Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/00574/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On the 20th October 2021	**On the 11th November 2021**

Before

THE HON. MR JUSTICE SAINI
UPPER TRIBUNAL JUDGE PITT

Between

MR REMI AKINYEMI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Khubber, Counsel, instructed by Turpin & Miller LLP
For the Respondent: Mr A Deakin, Counsel, instructed by the Government Legal Department

DECISION AND REASONS

1. This decision is the remaking of Mr Akinyemi's human rights appeal brought in the context of deportation proceedings. He maintains that deportation will breach his rights under Articles 3 and 8 of the European Convention on Human Rights (ECHR).

2. This appeal has a long history, including two previous Upper Tribunal decisions and two decisions from the Court of Appeal. The background and important features of the case have been set out on a number of occasions before, therefore, but it remains expedient to set out the key procedural and factual history again here.

3. The appellant, a citizen of Nigeria, was born in the UK on 21 June 1983. He is now 38 years' old.

4. The appellant's parents came from Nigeria to the UK in the 1970s as students. The appellant's father was granted indefinite leave to remain (ILR) in October 1987 and became a British citizen in October 2004. Sadly, the appellant's mother died in 1999. The respondent accepts that she was in the UK lawfully at that time, most likely having been granted ILR.

5. The appellant has two older brothers who live in the UK. His oldest brother, Femi, was born in Nigeria on 28 May 1974, came to the UK and became a naturalised British citizen in 2000. The appellant's other brother, Bode, was born in the UK on 27 May 1976. The operation of the legislation in force at that time meant that Bode was a British citizen from birth.

6. By the time that the appellant was born in 1983, the legislation had changed, however, and he did not acquire British nationality automatically at birth. No steps were taken during his childhood or thereafter to regularise his immigration status or for him to acquire British citizenship. He remains a Nigerian national by reason of his family background.

7. The appellant has committed a large number of offences since his teenage years. He has over twenty convictions for 43 offences. Details of these offences are considered in more detail below. Of particular note, on 5 July 2007 the appellant was convicted of causing death by dangerous driving and was sentenced to 4 years' imprisonment. The circumstances of that offence were that he suffered an epileptic fit whilst driving and lost control of the car, killing a cyclist. The appellant committed the offence knowing that he suffered from epilepsy and that he was driving whilst disqualified.

8. This offence, together with others that followed, led the respondent to consider bringing deportation proceedings against the appellant in 2011. However, on 30 June 2011, the respondent wrote to the appellant, informing him that a decision had been made not to take any deportation action. The letter warned the appellant that he had no right to be in the UK, that he remained liable to deportation and that "if you should come to adverse notice in the future, the Secretary of State will be obliged to give further consideration to the question of whether you should be deported."

9. Notwithstanding that warning letter, the appellant continued to offend. On 4 February 2013 he was sentenced to 40 months' imprisonment for four counts of possession of heroin with intent to supply.

10. Those offences, unsurprisingly, led the respondent to commence deportation proceedings against the appellant. On 13 February 2014 the respondent made a deportation order against him under the provisions of section 32(5) of the UK Borders Act 2007 (BA 2007). This was served on the appellant on 25 March 2014 together with a letter of the same date indicating that the respondent did not accept that deportation would breach the appellant's rights under Article 8 ECHR.

11. The appellant appealed against the decision of 25 March 2014. In a determination dated 29 August 2014, his appeal was allowed by First-tier Tribunal Judge Thanki. The respondent appealed to the Upper Tribunal and in a decision dated 24 November 2014 Upper Tribunal Judge Kekic set aside the decision of the First-tier Tribunal. A remaking of the appeal then took place and in a decision issued on 13 February 2015 Upper Tribunal Judge Kekic dismissed the appeal against deportation.

12. The appellant then appealed to the Court of Appeal. In Akinyemi v Secretary of State for the Home Department [2017] EWCA Civ 236, delivered on 4 April 2017, the Court of Appeal allowed the appeal against the decision of the Upper Tribunal. The appeal was remitted to the Upper Tribunal for a *de novo* hearing.

13. The Upper Tribunal, on this occasion a panel comprising Goss J and Upper Tribunal Judge Kopieczek, dismissed the appeal in a determination dated 14 August 2018.

14. The appellant appealed again to the Court of Appeal. In a decision reported as Akinyemi v Secretary of State for the Home Department (No. 2) [2019] EWCA Civ 2098, delivered on 4 December 2019, the Court of Appeal again allowed the appellant's appeal and again remitted it to the Upper Tribunal for a rehearing.

15. Since the matter was before the Court of Appeal, the appellant has received a further conviction for an offence of affray committed in August 2018 for which, on 6 May 2021, he received a community sentence.

16. The remaking of the appeal, after much delay, mainly as a result of the COVID-19 pandemic, thus came before us.

17. We heard oral evidence from the appellant, his former partner, Ms Rachel Lockhart, and the appellant's father, Lawrence Akinyemi. The witnesses were briefly cross-examined by Counsel for the respondent. Both Counsel provided detailed written submissions on Article 3 and Article 8 ECHR which were helpfully supplemented by concise and focused oral arguments.

18. We were also grateful to the parties for an updated list of agreed facts and issues. We attach the agreed list to this decision as an Annexe. We have taken into account those facts in our analysis below and will not repeat them in the body of our decision, which also addresses each of the agreed issues, but in a slightly different order.

Article 3 ECHR

Caselaw

19. There was agreement that the correct approach to the appellant's Article 3 ECHR claim is that provided by the Supreme Court in AM (Zimbabwe) v SSHD [2020] UKSC 17. The Supreme Court held that in Paposhvili v Belgium [2017] Imm AR 867 the European Court of Human Rights (ECtHR) extended the "other very exceptional cases" category of medical cases that might succeed under Article 8 ECHR beyond the D v UK 24 EHRR 423 and N v UK 47 EHRR 885 "deathbed" cases. The Supreme

Court confirmed that the correct approach was that set out in paragraph 183 of the judgment in Paposhvili:

> "The Court considers that the "other very exceptional cases" within the meaning of the judgment in *N. v. the United Kingdom* (§ 43) which may raise an issue under Article 3 should be understood to refer to situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy. The Court points out that these situations correspond to a high threshold for the application of Article 3 of the Convention in cases concerning the removal of aliens suffering from serious illness."

20. Reflecting the final sentence of that paragraph, the Supreme Court explained in paragraph 32 of AM (Zimbabwe) that the test for an Article 3 medical case remained high:

> "But, irrespective of the perhaps unnecessary complexity of the test, let no one imagine that it represents an undemanding threshold for an applicant to cross. For the requisite capacity of the evidence adduced by the applicant is to demonstrate "substantial" grounds for believing that it is a "very exceptional" case because of a "real" risk of subjection to "inhuman" treatment."

21. Also of importance in this case is the guidance of the Court of Appeal in J v Secretary of State for the Home Department [2005] EWCA Civ 629 on the correct approach to an Article 3 claim brought on the basis of a risk of suicide. Dyson LJ provided a set of principles to be taken into account in cases concerning suicide in paragraphs 26 to 31 of J:

> "26. First, the test requires an assessment to be made of the severity of the treatment which it is said that the applicant would suffer if removed. This must attain a minimum level of severity. The court has said on a number of occasions that the assessment of its severity depends on all the circumstances of the case. But the ill-treatment must "necessarily be serious" such that it is "an affront to fundamental humanitarian principles to remove an individual to a country where he is at risk of serious ill-treatment": see *Ullah* paras [38-39].
>
> 27. Secondly, a causal link must be shown to exist between the act or threatened act of removal or expulsion and the inhuman treatment relied on as violating the applicant's article 3 rights. Thus in *Soering* at para [91], the court said:
>
> > "In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which *has as a direct consequence the exposure of an individual to proscribed ill-treatment.*" (emphasis added).

> See also para [108] of *Vilvarajah* where the court said that the examination of the article 3 issue "must focus on the foreseeable consequences of the removal of the applicants to Sri Lanka…"
>
> 28. Thirdly, in the context of a foreign case, the article 3 threshold is particularly high simply because it is a foreign case. And it is even higher where the alleged inhuman treatment is not the direct or indirect responsibility of the public authorities of the receiving state, but results from some naturally occurring illness, whether physical or mental. This is made clear in para [49] of *D* and para [40] of *Bensaid.*
>
> 29. Fourthly, an article 3 claim can in principle succeed in a suicide case (para [37] of *Bensaid*).
>
> 30. Fifthly, in deciding whether there is a real risk of a breach of article 3 in a suicide case, a question of importance is whether the applicant's fear of ill-treatment in the receiving state upon which the risk of suicide is said to be based is objectively wellfounded. If the fear is not well-founded, that will tend to weigh against there being a real risk that the removal will be in breach of article 3.
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> 31. Sixthly, a further question of considerable relevance is whether the removing and/or the receiving state has effective mechanisms to reduce the risk of suicide. If there are effective mechanisms, that too will weigh heavily against an applicant's claim that removal will violate his or her article 3 rights."

22. In MY (Suicide risk after Paposhvili) [2021] UKUT 232 the Upper Tribunal found that the amended test for an Article 3 ECHR medical case taken from Paposhvili should be read across to cases concerning a risk of suicide.

Submissions

23. Counsel for the appellant maintained that his physical and mental health conditions showed that on return to Nigeria he would be exposed to a real risk of a serious rapid and irreversible decline in his state of health resulting in intense suffering and/or to a significant reduction in his life expectancy. The appellant's epilepsy was poorly controlled by medication and he suffered seizures several times a week. Due to the seriousness of his condition, he had been referred for assessment for possible epilepsy surgery and that assessment was ongoing. Secondly, the appellant's diagnosis of severe depression and anxiety was not disputed and nor was his history of suicidal ideation which had led to at least ten suicide attempts. The forensic psychology report of Dr Lisa Davies dated 22 August 2021 identified in paragraph 8.08 that the appellant presented with a "high and imminent risk for suicide in the event of any adverse outcome to the current proceedings." The appellant would not be able to access surgery or other specialist treatment for his epilepsy in Nigeria. He would also be unable to access counselling or therapy for his epilepsy or mental health problems and there would be insufficient mechanisms in Nigeria to reduce the risk of suicide.

24. The respondent submitted that the appellant's physical and mental health difficulties did not meet the "stringent threshold" that remained for a finding of a breach of Article 3 ECHR even taking into account the guidance in Paposhvili and AM (Zimbabwe). The evidence was not sufficient to show that either the appellant's epilepsy or his mental health would met the minimum threshold for an Article 3 ECHR to be made out.

Analysis: Article 3 ECHR

25. The appellant's diagnosis of drug-resistant epilepsy is not disputed. Dr Jane Adcock, Consultant Neurologist at John Radcliffe Hospital, provides details of the seriousness of the appellant's epilepsy in a letter dated 2 July 2021. The appellant has experienced both focal and tonic-clonic seizures since the age of 23 and Dr Adcock states that at present "He may experience up to several seizures per week." She confirms that the appellant has "significant memory impairment due to the epilepsy" and that his condition contributes to his depression. His health problems have had "a very significant impact on his life", preventing him from working and driving. His epilepsy is being treated with Sodium Valproate and Lacosamide. As the likelihood of controlling the seizures using medication was low, surgery was being considered and the appellant was in the process of being assessed and is currently awaiting further tests.

26. We were also provided with a country report dated 2 September 2021 from Dr Inge Amundsen which commented on the situation in Nigeria for someone with the appellant's physical and mental health problems. Dr Amundsen identified in paragraphs 4.3.4 and 4.3.7 of his report that the anti-epileptic and anti-depressant medications that the appellant currently takes are available in Nigeria "for a reasonable price." Dr Amundsen indicated in paragraph 4.1.12 that epilepsy surgery was not available in Nigeria and in paragraph 4.1.3 that "counselling and follow-up will not be available". This is qualified in paragraph 4.1.4 sets out that private provision of counselling and therapy would be available. Mr Deakin's estimate of the costs for such treatment being between approximately £9 and £70 per hour was not disputed for the appellant. In paragraph 4.1.4 Dr Amundsen comments that a high percentage of those who suffer from epilepsy in Nigeria do not access treatment "due to stigma, cultural beliefs, difficulty reaching a health facility, non-acceptance of diagnosis and seizures".

27. We find on the evidence in relation to the appellant's epilepsy and the treatment available to him in Nigeria, he would not face a breach of his Article 3 ECHR rights if returned there.

28. First, we do not accept that the evidence established that the appellant will face an "absence of appropriate treatment" or "lack of access to such treatment" for his epilepsy or depression in Nigeria. In the light of Dr Amundsen's clear statement on the availability and cost of medication in Nigeria, it was accepted for the appellant that the medication he is currently receiving for both epilepsy and depression would be available in Nigeria at a reasonable cost. It was also conceded for the appellant

that he would have some financial support in Nigeria from his father and Ms Lockhart, albeit we accepted that this would be to a somewhat lesser amount than that they currently provide. We also found that the approximate estimate of the cost of private counselling and therapy indicated that it was not prohibitive.

29. Secondly, the appellant is not currently receiving counselling to deal with the psychological impact of his epilepsy or for his depression and anxiety. It has also not yet been established whether surgery for his epilepsy would be appropriate. At present, therefore, there would be no differential in treatment in these regards on return to Nigeria. Dr Adcock refers in the final sentence of her letter to the appellant being "very significantly adversely affected if he were unable to receive appropriate specialist investigation and treatment" but we did not find the body of her letter supported that statement where the appellant can access the same medication in Nigeria that he receives in the UK and he has not, as yet, been identified as requiring more specialist treatment.

30. Thirdly, given the appellant's profile, someone used to seeking medical treatment, with insight into his physical and mental health problems and the impact they have had on his life as set out in his statements and oral evidence, we did not find it likely that he would be prevented from seeking and accessing treatment in Nigeria because of stigma, non-acceptance of diagnosis and so on, as suggested by Dr Amundsen in paragraph 4.14 of his report. Dr Davies states in paragraph 6.3.1 of her report that it was unlikely that the appellant would "seek out medical or psychological support if deported". We did not find that to be a reliable conclusion given that the preceding parts of the same paragraph indicate only that the appellant's ability to access treatment in Nigeria was "uncertain" and "unclear" rather than "unlikely". That was additionally our view given that the appellant has shown a commitment to obtaining proper support for his epilepsy and mental health in the UK and where the evidence showed that he would have some financial support to do so in Nigeria.

31. Put simply, we did not find that the evidence showed a material absence of or lack of access to appropriate treatment for the appellant's epilepsy in Nigeria such that he would face a serious deterioration capable of meeting the demanding threshold for an Article 3 ECHR medical claim even on the basis of the amended threshold set out in Paposhvili.

32. We also did not find that the evidence supported a finding that the appellant's mental health and risk of suicide on return to Nigeria would lead to a "serious, rapid and irreversible decline in his … state of health resulting in intense suffering or to a significant reduction in life expectancy."

33. The appellant relies on Dr Davies's concluding statement in paragraph 8.08 of her report dated 22 August 2021 that the appellant "presents a high and imminent risk for suicide in the event of any adverse outcome to the current proceedings." We concluded that we could not place significant weight on that statement for a number of reasons.

34. The assessments conducted by Dr Davies in 2017 and 2021 identified a "moderate" risk of suicide present at the time that the assessments were conducted; see paragraphs 3.47 and 3.49 of her report dated 22 August 2021. The same paragraphs set out that the appellant's responses showed "a weak wish to live and a weak wish to die" and "a weak wish to kill himself". The appellant was "unsure if he has the courage or ability to commit suicide, is unsure if he will make another attempt (or when he will make an attempt) but has made preparations"; see paragraph 3.4.8. The latter statement is somewhat moderated by the earlier statement in the same paragraph that the appellant had "not yet worked out the exact details of his plan."

35. In paragraph 3.4.9 Dr Davies draws from this material the conclusion that the risk of suicide "would be significantly increased in the context of being notified that he is being deported and during any attempt to forcibly remove him from the UK." We accept that the appellant has a history of suicide attempts and that he attempted suicide in approximately 2017 when he learned of further legal proceedings. Nevertheless, we were not able to ascertain how that the details of the assessment of the risk of suicide set out in paragraphs 3.4.7 3.4.8 supported the conclusion in paragraph 3.4.9 that a significantly higher risk would arise if the appellant were unsuccessful in his attempt to remain in the UK. We did not see anything in the appellant's responses as recorded in paragraph 3.4.8 that indicated anything other than a "moderate" risk.

36. We considered the statements made by the appellant in paragraph 3.3.21 of the report as they appeared to be the strongest indication as to his mental state when faced with the reality of return to Nigeria. The evidence from the appellant at that point of his meeting with Dr Davies were made in the context of an exploration of the impact of his epilepsy in paragraphs 3.3.13 to 3.3.23 of the report. Paragraph 3.3.21 sets out that the appellant was asked how he would manage and seek help for his epilepsy in Nigeria. Dr Davies records his response:

> "He told me that he has no idea where he would go for help. He told me that he no comprehension of how he would survive and stated, "*I would end my life*". He was clear that his risk for suicide would be increased from the moment that he was told of any adverse outcome to the current proceedings."

37. We were not satisfied that these statements, made in response to a question on how to manage his epilepsy in Nigeria, could be relied on to underpin a conclusion of a significantly increased risk of suicide or "a high and imminent risk for suicide" that met the Article 3 ECHR threshold. Also, our discussion above identifies that it was accepted for the appellant that his epilepsy and anti-depressant medication would be available to him in Nigeria, as would counselling. We have found that he would be likely to access some treatment given that he will have some financial support and given his history, certainly recently, of taking serious steps to address his health problems. This was not something that appears to have been part of the appellant's thinking when he made the statements recorded in paragraph 3.3.21 or by Dr Davies when she drew her conclusion from these comments.

38. The context for the assessment of the risk of suicide if the appellant is deported to Nigeria is that he has been assessed as being at a "moderate" risk over the last four years. There is limited evidence on the increased risk in the event of removal. We did not find that the material in Dr Davies's report or elsewhere justified the conclusion of a "high and imminent risk" or gave a reliable indication of how high that risk would be such that we could conclude that the Article 3 ECHR threshold was reached here.

39. For these reasons, we did not find that the respondent's decision to deport the appellant breached his rights under Article 3 ECHR.

Article 8 ECHR

The Legislative Framework and Caselaw

40. Part 5A of the Nationality, Immigration and Asylum Act 2002 (NIAA) (as amended by the Immigration Act 2014) provides a comprehensive framework for considering whether a decision made under the Immigration Acts that interferes with a person's Article 8 ECHR rights is justified.

41. Section 117A NIAA 2002 provides, insofar as material, that:

> "(2) In considering the public interest question, the court or tribunal must (in particular) have regard – (a) in all cases, to the considerations listed in Section 117B, and (b) in cases concerning the deportation of foreign criminals, to the considerations listed in Section 117C
>
> (3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private life and family life is justified under Article 8(2)".

42. Section 117C is entitled "Article 8: additional considerations in cases involving foreign criminals". It is the central provision in this appeal and provides, in relevant respects, that:

> "(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".

(The appellant falls within the definition in Section 117D of "a foreign criminal").

43. It appears to be common ground that the provisions of section 117B are not relevant in the present case (and we have accordingly not referred to them). It is also agreed that Exception 2 is no longer material (there being no relevant subsisting relationship between the appellant and Ms Lockhart, his former partner).

44. We do not refer to the similar provisions contained in the Immigration Rules where the Court of Appeal has indicated that it is generally unnecessary to do so; see CI (Nigeria) v SSHD [2019] EWCA Civ 2027 at [21]. No argument was made that they have an effect which differs in any material respects to the primary legislation.

45. The application of the legislation and Rules has been considered in a number of cases in the Court of Appeal and Supreme Court. Although both parties dealt at length with the case law in their written submissions, they accepted in oral argument that there was no dispute between them as to the legal principles. We will summarise the relevant principles below. We will not however refer to every case cited to us and will confine ourselves to cases where guidance of particular relevance to the present appeal has been given by higher courts.

46. The purpose of the statutory scheme is to require decision makers to adopt a structured approach to Article 8 issues raised by the removal of a foreign national i.e. whether it will be disproportionate and so a breach of Article 8 ECHR and "one which ensures due weight is given to the public interest... ".

47. This statutory framework is a "complete code" and the "... the entirety of the proportionality assessment required by article 8 can and must be conducted within it": HA (Iraq) v Secretary of State for the Home Department [2020] EWCA Civ 1176 at [27]. To the same effect, it is well established that that "the object of Part 5A of the 2002 Act is through a structured approach to produce a final result that is compatible with article 8.": CI (Nigeria) at [103]. That also means, however, that one must take into account the Strasbourg case law (we will refer to the main cases below).

48. In Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60 at [50] Lord Reed JSC described our task as follows:

> "In summary, therefore, the tribunal carries out its task on the basis of the facts as it finds them to be on the evidence before it, and the law as established by statute and case law. Ultimately, it has to decide whether deportation is proportionate in the particular case before it, balancing the strength of the public interest in the deportation of the offender against the impact on private and family life. In doing

> so, it should give weight to Parliament's and the Secretary of State's assessments of the strength of the general public interest. . . and also consider all factors relevant to the specific case in question."

49. The requirement for us to respect the "high level of importance" which the legislature attaches to the deportation of foreign criminals runs through caselaw: HA (Iraq) at [32] and Hesham Ali at [38]. In practical terms, Lord Wilson JSC's explained at [50] in Hesham Ali:

> "The critical issue for the tribunal will generally be whether, giving due weight to the strength of the public interest in the deportation of the offender in the case before it, the article 8 claim is sufficiently strong to outweigh it. In general, only a claim which is very strong indeed - very compelling, as it was put in the MF(Nigeria) case - will succeed."

50. However, the decision of the Court of Appeal in the second appeal by the appellant in this case makes clear that the public interest in favour of the deportation of foreign criminals is not fixed. At [39] Ryder LJ explained: "correct approach to be taken to the "public interest" in the balance to be undertaken by a tribunal is to recognise that the public interest in the deportation of foreign criminals has a moveable rather than fixed quality."

51. In coming to this conclusion, reference was made by Ryder LJ at [49] to Lord Kerr JSC's observations in Hesham Ali at [164] to the effect that the strength of the public interest in favour of deportation must depend on such matters as the nature and seriousness of the crime, the risk of reoffending, and the success of rehabilitation. These factors are relevant to an assessment of the extent to which deportation of a *particular individual* will further the legitimate aim of preventing crime and inform the public interest in deportation.

52. The Strasbourg cases of particular relevance are well known. They include Boultif v Switzerland (2001) 33 EHRR 50, Üner v Netherlands (2007) 45 E.H.R.R. 14 and Maslov v Austria [2009] INLR 47. Maslov is of particular importance in the present appeal given the Grand Chamber's observations at [71]-[75]. The relevance of the Strasbourg case law was also addressed recently by the Supreme Court in Sanambar v SSHD [2021] UKSC 30, to which we have had regard.

53. Of some importance in this case are the observations of Leggatt LJ in in CI (Nigeria) at [62] and [75] that while it is *possible* for social and cultural integration in the United Kingdom to be broken by criminal offending and imprisonment:

> "A person who has lived all or almost all his life in the UK, has been educated here, speaks no language other than (British) English and has no familiarity with any other society or culture will start with much deeper roots in this country than someone who has moved here at a later age. It is hard to see how criminal offending and imprisonment could ordinarily, by themselves and unless associated with the breakdown of relationships, destroy the social and cultural integration of someone whose entire social identity has been formed in the UK."

54. As to section 117C(4)(c), the concept of "integration" into the proposed country of deportation was considered in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 at [14] where Sales LJ explained in a now well-known passage:

> "... 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-today 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" (our emphasis).

55. In this appeal the appellant is required to demonstrate "very compelling circumstances, over and above those described in Exceptions 1 and 2..." (section 117C(6)). This is a demanding test and the difficulty of an appellant satisfying it must not be underestimated.

56. It does not, however, follow from this provision that a foreign criminal facing deportation is altogether disentitled from seeking to rely on matters falling within the scope of the circumstances described in Exceptions 1 and 2. He would need to point to features of his case of a kind mentioned in Exceptions 1 and 2 (and in paragraphs 399 or 399A of the Rules we have set out above), or features falling outside the circumstances described in those exceptions and those paragraphs, which made his claim based on Article 8 especially strong.

57. It is well-established that in the case of a serious offender who could point to circumstances in his own case which could be said to correspond to the circumstances described in Exceptions 1 and 2, but where he could only just succeed in such an argument, it would not be possible to describe his situation as involving very compelling circumstances, over and above those described in Exceptions 1 and 2. This has been called a "bare" case of the kind described in Exceptions 1 or 2. We base these observations on NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662 at [29]-[30] and CI (Nigeria) at [93].

58. In R (Kiarie and Byndloss) v Secretary of State for the Home Department [2017] UKSC 42 at [55] it was explained that the very compelling reasons which the tribunal must find before it allows an appeal are likely to relate in particular to some or all of the following matters:

> "(a) the depth of the appellant's integration in UK society in terms of family, employment and otherwise; (b) the quality of his relationship with any child, partner or other family member in the UK; the extent to which any relationship with family members might reasonably be sustained even after deportation, whether by their joining him abroad or otherwise; (c) the impact of his

> deportation on the need to safeguard and promote the welfare of any child in the UK; (d)the likely strength of the obstacles to his integration in the society of the country of his nationality; and, surely in every case, any significant risk of his reoffending in the UK, judged, no doubt with difficulty, in the light of his criminal record set against the credibility of his probable assertions of remorse and reform".

59. Finally, when approaching the Article 8 ECHR exercise a "balance sheet" approach is to be adopted: Hesham Ali at [83] . There is also helpful guidance in the case law as to how we should approach, as a matter of structure, the particular issues in the present appeal. As explained in NA (Pakistan) at [37], in cases involving "serious offenders" it:

> "will often be sensible first to see whether his case involves circumstances of the kind described in Exceptions 1 and 2, both because the circumstances so described set out particularly significant factors bearing upon respect for private life (Exception 1) and respect for family life (Exception 2) and because that may provide a helpful basis on which an assessment can be made whether there are "very compelling circumstances, over and above those described in Exceptions 1 and 2" as is required under section 117C(6). It will then be necessary to look to see whether any of the factors falling within Exceptions 1 and 2 are of such force, whether by themselves or taken in conjunction with any other relevant factors not covered by the circumstances described in Exceptions 1 and 2, as to satisfy the test in section 117C(6)."

Submissions

60. Having referred extensively to the facts (most of which were agreed) and the two decisions of the Court of Appeal in these proceedings, Counsel for the appellant persuasively argued that adopting the "balance sheet" approach to the appellant's Article 8 claim to resist deportation it is clear that the factors in favour of deportation were clearly and substantially outweighed by the factors against deportation in the particular circumstances of this case. While acknowledging the substantial factors in favour of deportation (the public interest in deportation following a sentence of 4 years and the appalling history of offending), he said the counter-factors were powerful. He focused understandably on a range of connected factors relating essentially to the fact that the appellant was to all intents and purposes a person with no ties to anywhere other than the UK where he was born and which country he had never left. When approached in terms of the relevant statutory provisions it was argued for the appellant that his case exhibits very compelling circumstances (over and above those described in Exceptions 1 and 2 of s.117C) such that deportation would be disproportionate. A number of points were made in this regard but the following were matters of particular focus; that he has been lawfully resident in the UK for most of his life; that he is socially and culturally integrated in the UK and that despite his history of offending, British culture and a British identity is all that he knows. There would be very significant obstacles to his integration into the destination state. Reliance was also placed on the appellant's health condition including depression, anxiety and suicidal ideation deriving from fear of being

removed to a country he has never lived in/ known. Finally, Counsel for the appellant made references to a number of ECHR cases which are well-known.

61. In his realistic and measured submissions, Counsel for the Secretary of State argued that the appellant has failed to demonstrate "very compelling circumstances" over and above those described in Exception 1 as required by section 117C(6) of the 2002. Counsel properly conceded that the appellant has been lawfully resident in the United Kingdom for most of his life and that he is socially integrated in the United Kingdom (we will turn to the nature of these issues further below). He also accepted that the appellant has demonstrated that there would be obstacles to his integrating in Nigeria. He argued forcefully however that that these could not properly be considered "very significant" or, if they are, that they were not so significant as to satisfy the requirements of section 117C(6) of the 2002 Act. He submitted that taking all the factors into account and giving due weight to the significant public interest in deportation (the appellant was described by Counsel as "a serious and recidivist offender"), deportation to Nigeria would not breach the appellant's Article 8 ECHR rights.

Analysis: Article 8 ECHR

62. We must consider whether the appellant has established very compelling circumstances over and above those described in Exception 1 (section 117C(4) of the 2002 Act). We begin with the three section 117(C)(4) factors themselves.

Factors (a) and (b): lawful residence and social and cultural integration

63. As identified above, factors (a) and (b) are conceded by the Secretary of State but we must not lose sight of the fact that the appellant amply (not only "just") satisfies those requirements. He has never lived anywhere but the UK (and indeed has never even left the UK), and his evidence (not challenged by the Secretary of State) is that British culture and British identity are all he knows. We accept that the fact that the appellant has never left the UK cannot be a "trump" card but the Secretary of State has rightly accepted that is factor of real weight in this appeal.

64. It is significant that the Secretary of State did not seriously challenge the substance of the appellant's evidence that he has no ties whatsoever to Nigeria, that he has no family there and knows very little about the country. He explained that he does not speak the languages or know any of the country's customs and he has never thought of himself as Nigerian. As far as he is concerned he and his family are all British. Having seen and heard him give evidence this description was wholly accurate.

Factor (c): very significant obstacles to integration in Nigeria

65. We conclude on the evidence that the appellant has also satisfied s.117C(4)(c) ("very significant obstacles to C's integration"). We consider the Secretary of State's arguments in opposition on this matter to be unrealistic and they substantially ignore the lack of any meaningful ties of the appellant to Nigeria, his personal health position and the challenges he faces even living in the UK. In our judgment, this is

again not a case where on the facts the appellant only "just" satisfies factor (c). He amply satisfies it.

66. It is established law that when considering the question of integration what is required is a broad evaluative judgment as to whether the appellant would be enough of an "insider", in terms of understanding how life in the society of that other country was 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 and family life: Kamara [14] cited above.

67. Applying that test, and given the substantially unchallenged evidence given by the appellant and the other witnesses, in our judgment it has been established that the appellant would face very significant obstacles to integration now in Nigeria. In summary:

    (a) He has never lived in or even visited that country;

    (b) He has no meaningful ties with anyone in that country;

    (c) He has no family members there;

    (d) He has no knowledge of any local language (although English is also an official language);

    (e) He has a total lack of knowledge of the culture;

    (f) He has personal and health problems which create real challenges in a foreign country (considered in more detail below); and

    (g) He would not have access to funds to begin to build a life. We find it is unlikely that the modest financial support he gets from Ms Lockhart (around £100 per month) would continue at the same level and accept his father's evidence that his oncoming retirement may make it difficult for him to provide money to the appellant, as he presently does.

68. Far from being an "insider", the appellant would properly be classed as a complete "outsider". Aside from the points we make above, the appellant would be entering a wholly alien environment at a time when even on the Secretary of State's case she accepts that the appellant has faced some very challenging health circumstances. Although the appellant's Article 3 ECHR claim has failed, the Secretary of State accepted that the acknowledged health problems of the appellant (which were not challenged by the Secretary of State) are relevant to our assessment of the nature of the obstacles the appellant would face when seeking integration in Nigeria. In our judgment, such considerations are important.

69. The appellant is not a fit and healthy young man who could readily gain employment and live a normal life in Nigeria. His health (including mental health) would make it much more difficult for him than a person who was not facing such challenges. His evidence of the striking daily difficulties he faces as an epileptic

underlines in our judgment the difficulties he would face in an alien environment where he would have lost the limited personal and familial support network through which he is currently sustained. The evidence of multiple and unpredictable seizures has made the appellant understandably reluctant to leave his home unless he is visiting those in his support network. The suggestion that such a person could integrate in a wholly alien society is fanciful.

70. We reject the speculation in cross-examination of the appellant's father than he would be able to obtain contacts for the appellant with the appellant's (deceased) mother's relatives. That was based on the argument that the father had visited Nigeria some years ago to have his wife buried and would have met some people from her village.

71. We also reject the submission that because the appellant's mental health and other conditions have made him isolated to some extent in the UK, that is a matter which makes it easier for him to integrate. On the evidence, the appellant is isolated but that makes his ties with his father and Ms Lockhart all the more important.

72. We turn now to the issue of very compelling circumstances: section 117(C)(6) of the 2002 Act. This is the "over and above" issue.

Factors in favour of deportation.

73. We begin with the matter of the public interest in deportation and the history of the appellant's engagement with the criminal law. This was the focus of the Secretary of State's submissions. The appellant is a foreign criminal. It is therefore in the public interest that he be deported (section 117C(1) of the 2002 Act). The more serious the offence committed the greater the public interest in deportation (section 117C(2) of the 2002). The appellant is a "serious" offender (i.e. he has been sentenced to a period of 4 years' imprisonment). The Secretary of State is right in our judgment to submit that weight should be given to the public interest in the appellant's deportation. What the weight should be is a matter for our assessment in accordance with the Court of Appeal's reasoning in the second appeal brought by the appellant and the facts we find.

74. The Secretary of State's written case focused on the appellant's record of offending. We summarise that record as follows (noting his age when certain offences were committed):

(a) The appellant received a caution for offences against the person and for theft and kindred offences in 1999.

(b) On 8 June 2000 the appellant was convicted of having an article with a blade/sharply pointed in a public place and sentenced to a community order of 50 hours consecutive. On the same occasion he was convicted of taking a conveyance without authority (sentenced to a community order of 50 hours), driving without insurance (disqualified from driving for 55 days and driving licence endorsed); driving otherwise than in accordance with a licence (no

separate penalty and licence endorsed), and possessing an offensive weapon in a public place (community service order of 50 hours, concurrent).

(c) On 12 January 2001 (again while still a minor) the appellant was convicted of 2 counts of conspiracy/robbery (18 month conditional discharge) and possessing an offensive weapon in a public place (18 month conditional discharge).

(d) On 15 February 2002 (as an 18 year old) the appellant was convicted of possessing a Class B controlled drug (cannabis) and fined £55 and costs.

(e) On 23 March 2002 the appellant was convicted of being carried in a motor vehicle without consent (community punishment order of 60 hours) and failing to surrender to bail (£25 fine and costs).

(f) On 13 December 2003 the appellant was convicted of possessing a controlled drug Class B (cannabis) and fined £50.

(g) On 2 April 2004 the appellant was convicted of handling stolen goods under section 22 of the Theft Act 1968 (community punishment order of 40 hours and community rehabilitation order); using a vehicle while uninsured (fined £100 and disqualified for 6 months); and driving otherwise than with a licence (no separate penalty).

(h) On 3 December 2004 the appellant was convicted of possession of a Class C drug (cannabis) and fined £25.

(i) On 14 February 2005 the appellant was convicted of handling stolen goods (receiving) and sentenced to imprisonment for 2 months. He was also convicted of driving while uninsured (disqualified for 12 months and driving licence endorsed) and driving otherwise than with a licence (licence endorsed, no separate penalty).

(j) On 19 May 2005 the appellant was convicted of using a vehicle while uninsured. The offence was committed while the Appellant was on bail. His driving licence was endorsed. There was no separate penalty.

(k) On 10 October 2005 the appellant was convicted of driving while disqualified. He was sentenced to 3 weeks' imprisonment, disqualified from driving for 6 months and his licence was endorsed. The appellant was also convicted of using a vehicle while uninsured (£200 fine or 1 day imprisonment); driving while disqualified (imprisonment for 5 weeks consecutive, 6 months disqualification and endorsement) and using a vehicle while uninsured (£200 fine and licence endorsed).

(l) In August 2006 the appellant was convicted of driving while disqualified (imprisonment 16 weeks, disqualified from driving 2 years, licence endorsed); using a vehicle while uninsured (licence endorsed, no separate penalty); and failing to surrender to custody at the appointed time (fine £100, served 1 day as not paid). On 1 August 2006 the appellant was convicted of failing to surrender to custody as soon as practicable after appointed time and sentenced to 14 days' imprisonment consecutive.

(m) On 8 December 2006 the appellant was convicted of driving while disqualified (imprisoned for 4 months, disqualified for 12 months and licence endorsed) and driving while uninsured (no separate penalty, licence endorsed);

(n) On 5 July 2007 the appellant was convicted of causing death by dangerous driving. The offence was committed while the Appellant was on bail. Following an appeal, the Appellant was imprisoned for 4 years and disqualified from driving for 5 years until test is passed. This was the most serious of his offences.

(o) On 12 October 2010 the appellant was convicted of possessing a controlled drug Class A (cocaine) (fined £100 plus costs and victim surcharge); Class B (cannabis) – offence committed while on bail - (fined £70).

(p) On 4 February 2011 the appellant was convicted of using a vehicle while uninsured (no separate penalty, licence endorsed); taking a motor vehicle without consent (imprisoned for 4 weeks concurrent) and driving while disqualified (imprisoned for 16 weeks, licence endorsed, disqualified for 24 months).

(q) On 19 August 2011 the appellant was convicted of possession of a controlled drug Class A (cocaine) and fined £80 (together with costs and victim surcharge) and Class A (heroin) and fined £80.

(r) On 5 July 2012 the appellant was convicted of driving while disqualified and he was sentenced to a supervision requirement, suspended sentence of 20 weeks (wholly suspended for 18 months), disqualification (discretionary 12 months) and an unpaid work requirement as well as costs). He was also convicted of using a vehicle while uninsured. There was no separate penalty.

(s) On 5 November 2012 the appellant was convicted of possessing a knife blade/sharp pointed article in a public place (fine of £110, costs victim surcharge, forfeiture and destruction) and commission of a further offence during the operational period of a suspended sentence order (order varied, activity requirement).

(t) On 4 February 2013 the appellant was convicted on three counts of supplying a Class A drug (heroin) and sentenced to 40 months' imprisonment (concurrent) and a victim surcharge. The offence was committed while the appellant was on bail. He was convicted of one count of possessing a Class A drug (heroin) and sentenced to 12 months concurrent. He was also convicted of committing further offences during the operational period of a suspended sentence order and imprisoned for 2 months. This again is a serious matter and we have considered the judge's sentencing remarks.

(u) On 18 March 2016 the appellant was convicted of driving while disqualified and sentenced to a suspended sentence of 20 weeks (wholly suspended for 2 years), 6 points, a victim surcharge and costs). He was also convicted of using a vehicle while uninsured and fined £100 and his licence was endorsed.

(v) On 15 June 2017 the appellant was convicted of using a vehicle while uninsured. He was disqualified from driving for 6 months, fined £330 together with a victim surcharge and costs. He was also convicted of driving otherwise than in accordance with a licence (no separate penalty, licence endorsed) and for the commission of further offences during the operational period of a suspended sentence order (fined £1000).

(w) On 31 August 2017 the appellant was convicted of possession a Class A drug (heroin) (fined £200 with costs and victim surcharge) and Class B (cannabis) (fined £133).

(x) On 6 May 2021 the appellant was convicted of affray committed on 23 August 2018 (some 3 years earlier) and sentenced to a 12 month Community Order, rehabilitation requirement, forfeiture of a knife and a victim surcharge.

75. This is a very concerning record with a common feature of offences involving cars/driving and a number of serious offences. We also take into account that in 2011 the appellant was specifically warned of the risks of deportation should he continue to offend and plainly failed to heed that warning. We give that matter considerable weight. Standing back, however, the nature of the offending, while clearly serious and significant, is not at the very highest end of the scale.

76. As to risk of future offending, the appellant's OASys rather dated assessment of 30 October 2017 recorded:

(a) "It is difficult to assess the motive in the index offence given that he has been allusive (sic) about what happened. Based on the previous assessment of a similar offence, I would assess that Mr Akinyemi enjoys driving and it would appear he does not believe that the law should apply to him..."

(b) The assessment also noted that: "Given that Mr Akinyemi was not allowed to drive with epilepsy, had breached several bans before going on to caused (sic) death by dangerous driving, and has broken the ban twice since I would assess recklessness and risk taking behaviour to be a significant problem and would link this section both to offending and risk of serious harm".

(c) The assessment said: "Very historic violent offences and no evidence of any current concerns around aggression or violence...". (We note, however, the appellant's 2021 conviction for affray). The assessment continues "... Mr Akinyemi has broken the ban for a second time since he caused death by dangerous driving. I also note that in doing so he has gone on to re-offend whilst already subject to immigration proceedings where it might have been assumed he'd be keen to make a good impression upon the Home Office by keeping out of trouble and it is likely that when offending he simply does not anticipate being caught. I would therefore assess problems with consequential thinking. Mr Akinyemi appears to set himself goals and achieve these: for example in education and employment. One goal he has struggled with however is his stated

determination to avoid re-offending. It is likely that his repeated breaches of the driving ban have also been due to not understanding the perspective of his previous victim's family, and empathy for those whom he is putting at risk by driving. I would therefore link this section both to offending and serious harm".

(d) The appellant's OVP risk of violent re-offending was assessed to be "LOW" and his OGP non-violent re-offending risk was assessed to be "MEDIUM".

77. In a more recent OASys assessment, May 2021, the appellant was assessed as medium risk of serious harm to the public if provoked by others. That assessment included the 6 May 2021 conviction (for a 2018 offence). Counsel for the Secretary of State submitted that this recent assessment was broadly consistent with Dr Davies's report, to which we now turn.

78. Dr Davies said: "Mr. Akinyemi's risk of committing further general (non-violent) offences is assessed using the LS-CMI (Andrews, Bonta and Wormwith, 2011) as continuing to fall in the moderate risk range."; "a structured assessment of the risk of violence, indicates a low risk of future violent reoffending at the current time (i.e. assaults, affray, robbery)." and "He presents with a low risk of causing serious harm". In her conclusion Dr Davies suggests that the future offending is "most likely to be possession of cannabis". This report was not challenged by the Secretary of State.

79. Counsel have helpfully informed as that there is a broad level of agreement between the parties as to the risk of reoffending. It is agreed it is "medium" in relation to nonviolent offending and "low" in relation to violent offending. That seems to us to represent a fair reflection of the most recent report, to which we have made reference above.

80. As we have explained above, following the appellant's second appeal to the Court of Appeal, it is established that the public interest in deportation, although strong, is not "fixed or rigid" and can be affected by other factors in the case. Specifically, it is open to a tribunal to give less weight to the public interest in deportation if, for example, the person was born in the UK.

81. The Secretary of State also accepted that because the appellant was born in and has never left the United Kingdom, this is likely to reduce the public interest in removal insofar as it depends on the "public confidence" element identified by Lord Wilson in Hesham Ali at [70].

82. The Secretary of State's written submission was that the public interest in deportation in this case turns predominantly on risks of reoffending and deterrence. There can be no doubt that the nature of the appellant's offending was serious but there are certain important matters of context. First, the age of the appellant when he committed the offences is material. Some of the offences were committed when he was in his teenage years and without the recognition of his mental/physical health

needs and support he has now. Second, one needs to consider the appellant's conduct since the offence leading to deportation action was committed. In this case the offence that led to deportation was committed on 23 October 2012 – now over 9 years ago. The appellant has not committed any further similar offences. That point only goes so far because the appellant has been convicted of further offences since the offence leading to deportation, but these were of lesser seriousness (see above) – reflected in the sentences.

83. We also note that since the commission of the most recent offences in 2018, the appellant has made a conscious and deliberate effort to improve his attitude and outlook. We accept his evidence in that regard, which the Secretary of State did not challenge. That evidence is also reflected in the report of Dr Davies.

84. On the facts before us, there is a real public interest in deportation of the appellant, but it is not at the higher end of the scale. We give particular weight in this assessment to the period of time (all of his life) that the appellant has been in the UK, and the timing and nature of offending.

Factors against deportation

85. Having considered the evidence (and without repeating all of what we have said above in relation to Exception 1), we identify the following matters as being significant:

    (a) The length of the period of the appellant's residence in the UK – his entire life. This factor has however already been taken into account by us in reducing the public interest in deportation (see our observation below about the risk of "double counting").

    (b) The lack of any period of residence (even short) in the destination state since birth here.

    (c) The quality of the appellant's period of residence. He has grown up, been educated and employed in the UK. He has been lawfully here since birth.

    (d) The extent of the appellant's integration in the UK. In terms of culture, education, and outlook he is completely British. His lengthy criminal offending did not extinguish his established integration.

    (e) The Appellant's lack of any meaningful ties to the destination state, resulting in very significant obstacles existing for the purposes of integration (in the destination state).

    (f) The strong and long-standing relationship with his family members and former partner. Although the appellant is not now in a long-term relationship with a qualifying partner, he maintains a relationship with her and she provides important, regular welfare assistance to him. We address this further below. He would also lose the close support he gets from his aging father, his brothers and wider family.

86. We have already set out above the Exception 1 factors which have been established in a convincing manner. However, we would add that on the issue of very compelling circumstances, the personal position of the appellant in this case attracts real weight. Subject to relatively brief questions in relation to his financial support and history in relation to drugs, the appellant was not challenged on his witness statement. He gave evidence convincingly and was sincere. We note in particular his medical position. Because of his particular type of epilepsy, the appellant cannot work and has to stay at home most of the time. He has, as a result of his seizures, been admitted to hospital on a number of occasions for 1 to 2 days at a time. His memory impairment is such that he cannot remember appointments and who he should contact when he wakes up from a seizure. He sometimes has multiple seizures in one day. His former partner provides the appellant with a huge amount of support in day-to-day activities of a basic nature and she is his "pillar" of emotional support. She visits him every day and also tries to come over if he suffers a seizure. Given his episodes of seizures in public places (and advantage taken of that by others) he is very anxious about leaving his house.

87. The evidence Ms Lockhart, which was not challenged, in relation to the appellant's ability to function is also of some importance. She explained that the appellant struggles in the UK even with the benefit of her and his family's support. In Nigeria, he knows nobody, and he has no idea of how the country functions. He would be totally alone. Her convincing evidence is that her presence is the appellant's "main protective factor", as well as his contact with his family. She has first-hand knowledge of the appellant in social situations or with new people and we accept her evidence that he would not cope in a new environment on his own. The evidence of the appellant's family was to the same effect. They are his support network.

88. In our judgment, the factors against deportation in this case create a very powerful case in the appellant's favour.

89. Although the balancing exercise is not a mathematical one, we have taken care not to "double count" the important factor of the period of the appellant's residence in the UK. That is a factor is capable of being relevant both to the public interest in deportation (in potentially reducing it) but also can count in favour of the appellant as a factor against deportation.

Conclusion on "very compelling circumstances"

90. This is a clear case of very compelling circumstances (over and above those described in Exception 1). We have come to this conclusion giving appropriate weight to the public interest in deportation but on the facts deportation would be disproportionate and therefore contrary to Article 8 ECHR. The balance sheet comes firmly down in favour of the appellant applying the high standard to which we must be satisfied.

91. This is a case of the type identified in NA (Pakistan) at [30], where the appellant has succeeded in establishing on the evidence factors of an Exception 1 type which are of an especially compelling kind and going beyond bare satisfaction. Those factors

taken with the other particular facts concerning the appellant (on uncontested evidence) mean the appellant succeeds, when they are weighed against the contrary public interest factors.

Notice of Decision

The appeal is allowed under Article 8 ECHR.

Signed: Mr Justice Saini Dated: 1 November 2021

ANNEXE

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

REF NO: DA/00574/2014

BETWEEN

REMI AKINYEMI

Appellant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

AMENDED **LIST OF AGREED FACTS AND ISSUES BETWEEN THE PARTIES**

Introduction.

1.1. This document has been drafted by the parties in accordance with the request made by the Tribunal (Saini J, UTJ Pitt) at the hearing on Wednesday 20 October 2021.

1.2. It amends the previous list of agreed facts and issues to take into account matters since that document was drafted.

List of agreed facts.

2.1. The following is a list of factual matters that are agreed between the parties in this appeal.

1. The Appellant was born in the UK in June 1983 to Nigerian parents who were students at that time and the Appellant is now 38 years old (e.g. see Court of Appeal's first judgment, "CA 1", para 2).

2. The Appellant has lived in the UK for all of his life; he has never left the UK and more particularly never been to Nigeria (CA 1 para 2). He has been lawfully in the UK since birth (Court of Appeal's second judgment, "CA 2", paras 36,40, CA 1 para 43).

3. The Appellant has two older brothers both of whom are British, the eldest by naturalisation in 2000 and the other as a result of the consequences domestic of legislation when he was born in the UK (CA 1, para 2).

4. The Appellant's mother died when he was a teenager and was lawfully here at that time, 1999 (CA 1, para 2).

5. The Appellant's father was granted ILE in October 1987 and subsequently became a British citizen in October 2004 (CA 1, para 2).

6. The Appellant does not have any children of his own (e.g. see A's appeal statement AB/6-19, A's partner's statement, AB/20-23).

7. The updated PNC regarding the Appellant's criminal convictions / offending history is not disputed (updated PNC, provided by SSHD at the hearing on 20 October 2021).

8. The Appellant was in a relationship with his long-term partner, Ms Rachel Lockhart. The Appellant is no longer in a relationship with her but they are close friends and remain in regular contact (see A's statement AB/6-19, Ms Lockhart's statement, AB/20-23)

9. The Appellant is now at liberty as a result of being granted Immigration bail.

10. The Appellant has been employed in the UK in the past (e.g. A's statement, AB/6-19).

11. The Appellant suffers from, inter alia, epilepsy (A's statement AB/6-19 at paras 23-28, 57-64). He also has suffered with mental health problems and depression from a young age. He has taken anti-depressant medication and anti-epilepsy medication and a course of counselling in May -June 2019 (CA 2, para 9).

12. The Appellant has had a significant history of suicide attempts (CA 2 para 12).

13. RA has a number of relatives/extended family members who reside in the UK on long-term basis (see statement AB/18, para 70) including his father (Lawrence Akinyemi, statement AB/24-29), and step-mother, his brothers (Femi Akinyemi, born 28 May 1974, statement AB/24-29, Bode Akinyemi, born 27 May 1976) and their families, his cousin (Ayo Fagbohun, statement AB/3336) and an uncle and his family. They all live in the UK in Milton Keynes, East London and Essex.

14. The Appellant undertook various courses whilst in prison and was successful in obtaining various certificates (AB/621-634).

15. In March 2021 the Appellant was convicted of affray and received a 12 month community order, a rehabilitation requirement, forfeiture of knife, victim surcharge of £85.

Agreed Issues.

3.1. The agreed list of issues between the parties are:

1. Whether the SSHD's decision to deport the Appellant breached the Appellant and his relevant family member's Article 8 ECHR rights, with consideration by way of Part 5A NIAA 2002 and the Immigration Rules? In particular:

   a). Whether the Appellant has established very compelling circumstances "over and above" those described in Exception 1 under s.117C(4).

b). In assisting with consideration of a). above - the very compelling circumstances test under s.117C(6) – whether the Appellant satisfied Exception 1 to any extent.

c). Pursuant to b) above, under Exception 1, whether the Appellant has established all three elements i.e.

i. He has been lawfully resident in the UK for most of his life,

ii. He is socially and culturally integrated in the UK and

iii. there would be very significant obstacles to his integration into the country to which he is proposed to be deported.

d). If the Appellant's case does not satisfy s.117C(6), whether it is necessary for the tribunal to consider that Article 8 ECHR would otherwise be breached by his deportation.

e). Pursuant to 1 above, when considering whether a breach of Article 8 would result from deportation, the extent of the public interest in the Appellant's deportation (see CA 2).

2. Whether deportation of the Appellant would result in a breach of his rights under Article 3 ECHR?