



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12784/2019

THE IMMIGRATION ACTS

Heard at Manchester via Skype
On 25 September 2020

Decision & Reasons Promulgated
On 29 October 2020

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MS
(Anonymity order made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ball instructed by Mordi & Co Solicitors.

For the Respondent: Mr P Deller Senior Home Office Presenting Officer.

DECISION AND REASONS

1. MS is a male citizen of South Africa born on 14 November 1988 who is the subject of an order for his deportation from the United Kingdom pursuant to the UK Borders Act 2007.
2. By a decision dated 30 June 2020 the Upper Tribunal set aside the decision of the First-tier Tribunal and listed the matter for a further hearing to enable it to substitute a decision to either allow or dismiss the appeal.

Background

3. On 14 February 2017, at Ipswich Crown Court, MS pleaded guilty to and was sentenced on two counts as follows:
 - Count 1: Taking a child without lawful authority, contrary to section 2(1)(a) of the Child Abduction Act 1984: 32 months' imprisonment.
 - Count 2: Assault by bearing, contrary to section 39 of the Criminal Justice Act 1988: 4 months imprisonment, concurrent.
4. In February 2017 MS was notified of a decision to deport him from the United Kingdom.
5. On 30 July 2018 First-tier Tribunal Judge O'Callaghan dismissed his appeal against the refusal of his human rights claim relied upon as an exception to deportation.
6. On 27 December 2018 MS submitted further representations showing how he had addressed his alcohol misuse.
7. On 25 July 2019, the Secretary of State accepted the further submissions amounted to a Fresh Claim pursuant to paragraph 353 of the Immigration Rules but refused the application against which MS appealed. It is this appeal which is 'at large' before the Upper Tribunal.
8. Preserved findings from the decision of the First-tier Tribunal are:
 - i. Immigration history - The appellant entered the United Kingdom on 4 August 2004 as a dependent child (aged 15) of his mother, [VM]. The appellant was granted indefinite leave to remain on 21 July 2006.
 - ii. Criminal history - as above. The appellant has no other convictions or cautions according in the copy PNC record in the appeal papers.
 - iii. Composition of family unit - The appellant married a British citizen, [AS] on 10 April 2012. They have two children [NS] born 24 April 2012 and [SS] born 21 November 2015. MS also has a son, [OM-W] born 12 December 2007, from a previous relationship who resides with his mother.
 - iv. Findings regarding attendance at alcohol counselling sessions -
 - i. "[S]ince the previous decision was promulgated on 23/07/2018 the appellant has taken positive steps to tackle his alcohol misuse." FTT decision at [44].
 - ii. "In the period between August 2018 and to the present day the appellant has been attending monthly sessions with Ms Hunter." FTT decision at [52].
 - iii. The Judge noted the evidence of Paul Moyse of Foyer Hostel that [MS] was "hard working and dedicated" FTT decision at [45].
 - iv. The Judge accepted that the Appellant had attended four Alcoholics Anonymous sessions, but that he preferred the one to one sessions offered by Anna Hunter to the group sessions at Alcoholics Anonymous. FTT decision at [47].

Discussion

9. Although the pleadings the submissions made prior to today's hearing indicated the appellant's approach to this matter was that as Judge O'Callaghan had found it to be a borderline matter and that the only reason the appeal had been dismissed was as a result of the lack of evidence that the appellant had sought to address his alcohol misuse, and that he had now done so, the appeal should be allowed without more, Mr Ball confirmed this was not how the appellant was presenting his case.
10. The earlier suggestion that as the appellant had resolved one issue of concern to Judge O'Callaghan should have succeeded in accordance with the Devaseelan principle is a submission without arguable merit, per se. The Court of Appeal have recently considered the Devaseelan principle in AL(Albania) [2019] EWCA Civ 950 and BK (Afghanistan) [2019] EWCA Civ 1358.
11. In BK (Afghanistan) the Court of Appeal stressed the importance of not allowing the guidance to place unacceptable restrictions on the second judge's ability to determine the appeal in front of him.
12. What is important is the need to assess the factual matrix that exists at the date of the hearing and to consider relevant legal provisions, especially in light of recent decisions of the Court of Appeal in this area. The key question in an appeal of this nature is whether the appellant's circumstances engage article 8 ECHR and whether the consequences of any interference with a protected right is sufficient to outweigh the strength given to the respondent's right to deport a foreign criminal from the United Kingdom.
13. The relevant provisions of the Immigration Rules are A398-399A. In this case they provide that for someone sentenced to less than 4 years but at least 12 months (as MS was) the public interest in deportation will be outweighed if one of two relevant criteria are met:
 - a. it would be "unduly harsh" for a British child or British partner to go to South Africa with their father, or remain in the UK without him (399(a) and (b)); or
 - b. he has been lawfully resident in the UK for most of his life; and he is socially and culturally integrated; and there would be "very significant obstacles to his integration" in South Africa (399A).
14. Section 117C of the Nationality Immigration and Asylum Act 2002 provides that the public interest does not require a person's deportation ("C") if they have been sentenced to less than 4 years and:
 - a. Exception 1: lawfully resident 'most of C's life'; 'socially and culturally integrated'; and 'very significant obstacles' (s117C(4)).
 - b. Exception 2: 'the effect of C's deportation on the partner or child would be unduly harsh.' (s117C(5))
15. In relation to the question whether there would there be very significant obstacles to MS's integration in South Africa, both parties referred to the decision of the Court of Appeal in Kamara v Secretary of State for the Home Department [2016]

EWCA Civ 813 in which Sales LJ commented on the “very significant obstacles” test, for the purposes of the third limb of the private life exception to deportation at paragraph 14 as follows:

“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) ... 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.”

16. Whilst the appellant claims he is unfamiliar with modern life in South Africa, ‘culture shock’ does not amount to a very significant obstacle: see SSHD v Olarewaju [2018] EWCA Civ 557.
17. Whilst there are some cultural differences between the UK and South Africa it is relevant that that country formed part of the British Empire from 1910 to 1961 meaning that many aspects of life in South Africa will be familiar to MS.
18. It was not made out MS will be unable to obtain work in light of this previous experience, educational and vocational qualifications. The cost of his needs if paid for in the local currency will be similar to those in the UK or, if he receives any remittances from the UK in £ (Stirling), prices will be much lower and he will be able to enjoy a higher-quality lifestyle. It was not made out he would not be accepted in either employment or society in general or that he lacks the capacity and ability to participate and operate on a day-to-day basis.
19. South Africa is similar to the UK in that it does offer state-run healthcare, with small fees charged related to income and number of dependents.
20. Although not conceding the point Mr Ball accepted this was not the strongest ground of challenge, a sentiment I completely agree with. Whilst accepting that any transition will be difficult, I do not find on evidence made available to the Upper Tribunal that the appellant has established very significant obstacles to his reintegration into South Africa.
21. The real issue in this appeal is the question of whether the appellant’s deportation from the United Kingdom will result in unduly harsh consequences for either his wife or their children.
22. The Court of Appeal has recently examined this issue in AA (Nigeria) v Secretary of State for the Home Department [2020] EWCA Civ 1296 in which it was found that it would usually be unnecessary for a tribunal to refer to anything other than the leading Supreme Court and Court of Appeal authorities. They are confirmed as being KO (Nigeria) v SSHD [2018] UKSC 53; R (Kiarie and Byndloss) v SSHD [2017] UKSC 42; NA (Pakistan) v SSHD [2016] EWCA Civ 662; and HA (Iraq) v SSHD [2020] EWCA Civ 1176.
23. In KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53, the Supreme Court considered the test for and factors to be taken into account when

assessing the meaning of 'unduly harsh' in paragraph 399A of the Immigration Rules and section 117C(5) of the Nationality, Immigration and Asylum Act 2002. In paragraph 23, Lord Carnwath held as follows:

"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 the 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 the 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."

24. In HA (Iraq) v Secretary of State for the Home Department [2020] EWCA Civ 1176, Lord Justice Underhill cautioned against a literal reading of paragraph 23 in KO (Nigeria) due to the difficulty in defining the level of harshness that would "necessarily" be suffered by "any" child and emphasises that the underlying concept is of an enhanced degree of harshness sufficient to outweigh the public interest in deportation of foreign criminals in the medium offender category. Further guidance is given in paragraphs 50 to 53 below follows:

"50 What light do those passages shed on the meaning of "unduly harsh" (beyond the conclusion on the relative seriousness issue)?

51. The essential point is that the criterion of undue harshness sets a bar which is "elevated" and carries a "much stronger emphasis" than mere undesirability: see para. 27 of Lord Carnwath's judgment, approving the UT's self-direction in MK (Sierra Leone), and para. 35. The UT's self-direction uses a battery of synonyms and antonyms: although these should not be allowed to become a substitute for the statutory language, tribunals may find them of some assistance as a reminder of the elevated nature of the test. The reason why some degree of harshness is acceptable is that there is a strong public interest in the deportation of foreign criminals (including medium offenders): see para. 23. The underlying question for tribunals is whether the harshness which the deportation will cause for the partner and/or child is of a sufficiently elevated degree to outweigh that public interest.

52. However, while recognising the "elevated" nature of the statutory test, it is important not to lose sight of the fact that the hurdle which it sets is not as high as that set by the test of "very compelling circumstances" in section 117C (6). As Lord Carnwath points out in the second part of para. 23 of his judgment, disapproving IT (Jamaica), if that were so the position of medium offenders and their families would be no better than that of serious offenders. It follows that the observations in the case-law to the effect that it will be rare for the test of "very compelling circumstances" to be satisfied have no application in this context (I have already made this point – see para. 34 above). The statutory intention is evidently that the hurdle representing the

unacceptable impact on a partner or child should be set somewhere between the (low) level applying in the case of persons who are liable to ordinary immigration removal (see Lord Carnwath's reference to section 117B (6) at the start of para. 23) and the (very high) level applying to serious offenders.

53. Observations of that kind are, I hope, helpful, but they cannot identify an objectively measurable standard. It is inherent in the nature of an exercise of the kind required by section 117C (5) that Parliament intended that tribunals should in each case make an informed evaluative assessment of whether the effect of the deportation of the parent or partner on their child or partner would be "unduly harsh" in the context of the strong public interest in the deportation of foreign criminals; and further exposition of that phrase will never be of more than limited value."

...

"Peter Jackson LJ:

...

152. Parliament has enacted two important public interests in cases involving children. Section 117C of the Immigration Act 2014 enshrines the public interest in the deportation of foreign criminals. Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Secretary of State to make arrangements to ensure that in her immigration functions she has regard to the need to safeguard and promote the welfare of children, which translates into a duty to make the best interests of the child a primary consideration. The decision-maker must bring both of these elements into play in accordance with the complete statutory code, applying (as may be appropriate in the individual case) the fulcrum of undue harshness, or of very compelling circumstances or of proportionality. A resulting decision to deport a parent may produce hugely detrimental consequences for a child but, provided his or her best interests have been adequately identified and weighed in the balance as a primary consideration, the decision will be lawful. But a decision that does not give primary consideration to the children's best interests will be liable to be set aside."

25. In relation to the question of whether it would be unduly harsh for the family to relocate to South Africa with the appellant, I agree with the findings of Judge O'Callaghan in the earlier determination that [MS] has a genuine and subsisting relationship with his wife, that the relationship was formed when his immigration status was not precarious, and that it would be unduly harsh for [AS] to live in South Africa because of compelling circumstances over and above Appendix FM. This is because she is British, suffering "long-term from a chronic relapsing and remitting disease that has on a number of occasions lead to flare-ups.", that relocating to South Africa would increase anxiety such that hospitalisation was likely, that her medication also led to a heightened risk of skin cancer, and that there would be an adverse impact on her day to day life were she in South Africa.
26. The next factor to consider is whether it would be unduly harsh for AS and their children to remain in the United Kingdom if he were deported to South Africa.
27. In relation the impact on the children: in HA (Iraq) the Court of Appeal remind us that in evaluating undue harshness for a child decision makers should take into account the Zoumbas principles [55, 84, 114, 153], the best interests of the child [55], emotional as well as physical harm [159], relationships with other family members in the UK [120] and where applicable "the very significant and weighty" benefits of British citizenship.

28. The matter must be evaluated only by reference to the child themselves. To weigh the impact of deportation on the child against the criminality of MS would be to offend against the seventh principle in Zoumbas v Secretary of State for the Home Department [2013] UKSC 74 that a child cannot be blamed for matters for which he is not responsible: KO (Nigeria) & Ors v Secretary of State for the Home Department (Respondent) [2018] UKSC 53.
29. In her witness statement dated 20 July 2020 AS writes:
- “3. When my husband was in prison, it was terrible for my children because of the way they are so close to their father. They were so confused, especially [NS] our eldest daughter. She was always asked and talking about her father all the time because they are very close. They are very happy since he was released from prison and like to follow him everywhere. Since the COVID- 19 lockdown, we are much more bonded together. They are more bonded with him because they are girls and as the saying goes, ‘girls are closer to their fathers and boys to their mothers’. Another good reason for their unique bond is because he has more energy than me and he is able to run around with them because they are very active.
 4. If my husband is deported it will be a disaster for me and my children because there is no way I can raise them on my own and my mother and siblings will not be able to assist me because they have their own issues. Especially in the wake of the new normal caused by the ongoing COVID-19 pandemic.
 - ...
 7. [NA] is still suffering from separation anxiety and the likely effect it will have on her at adulthood if my husband is deported has been carefully explained in the psychologist’s report from the Private Therapy Clinic. I am quite sure the same thing will happen to [SS] if he is deported because she is more mature now than when my husband was serving the prison term and their bond has gotten stronger as a result of the COVID 19 lockdown.
 - ...
 11. Our eldest daughter, [NA] is suffering from bronchial asthma and she is currently on preventative inhalers. She experienced speech delay which her doctor attributed to stress and I believe that it will happen again if she has to go through the stress of separation from her father again, because her condition deteriorated when my husband was in prison but has improved since we started living together as a family unit.”
30. The report referred to by AS, dated 20 October 2019, is written by Tamara Licht of Private Therapy. Tamara Licht states her specialist field is HCPC Registered Psychologist and Counselling Psychologist. There was no challenge to the suitability of the author to prepare the report.
31. At section 4 of the report Tamara Licht writes:

“4 My opinion

According to the American Psychiatry Association, “distress or impairment in social, academic, occupational or other important areas of functioning” (2013) may be an indicator of mental health disturbance. In my professional opinion, [NS] change in behaviour (anxious mood), avoidance going into school (“push

time to go to school') and lack friendships, signals impairment in her family, academic and social functioning.

It is my opinion that such impairment and moderate symptoms such as stomach pain (somatic), eczema (somatic), depression, anger, anxiety, inattention and sleep disturbance is derived from separation anxiety disorder associated to the time [MS] served in prison and moderate levels of anxiety as a consequence of [MS] (her father) facing possible deportation to South Africa.

The American Psychiatric Association indicates that "individuals with separation anxiety disorder often limit independent activities away from home or attachment figures (e.g., in children avoiding school)" (2013). For example, [NS] mentioned that she doesn't like her father 'keep leaving the house to go to the gym'. She also avoids going to school.

Furthermore, American Psychiatry Association indicates, "separation anxiety disorder often develops after life stress, especially a loss" (2013). In [NS] case, the loss of her father during the time he was in prison and currently a perceived loss such as "immigration" (APA, 2013). Additionally, in a short space of time, [NS] is also faced the loss of a sibling (her mother had a miscarriage earlier this year), the loss of her paternal grandfather (approximately a month ago), the loss of regular contact with her half-brother (11-year-old child from [MS] previous relationship) and the loss of her best friend (who lived close to her) when the [S] family moved homes.

In my opinion, if [NS] was to be separated from [MS], at this point, her overall quality of life would be significantly affected. Furthermore, since [AS] is currently undergoing a period of bereavement and given that she indicated that she finds it 'hard to play' with her daughters due to a medical condition, she may not be able to take part in some activities that a girl of [NS] age would enjoy and benefit from (emotionally and socially). Due to [MS] not being present (if he were to be deported) to take [NS] to such activities, she would be deprived of such activities; thus emotional and social growth may be jeopardised.

It is my professional opinion that [NS] difficulty to make friends is related to the fear of loosing them. Given that [NS] has undergone a period of intense loss (as described above), her fear of losing her friends prevents her from forming close relationships.

In my opinion, it is likely that [NS] ability to learn and concentrate has been and is currently impaired due to moderate anxiety levels. Separation anxiety disorder in children leads to school refusal, which in turn may lead to academic difficulties (APA.2013).

The aforementioned in part may explain why a professional assessment that I have reviewed as part of this assessment suggest that [NS] presents with symptoms similar to those of someone with dyslexia. I suggest monitoring any traits suggestive of dyslexia; however, it is recommended to first assist [NS] with managing her anxiety and, once this is settled, notice if dyslexia symptoms are present and assess accordingly. It is also my professional opinion that the suggestion of a potential Asperger's diagnosis (included in the autism spectrum is unlikely. Symptoms of separation anxiety disorder,

anxiety and low mood may better explain behaviours that sometimes may also be seen in individuals diagnosed with autism.

4.01 Diagnosis

[NS] symptoms meet the criteria for Separation Anxiety Disorder, 309.21 (F93.0), as defined by the *Diagnostic and Statistics manual of Mental Disorder*, fifth edition (American Psychiatric Association, 2013).

4.02 Causation

It appears that [NS] current mental health state (separation anxiety disorder and moderate anxiety and low mood) may be triggered by the perception that she may lose her father, if he were to be deported from the United Kingdom to South Africa.

4.03 Risk:

From a diagnostic perspective, the American Psychiatric Association indicates that “separation anxiety in children may be associated with increased risk of suicide” (2013).

I am also concerned that due to [AW] currently undergoing a period of bereavement and given that she indicates that she finds it ‘hard to play’ with her daughters due to a medical condition she may not be able to cope with additional parenting responsibilities that could arise from [MS] being deported to South Africa and how this could affect her parenting skills if left on her own and to navigate the challenges that come with parenting without a partner.

4.04 [NS] anxious behaviour could likely improve in the long term if she were given space to further explore ways of expressing and managing her thoughts and emotions. I understand she hasn’t taken part in psychological therapy. Literature suggest that the following psychotherapies are effective in reducing anxiety and mood problems in children: CBT; interpersonal psychotherapy (IPT); supportive interventions; and behavioural family interventions (Bradley, 2001).

I want to stress that therapy may be helpful in assisting [NS] with separation anxiety symptoms; however, since therapeutic intervention hasn’t been offered before the symptoms exacerbated (e.g. at the time [MS] started to serve time in prison), it may take a long time before [NS] is able to learn how to regulate her emotions.

Furthermore, if [NS] is not able to manage thoughts and emotions that trigger separation anxiety, there is a risk of her suffering from generalised anxiety which she may also carry on to her adult years. Literature suggests that anxiety and mood disorders in children and adolescents are prevalent conditions that may become chronic and may carry a risk of current and later functional impairment (Bradley, 2001). In my opinion, if [NS] separation anxiety is left untreated, her personal, family, social and academic life could likely become severely affected.”

32. The best interests of [NS] lie in favour of her remaining in the UK and to continue receiving the treatment she requires to improve her mental health, although it is not clear if she has in fact received any treatment to date. Tamara Licht’s report is

- also dated 20 October 2019, nearly two years ago with no update or indication of whether treatment has been undertaken and how successful or otherwise the same has been.
33. The best interests of any child are to be brought up in a loving and stable relationship with two caring parents. In that regard the best interests of MS's children who he lives with are best served by his remaining in the UK.
 34. But that is not the determinative factor as best interests may favour a parent remaining in the UK per se, yet the removal of the offending parent does not give rise to unduly harsh consequences or tip the balancing exercise in favour of the deportee.
 35. During the time MS was in prison, [AM] was able to care for and provide the required day-to-day support the family needed and access support from outside groups. There are a large number of single parent families in the UK, some with health needs far worse than those suffered by [AM] who manage to parent their children and maintain the family unit.
 36. It is accepted that [AW] may not be able to do all she would want to do for the children but that does not mean her standard of care and parenting will fall below an acceptable standard. There is no suggestion of any need for the intervention of Social Services if the appellant is deported, based upon child protection/neglect concerns.
 37. Although as a result of COVID-19, [AM] has come to depend on MS for support with regards to the school runs I find the evidence fails to support a finding that the degree of dependency from MS's wife and children, and the consequences so his not being able to assist as he has to date, is such that it will result in 'unduly harsh' consequences if MS was no longer able to provide that support.
 38. I accept that deportation will result in harsh consequences for this family unit and that the children will not have the same level of contact with MS and will be limited to contact through indirect means such as Skype, telephone, email and letters.
 39. The children currently reside with their mother and there is no suggestion this will change. It is not made out assistance and interventions will not be available if required for both [NS] in helping her deal with her emotional needs or [AS] in relation to any personal or parenting issues. The report of Tamara Licht to a large extent sets out references to texts from the American Psychiatric Association and pontificates on what might happen rather than providing a clear indication of what will happen and the consequences of the same.
 40. There is also an issue for which Tamara Licht has been criticised by a judge of this Tribunal before, of referring to issues that have never been at large in an appeal. In this case the reference to risk of suicide is a further example of this as there is no credible suggestion this was a live issue in this appeal.
 41. A more recent development is that [AS] is pregnant with MS's child. It is accepted that the current Covid-19 pandemic is likely to pose a greater risk to her and place her in the vulnerable category, but it is not acceptance that a real risk actually exists. The Government Covid-19 website confirms that pregnant women were said to fall within the vulnerable group as a precaution, not because there is scientific evidence that as a group, they face a greater risk of infection.

42. I do not find the appellant has made out that if he is removed from the United Kingdom, when considering all the evidence in the round and whilst accepting it will result in harsh consequences for this family unit, will result in what can properly be found on an holistic assessment to be 'unduly harsh' consequences such as to warrant a finding that the appellant is able to succeed in resisting deportation on the basis of either of the exceptions contained in section 117C or the Immigration Rules.
43. Moving on to consider Article 8 ECHR, the above findings are relevant to considering the proportionality of the respondent's decision. It is accepted the appellant has family life with his wife and children as well as a private life in the United Kingdom with his home, work when undertaken, his church, and friendship groups, and that the same were formed at the time he was legally entitled to reside in the United Kingdom with settled status.
44. It is accepted that the respondent's decision will have consequences such as to engage article 8 in relation to the interference in both the appellant's private and family life and those of the other family members with him.
45. It is accepted the appellant's sentence of 32 months imprisonment places him in the medium category of offenders which engaged the question of whether any of the exceptions applied. The appellant, in failing to establish that he can rely on either exception has not able to show that those matters the respondent considers demonstrate the deportation decision is not proportionate in statute, have been made out.
46. It is not in dispute that it is never pleasant for a child or partner in a close family unit for the offending parent or adult partner to be deported. It is accepted that at this time there may be heightened concerns as a result of the Covid 19 pandemic which is prevalent both in the United Kingdom and in South Africa, but as submitted by Mr Deller this is a transient issue whilst the virus is currently with us.
47. Post HA (Iraq) it is necessary for the appellant to establish that the best interests of the child give sufficient weight to the appellant's case to be determinative. Having undertaken the fresh holistic examination of this case, I do not find it has been shown that the best interests of any of the children are the determinative point.
48. Whilst the appellant has taken up steps to deal with his alcohol problems, demonstrated an improvement since the commission of the index offence, and I have noted the emotional difficulties highlighted in the evidence and lack of any intervention having been sought by the parents to deal with the same to assist [NS], I also note the availability the same as the child will be staying in the United Kingdom. I find the case relied upon by the appellant is not sufficient to show that the strong public interest in his deportation from the United Kingdom on the facts of this case has been outweighed.
49. I find that the family's circumstances do not establish there are very compelling circumstances outside the exceptions sufficient to make the appellant's removal from the United Kingdom an unlawful interference with any of the protected rights relied upon pursuant to article 8 ECHR.

Decision

50. **I remake the decision as follows. This appeal is dismissed.**

Anonymity.

51. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 20 October 2020