fully rehabilitated. I accept that Mr [D] has made sustained effort to change his ways, his risk of re-offending has been assessed as low and he has started an apparently successful small business. There remains a significant public interest in his deportation. This is because the significance of rehabilitation is limited by the fact that the risk of re-offending is only one facet of the public interest – see SSH D v Olarewaju [2018] EWCA Civ 557 at [26] and [18-20] above. Mr [D]'s criminal offending took place over an extended period of time and according to his own evidence, was linked to dependencies and stress factors in his life. I accept that Mr [D] has demonstrated a change in attitude that has resulted in no reoffending since his last criminal conviction. I am satisfied that Mr [D]'s rehabilitation is a factor to take into account but it is only a factor amongst many. Mr [D] offended beyond his minority and for an extended period of time. I do not accept that this is not one of those rare cases in which rehabilitation makes a significant contribution to establishing very compelling circumstances.

#### *Other compelling circumstances*

30. Mr Ell also invited me to consider all relevant factors cumulatively to determine whether there are very compelling circumstances. I have in particular taken into account the matters set out below.
31. First, Mr [D] has been lawfully resident as a settled migrant in the UK for a very lengthy period, having come to the UK when he was a 13-year old child. Maslov

(supra) makes it clear that for a settled migrant who has lawfully spent all or the major part of his childhood and youth in the host country, as in this case, very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences underlying the measure as a juvenile. This is a factor that tells in Mr [D]'s favour. However, it is important to bear in mind that Mr [D]'s offending took place over an extended period into his adulthood. Although he had inevitable difficulties in his background to address, his siblings have demonstrated an ability to overcome these without dependencies or criminal offending.

32. Second, Mr [D] entered the UK as a child refugee and has inevitably been through a difficult time both when in Vietnam and then when adjusting to life in the UK. He has been brought up in a family of refugees forced to flee Vietnam. In these circumstances, I accept Mr Ell's submission that Mr [D] has spent the majority of his life with a negative view of Vietnam, understandably tainted by his experiences there and those of his family members. However, he has benefitted from being part of a close-knit, loving and large family unit.
33. Third, Mr [D] is close to his mother and B. They will not be able to visit him in Vietnam. Deportation will have an inevitable adverse impact upon the quality of his family relationships. Those family relationships are not covered by Exception 2, because Mr [D] does not have a genuine and subsisting relationship with a qualifying partner or qualifying child. I have already found that the family relationships do not constitute family life for the purposes of Article 8(1). Undoubtedly upset and distress on the part of all the family members, particularly the mother and B, will be a consequence of Mr [D]'s deportation, but they have support systems in place to help with this.
34. I acknowledge that when viewed together with Mr [D]'s rehabilitation, and cumulatively, these constitute compelling circumstances. However, I am not prepared to find that there are very compelling circumstances per se or over and above Exceptions 1 and 2. Mr [D] does not reside with any family member, and only sees his mother and brother on a fortnightly basis. There are other relatives that they will be able to turn to in his absence. As set out above Mr [D] has the requisite skills to be able to adapt to Vietnamese life. He is well-placed to enter the job market or start a small business given his long-standing experience as a chef, his linguistic skills and his changed attitude to life since his imprisonment. Vietnam is a transformed society since Mr [D] departed. Although challenges remain, Mr [D] is well-placed to meet them, even without the support of family in Vietnam.
35. Although Mr [D] has settled into UK society over an extended period of time (see Maslov (supra)), I am not satisfied that there are very compelling circumstances, when these are viewed in the context of an Article 8 balancing exercise and when all the relevant factors are considered cumulatively. Had this been a case in which there was a sentence of four years and over and

therefore requiring the direct application of section 117C(6) that would be the end of the matter – see NE-A (Nigeria) (supra) at [14-15].

36. However, this is a case involving a medium offender. I have therefore gone on to consider whether the nature and extent of the public interest and its relevant statutory underpinning is such that Mr [D]’s deportation would be a disproportionate breach of Article 8 i.e. on the basis that section 117C(6) does not necessarily produce a final result. I have already decided that Mr [D] does not meet the demanding tests in sections 117C(3) to (6). Notwithstanding, his rehabilitation thus far, there remains a strong public interest in his deportation. This is not outweighed by the interference with his private and family life. For the reasons I have already provided, Mr [D] and his family members may find his deportation difficult but they will be able to cope and adjust in all the circumstances of the case.

### **Decision**

37. I remake the decision by dismissing the appeal on Article 8 grounds.

Signed:

**Ms M. Plimmer**

**Judge of the Upper Tribunal**

Date:

**12 July 2018**