

2. At the initial hearing on 7 April 2021, Mr Diwnycz, who appeared for the respondent, acknowledged that the judge had erred in law. I shall therefore be brief.
3. The appeal in the First-tier Tribunal was determined before the judgment of the Court of Appeal in *HA (Iraq)* [2020] EWCA Civ 1176. The parties agree that the judge was wrong to find at [61] that ‘the effect [of deportation] on his children will be no different to that of any other child separated from a parent as a consequence of deportation’. That finding was not consistent with the Court of Appeal in *HA* at [35]. The finding made by the judge at [61] in determining ‘undue harshness’ under Exception 2 as opposed to ‘very compelling circumstances’ under section 177C(6) of the 2002 Act (as amended) should not have attracted the weight attributed to it by the judge in her assessment. Following *HA*, we now know that comparing the circumstances of a particular child in a deportation appeal with the generality of children in similar circumstances leads the decision maker away from the child-focused assessment required. Given that Tribunals at both levels have fallen into similar error until corrected by the Court of Appeal, it is no criticism of the judge in this case that she did not anticipate the clarification of the law set out in *HA*. However, the judge’s analysis is vitiated by her error and her decision cannot stand. The appeal is allowed on Ground 1. I make no finding on Ground 2 although I note that that ground also arises out of the judgment in *HA*. The argument may be advanced as one element of the total circumstances which the Tribunal will need to consider when it remakes the decision.
4. The circumstances of the appellant have moved on since the hearing in the First-tier Tribunal. I understand that he is now the father of ten rather than nine children. There will need to be a new fact-finding exercise which is better conducted by the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*. Both parties may rely on new evidence provided copies of any documentary evidence (including witness statements) are sent to the other party and the Tribunal no less than 10 days before the next hearing

Listing Directions: Taylor House; First-tier Tribunal to determine if remote or face to face; Not Judge Welsh; first available date; 2 hours; No interpreter.

Signed
Upper Tribunal Judge Lane

Date 7 April 2021

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.