



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/02621/2018

THE IMMIGRATION ACTS

Heard at Field House
On 13 August 2019

Decision & Reasons Promulgated
On 20 August 2019

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR POURIA FARVAHARI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the decision of the Secretary of State to deport him and to refuse his human rights claim made on 9 January 2018. His appeal against that decision to the First-tier Tribunal was allowed in a decision promulgated on 9 April 2019. That decision was set aside by the Upper Tribunal for the reasons set out in the decision promulgated on 26 June 2019, a copy of which is annexed.
2. The appellant was born on 12 August 1982. He entered the United Kingdom on 14 October 2001, claiming asylum on 2 January 2002. Although initially refused, his

application was successful on appeal and was granted indefinite leave to remain in 2003. He has had several convictions since then. In 2010 he was sentenced to thirteen months' imprisonment which resulted in the Secretary of State revoking his refugee status in 2011 and in 2012 signing a deportation order against him. The deportation order was revoked in 2013, a fresh decision issued and his appeal against that decision was allowed on Article 8 grounds in 2014. After initially seeking to resist the subsequent revocation of his indefinite leave to remain, eventually the appellant accepted leave to remain on a limited basis.

3. In 2015 the appellant was sentenced as a result of further criminal offences and again on 8 May 2017 was convicted in his alias, Aria Nami, of passing as genuine a thing knowing it was a counterfeit of a currency note to which he was sentenced to fourteen months' imprisonment.
4. The Secretary of State then began the deportation process anew. A further deportation order was made on 29 December 2017, the Secretary of State refusing to revoke that and it is against that decision that the appellant has an appeal on human rights grounds.
5. The appellant's wife is originally an Iranian national but has now naturalised as a British citizen. The couple have three children born in 2013, 2015 and late 2017. All three are British citizens. In addition, the appellant's mother lives in the United Kingdom and his wife has a number of other relatives in the United Kingdom, including his sister and mother.
6. The Secretary of State's case is that, in summary, although it would be unduly harsh for the children to live in Iran as his wife cannot live there given that she had been recognised as a refugee in the United Kingdom, it would not be unduly harsh for the children to remain in the United Kingdom with their mother. Accordingly, it was concluded that the appellant did not meet the requirements of paragraph 399(a) of the Immigration Rules; it was not accepted that the appellant's relationship with his wife was such that he met the requirements of paragraph 399(b) of the Immigration Rules on the basis, amongst other reasons, that the relationship was not formed in the United Kingdom when he was in the country lawfully and his immigration status was not precarious given he had obtained refugee status by deception and sought to enter the United Kingdom by applying for a visa in another identity and, had travelled to Dubai to marry, having failed to surrender to custody in the United Kingdom nor was it accepted it would be unduly harsh for her to remain in the United Kingdom if he were deported.
7. The respondent considered also that there were not in this case very compelling circumstances such that he should not be deported.
8. On appeal, the judge found that the wife could not return to Iran because of her father's profile as a Mujahedin activist and that the youngest child had some difficulties showing hearing, speech and language development issues [18]. The

judge found it would be unduly harsh on the three children and his wife if the appellant were to be deported as they could not visit him in Iran.

9. For the reasons set out in the attached error of law decision, the Upper Tribunal concluded that the decision to that effect involved the making of an error of law and we set it aside to be remade.

The Hearing on 13 August 2019

10. The appellant represented himself. He gave evidence as did his wife, his wife's sister, and his mother-in-law. In addition to the oral evidence, I had before me a report from an independent social worker and her CV, a bundle of witness statements and case law produced by the respondent.
11. The appellant adopted his witness statements adding and was cross-examined. He said that his youngest child's hearing difficulties had not yet been formally assessed given his age but he has been given hearing aids and goes to speech therapy sessions. He is also monitored at nursery school. The doctors had said that the hearing aids do help him hear better but that it is difficult to assess it properly until he is able to start talking better.
12. The appellant said that neither his mother-in-law nor his sister were able to help look after the children. He said that his mother-in-law suffers from back pain and other problems. He said that she was in receipt of benefits, was not sure which, but that she has a blue badge owing to reduced mobility.
13. The appellant said that his wife gets housing benefit, child and tax allowance but in addition to that they had had to borrow money from friends.
14. In response to my questions, the appellant said that the rent on the house was about £2,000 a month, approximately £11,400 of which was met by housing benefit and that they received other benefits on top. He said he was not sure if he would be able to keep in contact with family from Iran using means such as Facebook or WhatsApp or other means as he understood that the Iranian regime tries to limit contact on using such methods.
15. I then heard evidence from the appellant's wife who adopted her witness statement adding that her parents live about seven to eight miles away. And was cross-examined. She said that her mother, who lives about seven to eight miles away, has back and hand problems. She said that she is on medication, cannot drive, bend or use her hands without pain. She did not show the nature of the problem.
16. The appellant's wife said that her youngest son does have hearing aids and that these appear to work. She said that he ought to have 50 to 60 words in his vocabulary by now but only has 15 to 20. She said the family struggles financially and this would be worse if the appellant were deported as she would have to give up her work as a

carer which adds £60 to £70 a week to the benefits and they would probably lose their house. She said that she is in contact with her sister but that as their children do not get on, this is relatively limited.

17. I then heard evidence from the appellant's sister-in-law (his wife's sister). She adopted her witness statement and was cross-examined. She said that she saw her sister about once a month as the children do not get on but speak regularly by phone. She said that she cares for her mother-in-law who has problems with her shoulders which had just been replaced as well as her knee. She works part-time and also volunteers with the church.
18. I heard evidence from the appellant's mother-in-law who adopted her witness statement. She said that she suffers from migraines and dizziness for which she takes tablets. She also said that she receives benefits owing to her disability but she was not quite sure which ones as her husband dealt with that.
19. Mr Tufan submitted that there were two issues to be considered: whether it would be unduly harsh to separate the children from their father by deporting him; and, whether there are very compelling reasons over and above those set out in Exceptions 1 and 2 as set out in Section 117C of the 2002 Act. He submitted that the answer to both questions was no given that the threshold to show undue harshness was very high and whilst it was evident that the family would face difficulties and would even face distress, that was not sufficient as could be seen from **PG (Jamaica)** at paragraphs 34, 38 and 39. He submitted that the report from the social worker did little more beyond considering that it would be in the best interests of the children for them to remain in the United Kingdom. He accepted that that may be so but that did not dispose of the matter given that an actual fact of deportation was to separate families. He submitted that there was insufficient evidence to show that the youngest child would face positions of sufficient severity to bring the appellant over the threshold of undue harshness, relying on **BL** at paragraph 53. He submitted in any event were there problems with this family and lack of family support, it had not been shown that social services would be unable to assist.
20. Mr Tufan submitted that there was simply nothing of a very compelling nature in the facts of this case.
21. In response, the appellant said that he had appreciated he had made mistakes, realised that he has psychological problems and he was trying to remedy that. He submitted it would be very difficult for his family as he needed to work and help them clear debts. He said his family would be forced to leave their house and that it would be very difficult for his wife to look after the son and the other children given that the youngest son needs a lot of other assistance with his speech therapy and being taken to and from appointments which could not be managed whilst dealing with the other two children. He said he had nowhere to go on return to Iran and no job or a place to live.

The Law

22. Section 117C provides as follows:-

“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.
- (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.”

23. The Immigration Rules provide:

399. This paragraph applies where paragraph 398 (b) or (c) applies if –

- (a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and
 - (i) the child is a British Citizen; or
 - (ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case
 - (a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and
 - (b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or
- (b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and

- (i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and
- (ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and
- (iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.

24. In **KO (Nigeria) v SSHD [2018] UKSC 53** the Supreme Court held at paragraph 23:-

“23. On the other hand the expression “unduly harsh” seems clearly intended to introduce a higher hurdle than that of “reasonableness” under section 117B(6), taking account of the public interest in the deportation of foreign criminals. Further the word “unduly” implies an element of comparison. It assumes that there is a “due” level of “harshness”, that is a level which may be acceptable or justifiable in the relevant context. “Unduly” implies something going beyond that level. The relevant context is that set by section 117C(1), that is the public interest in the deportation of foreign criminals. One is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent. What it does not require in my view (and subject to the discussion of the cases in the next section) is a balancing of relative levels of severity of the parent’s offence, other than is inherent in the distinction drawn by the section itself by reference to length of sentence. Nor (contrary to the view of the Court of Appeal in *IT (Jamaica) v Secretary of State for the Home Department* [2016] EWCA Civ 932, [2017] 1 WLR 240, paras 55, 64) can it be equated with a requirement to show “very compelling reasons”. That would be in effect to replicate the additional test applied by section 117C(6) with respect to sentences of four years or more.”

In addition, at [27] the Supreme Court approved guidance as to the meaning of unduly harsh given in **MK (Sierra Leone) v SSHD [2015] UKUT 223** saying this:-

“27. Authoritative guidance as to the meaning of “unduly harsh” in this context was given by the Upper Tribunal (McCloskey J President and UT Judge Perkins) in *MK (Sierra Leone) v Secretary of State for the Home Department* [2015] UKUT 223 (IAC), [2015] INLR 563, para 46, a decision given on 15 April 2015. They referred to the “evaluative assessment” required of the tribunal:

“By way of self-direction, we are mindful that ‘unduly harsh’ does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. ‘Harsh’ in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb ‘unduly’ raises an already elevated standard still higher.”

On the facts of that particular case, the Upper Tribunal held that the test was satisfied:

“Approached in this way, we have no hesitation in concluding that it would be unduly harsh for either of the two seven year old British citizen children concerned to be abruptly uprooted from their United Kingdom life setting and lifestyle and exiled to this struggling, impoverished and plague

stricken west African state. No reasonable or right thinking person would consider this anything less than cruel."

This view was based simply on the wording of the subsection, and did not apparently depend on any view of the relative severity of the particular offence. I do not understand the conclusion on the facts of that case to be controversial."

25. Commenting on **KO (Nigeria)**, the Upper Tribunal in **RA (Iraq)** said this:-

"(1) In KO (Nigeria) & Others v Secretary of State for the Home Department [2018] UKSC 53, the approval by the Supreme Court of the test of "unduly harsh" in section 117C(5) of the Nationality, Immigration and Asylum Act 2002, formulated by the Upper Tribunal in MK (Sierra Leone) v Secretary of State for the Home Department [2015] UKUT 223 (IAC), does not mean that the test includes the way in which the Upper Tribunal applied its formulation to the facts of the case before it.

(2) The way in which a court or tribunal should approach section 117C remains as set out in the judgment of Jackson LJ in NA (Pakistan) & Another v Secretary of State [2016] EWCA Civ 662.

(3) Section 117C(6) applies to both categories of foreign criminals described by Lord Carnwath in paragraph 20 of KO (Nigeria); namely, those who have not been sentenced to imprisonment of 4 years or more, and those who have. Determining the seriousness of the particular offence will normally be by reference to the length of sentence imposed and what the sentencing judge had to say about seriousness and mitigation; but the ultimate decision is for the court or tribunal deciding the deportation case.

(4) Rehabilitation will not ordinarily bear material weight in favour of a foreign criminal."

26. It is also evident from the decision of the Upper Tribunal in that case that if Exception 1 or 2 is not met, then it would be necessary to go on to consider whether there are nonetheless very compelling circumstances over and above those described in Exceptions 1 and 2.

27. In **SSHD v PG (Jamaica)** [2019] EWCA Civ 1213 the Court of Appeal described the issue as this:-

"38. The decision in KO (Nigeria) requires this court to adopt an approach which differs from that taken by Judge Griffith and Judge Finch. In the circumstances of this appeal, I do not think it necessary to refer to decisions predating KO (Nigeria), because it is no longer appropriate, when considering section 117C(5) of the 2002 Act, to balance the severity of the consequences for SAT and the children of PG's deportation against the seriousness of his offending. The issue is whether there was evidence on which it was properly open to Judge Griffith to find that deportation of PG would result for SAT and/or the children in a degree of harshness going beyond what would necessarily be involved for any partner or child of a foreign criminal facing deportation.

39. Formulating the issue in that way, there is in my view only one answer to the question. I recognise of course the human realities of the situation, and I do

not doubt that SAT and the three children will suffer great distress if PG is deported. Nor do I doubt that their lives will in a number of ways be made more difficult than they are at present. But those, sadly, are the likely consequences of the deportation of any foreign criminal who has a genuine and subsisting relationship with a partner and/or children in this country. I accept Mr Lewis's submission that if PG is deported, the effect on SAT and/or their three children will not go beyond the degree of harshness which is necessarily involved for the partner or child of a foreign criminal who is deported. That is so, notwithstanding that the passage of time has provided an opportunity for the family ties between PG, SAT and their three children to become stronger than they were at an earlier stage. Although no detail was provided to this court of the circumstances of what I have referred to as the knife incident, there seems no reason to doubt that it was both a comfort and an advantage for SAT and the children, in particular R, that PG was available to intervene when his son was a victim of crime. I agree, however, with Mr Lewis's submission that the knife incident, serious though it may have been, cannot of itself elevate this case above the norm. Many parents of teenage children are confronted with difficulties and upsetting events of one sort or another, and have to face one or more of their children going through "a difficult period" for one reason or another, and the fact that a parent who is a foreign criminal will no longer be in a position to assist in such circumstances cannot of itself mean that the effects of his deportation are unduly harsh for his partner and/or children. Nor can the difficulties which SAT will inevitably face, increased as they are by her laudable ongoing efforts to further her education and so to improve her earning capacity, elevate the case above the commonplace so far as the effects of PG's deportation on her are concerned. In this regard, I think it significant that Judge Griffith at paragraph 67 of her judgment referred to the "emotional and behavioural fallout" with which SAT would have to deal: a phrase which, to my mind, accurately summarises the effect on SAT of PG's deportation, but at the same time reflects its commonplace nature."

28. In assessing the impact on the family I have regard to what was said in BL (Jamaica) v SSHD [2016] EWCA Civ 357 at [53]:

"53. What the UT did in the course of their detailed and no doubt conscientious decision was to accept KS's son's evidence that KS could not manage her money and drank more than was good for her and made the inference that without BL the family would descend into poverty and require the support of social services. As against this, however, KS had looked after the family while BL was in prison or immigration detention and the UT had not made any findings that the family had then descended into poverty or required the support of social services, or that if that were to happen, there would not be adequate support services for these children. The UT were entitled to work on the basis that the social services would perform their duties under the law and, contrary to the submission of Mr Rudd, the UT was not bound in these circumstances to regard the role of the social services as irrelevant. The Secretary of State had made the point in the decision letter that there was no satisfactory evidence that KS had not coped with the children's upbringing in BL's absence and so the UT were aware that this point was in issue. KS's son's evidence was an insufficient evidential basis

for the UT's conclusion on this point. His evidence was in reality uncorroborated and self-serving hearsay on this issue."

29. I accept, and it is not in dispute, that there is a genuine and subsisting relationship between the appellant and his wife and a genuine and subsisting relationship between them and their children. It is accepted that it would be unduly harsh to expect the children to go to live in Iran and I accept also that it would be unduly harsh to expect the appellant's wife to go to live there in light of the findings made by the First-tier Tribunal. That said, the First-tier Tribunal did not appear to have addressed the first and second limbs of paragraph 399(b) nor has any Rule 24 letter been produced and in the circumstances, I conclude that this would not apply for the reasons given by the Secretary of State: although the appellant did establish his family life with his wife whilst he had indefinite leave to remain his position had been precarious given his criminal record and the fact that he had absconded from the United Kingdom to avoid trial.
30. The focus therefore must first be on whether separating the appellant's wife and their children from the appellant by deporting him would be unduly harsh on the children.
31. I have no reason to doubt the account of the difficulties of family life that would exist were the appellant to be deported. I accept that it would be difficult if not impossible for the appellant's wife to continue working in the limited hours she has if she had to look after the children without the support of a partner. I accept that this may also mean that it would be difficult for them to continue living in their current house but what I have not heard is evidence that the rest of the family would not be able to assist, even if only temporarily, in providing finance to the family to make up the shortfall.
32. I have no reason to doubt either the account given for the family life by the social worker. It is perhaps inevitable that the children were distressed when their father was imprisoned and that this caused behavioural difficulties. I have no doubt that these would reoccur if the appellant is deported but again that sort of distress is the natural consequence of deportation. I am satisfied that it is in the children's best interests, as the social worker argues, for their father to remain with them and for them to be brought up as part of a nuclear family. But, as Mr Tufan submitted, that is not dispositive of the issue; it is necessary for the effect on the children to be unduly harsh.
33. It may well be that the appellant will have difficulty in maintaining contact with his family by electronic means. He was unsure about this but I take judicial note of country guidance cases produced by the Upper Tribunal to show that there is interference in communications put in place by the government of Iran. Whether or not that would impact on his ability to maintain, for example, internet video communications with his family is unclear although I accept that it is not likely to be as certain as making such communications from a country without such restrictions in place.

34. I accept also that there would be real difficulties in the appellant and his family meeting in a third country given the cost and the lack of funds currently available.
35. With regard to the situation for the younger child, I accept from the medical and oral evidence that he does have to wear hearing aids. I accept also that his speech and language development has been delayed as a result of the hearing problem which, as the appellant's wife explained to me, was detected shortly after birth. It is not, however, at this stage clear whether the child would be able in future to communicate with hearing aids or whether he would be able to communicate by audio-visual means with his father. In any event, given his young age and presence, that would be extremely difficult.
36. I accept the evidence that the appellant's and his wife's family would not be able to assist at least in practical terms although they may be able to provide some degree of moral support. Nonetheless, there is insufficient evidence to show that at this stage there is any realistic prospect of there being such serious problems as to require the intervention of social services.
37. Taking all of these factors into account, while I have no hesitation in concluding that the deportation of the appellant will have a significant and serious effect on his wife and their children, applying the case law set out above I am not satisfied that this meets the high threshold required to show that it would be unduly harsh. It is not enough to be characterised as severe or bleak. In reaching that conclusion I take into account the fact that the appellant is primarily responsible for looking after the children during the daytime when the mother is sleeping and also in taking the youngest child to and from appointments.
38. Having found that the appellant does not meet the requirements set out in Exception 1 or Exception 2, it is therefore necessary for me to consider whether there are nonetheless very compelling circumstances such that deportation would not be proportionate.
39. I bear in mind that there is a very real prospect of family life being severed permanently in this case or at the very least for a significant number of years. While I accept that the wife does not meet the requirements set out in 399(b), nonetheless I accept that she would be so effectively separated from her husband and he would be separated from the extended family that he has in the United Kingdom both in terms of his own blood relatives and his wife's relatives. I am not, however, persuaded by the evidence that the situation in Iran would be so bleak for him and his evidence he would not be able to have anywhere to live or to find a job is speculative. Viewing all the evidence in the round, I am not satisfied that there is anything in this material such that the very compelling circumstances is met and in reaching that conclusion I bear in mind the appellant's long history of criminal offending and the use of false names.
40. Accordingly, I am not satisfied that deporting the appellant would be a breach of his Article 8 rights or otherwise and I therefore dismiss the appeal.

Notice of Decision

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- (2) I remake the appeal by dismissing the appeal.

No anonymity direction is made.

Signed

Date 16 August 2019

A handwritten signature in black ink, appearing to read 'Jonathan Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul

ANNEX – ERROR OF LAW DECISION



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/02621/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 18 June 2019**

Decision & Reasons Promulgated

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Before

**THE RIGHT HONOURABLE LORD BOYD OF DUNCANSBY
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE RINTOUL**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR POURIA FARVAHARI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr D Clarke, Home Office Presenting Officer
For the Respondent: Ms H Arrif, Arden Solicitors Advocates

DECISION AND REASONS

41. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge S J Clarke promulgated on 9 April 2019 allowing Mr Farvahari's appeal against the decision of the Secretary of State to deport him and to refuse his human rights claim, that decision being made on 9 January 2018.
42. The appellant in this case is the Secretary of State but for ease we refer to Mr Farvahari as the appellant as he was in the First-tier Tribunal.
43. The appellant was previously successful in an appeal against an earlier a deportation order, as is set out in the decision of the First-tier Tribunal against which this appeal lies at paragraphs [10] to [17]. The appellant is a citizen of Iran. His wife and his three children are British citizens. One of the children has a number of difficulties both in terms of hearing, speech and language development issues.
44. The judge in this case concluded, having directed herself in line with **KO (Nigeria)** at paragraph 19, that it would be unduly harsh on the three children and the wife if the appellant were to be deported as they could not visit him in Iran because there was no nobody that could take them to see him. The judge also found earlier in her decision that the wife, although a British citizen, could not travel to Iran because of her political activities, which were continuing.
45. The Secretary of State sought permission to appeal in this case on the relatively narrow ground that the judge had failed to give reasons as to how the high threshold of unduly harsh consequences is met in this case, the fact that family life would be permanently fragmented not being sufficient and that the test of unreasonableness is a lower threshold than that required of unduly harsh consequences.
46. We heard submissions from both representatives. We accept the submission that unduly harsh is a high test; it is difficult to meet and what amounts to unduly harshness is set out to some degree in paragraph [27] of **KO (Nigeria) [2018] UKSC53**. It has, in summary, to be something bleak and/or severe. We bear in mind also what was said in **NA (Pakistan) & Another v Secretary of State [2016] EWCA Civ 662**. at paragraph [34], that neither the British nationality of the respondent's children nor their likely separation from their father for a long time are exceptional circumstances. That approach is endorsed in **RA (s.117C: "unduly harsh"; offence: seriousness) Iraq [2019] UKUT 123 (IAC)**.
47. Despite Ms Arrif's best efforts on behalf of her client we do not accept that in this case the judge had properly set out why the consequences on the family were unduly harsh. It is the clear policy of Parliament, as set out in Section 117C, to split up families. That is the purpose of the legislation. The default position is that families will be split by deportation. The judge has, in our view, failed to set out anything or make any findings of fact such as would show that the consequences for the wife and the children of deporting the appellant would be unduly harsh, even though we accept that there are three British citizen children involved .
48. There is, with respect to the judge, nothing identified which takes this out of the usual consequences on a family of deportation and for these reasons, we find that the

decision of the First-tier Tribunal did involve the making of an error of law and we set it aside to be remade.

49. We do not consider that it would be appropriate for this case to be remitted to the First-tier Tribunal. We consider that it should be retained in the Upper Tribunal but adjourned to another date to permit the further evidence to be served.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and we set it aside.
2. The appeal will be remade in the Upper Tribunal on a date to be fixed.
3. Any additional material or evidence upon which either party may seek to rely must be served at least 10 working days before the next hearing. Any failure to comply with this may result in the material or evidence being excluded.

Signed

Date 21 June 2019

A handwritten signature in black ink, appearing to read 'Jonathan Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul