



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/12859/2017

**THE IMMIGRATION ACTS**

Birmingham Justice Centre  
Remote Hearing via Microsoft Teams  
On 6<sup>th</sup> July 2021

Decision & Reasons Promulgated  
On 19<sup>th</sup> October 2021

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

CAB  
(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Muhammad Ul-Haq, Counsel instructed by J M Wilson  
Solicitors

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. An anonymity direction was made by the First-tier Tribunal in respect of the appellant's children. As this appeal concerns the interests of minor children, it is appropriate to make an anonymity direction. Unless and until a Tribunal or Court directs otherwise, the appellant is granted anonymity. No report of these

proceedings shall directly or indirectly identify him or any other member of his family. This direction applies both to the appellant and to the respondent.

2. The appellant is a national of Jamaica. He arrived in the UK in June 2002 and in November 2006 he was granted indefinite leave to remain in the UK as the spouse of a British Citizen. Between 24<sup>th</sup> November 2011 and 25<sup>th</sup> February 2013, the appellant amassed five convictions for offences involving battery, possession of class A drugs (Cocaine) and class B drugs (Cannabis), and possession with intent to supply class A drugs (Crack Cocaine and Cocaine). On 10<sup>th</sup> May 2013, the appellant was sentenced at Wolverhampton Crown Court for two counts of possession with intent to supply class A drugs and, for possession of class B drugs (Cannabis). He received a total sentence of three years imprisonment. The appellant was released from prison on 21<sup>st</sup> October 2014, were detained by the respondent under immigration powers until 15<sup>th</sup> April 2015.
3. The appellant was served with notice of liability to deportation, and after considering representations made by the appellant, a deportation order was made. The respondent also made a decision dated 4<sup>th</sup> October 2017 to refuse his human rights claim. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Parkes for reasons set out in a decision promulgated on 29<sup>th</sup> August 2018. The appellant's immigration and offending history is set out in paragraphs [12] to [14] of that decision. The appellant has eight children, all of whom are British Citizens. At paragraph [16], Judge Parkes referred to the appellant's four children from his relationship with [CB], his three children from his relationship with [AC] and his child from his relationship with [NM]. The evidence before the First-tier Tribunal is referred to at paragraphs [18] to [33] of the decision. Judge Parkes heard oral evidence from the appellant and three witnesses including his estranged wife [CB], but not his partner. The findings and conclusions reached by Judge Parkes are set out at paragraphs [34] to [52] of his decision.
4. Judge Parkes concluded that the appellant has not been lawfully resident in the UK for most of his life and cannot therefore meet the requirements of paragraph 399A

of the immigration rules. At paragraphs [41] to [43] of his decision, Judge Parkes said:

“41. The Appellant’s children are all British citizens. By virtue of the Appellant’s nationality they may be entitled to Jamaican citizenship and there is no evidence to demonstrate the opposite. That said there is no evidence that they have ever been to Jamaica or have any knowledge of the country beyond what they may have seen in the media or may have been told by the appellant. Given their ages, their living with their mothers in the UK and the various stages of education that some of them are in and the obstacles that they would face in Jamaica in terms of housing, healthcare and education it would be unduly harsh to expect them to live in Jamaica.

42. As noted above the provisions of paragraph 399(a) are cumulative. To defeat the deportation order it has to be shown under paragraph 399(a)(ii)(b) that it would be unduly harsh for any child with whom the Appellant has a parental relationship to remain in the UK without the Appellant. On this issue I have had regard to the guidance set out in paragraph 8 above and the interaction with the best interests of the children who would be affected by the Appellant’s deportation.

43. Ordinarily it is in a child’s best interests to live with both parents in a stable and caring environment. The appellant is directly responsible for that not being possible for his children in this case. There are a number of ways in which the appellant has not put the children’s best interests as a primary consideration in his behaviour. The appellant’s criminal offending was not prevented by his parental responsibilities which increased in serious (*sic*) as time went by is one feature.”

5. At paragraph [46] of his decision, Judge Parkes noted that it is clear from the evidence before the Tribunal that the appellant maintains a relationship with all his children. He noted that to the appellant’s credit, that was a situation that prevailed before the appellant went to prison and was not a cynical exercise by him to use his children to thwart deportation with a late flowering of contact. At paragraph [47] of the decision, Judge Parkes said:

“That he is supportive of their mothers and that he facilitates all the children having contact with each other at weekends and sometimes other occasions is not in doubt. I accept that when the Appellant was in prison there was no contact between the Appellant’s children as the mothers were not prepared to take the necessary steps to facilitate that. Given that the evidence from all sides is that the children enjoy their time together and with the Appellant it is not clear why no effort was made by the mothers to promote this aspect of their children’s lives, they all live in the same area. That implies that the appellant’s removal would lead to a loss of contact but that is not inevitable if the mothers involved sought to cooperate for their children’s sake.”

6. Judge Parkes found the children would all miss the appellant and the time that they spend with each other. He noted there is evidence that the appellant’s removal

would cause them distress and there may be a recurrence of behavioural issues that arose when the appellant went to prison and was in immigration detention. At paragraphs [50] and [51], Judge Parkes said:

“50. If removed the universally expressed fear is that this would rupture the parental role that the appellant has built up over the years and effectively sever any contact that he has with the children. The likelihood that any of his children would be able to make the journey to Jamaica is very small if not impossible given the economic circumstances of the families and the appellant would be prevented from returning to the UK for many years. The appellant’s evidence was that any form of internet contact would be very difficult given the expense involved.

51. I find that it would be in the children’s best interests for the appellant to remain in the UK to provide support to their mothers and facilitate their meeting as an extended family. That does not answer the question about whether it would be unduly harsh for them to remain in the UK without him. In that respect, considering the guidance set out in paragraph 8 above, the seriousness of the appellant’s record and what he actually did, and with regard to the evidence of how the families coped in his absence and the nature of the care that they will continue to receive I find that the test is not met and that it would not be unduly harsh for them to remain in the UK without him.”

7. Judge Parkes concluded the appellant could not meet the provisions of paragraphs 398 to 399A of the immigration rules and there are no compelling circumstances that would justify the grant of leave under Article 8 outside. The appeal was therefore dismissed.
8. The appellant was granted permission to appeal to the Upper Tribunal. The appeal was heard by Upper Tribunal Judge Freeman on 8<sup>th</sup> May 2019 and allowed for reasons set out in his decision promulgated on 21<sup>st</sup> May 2019. Upper Tribunal Judge Freeman rejected the claim that the appellant should be regarded as a person who has been lawfully resident in the UK for most of his life. He also rejected the claim that Judge Parkes erred in his approach to the fact-finding exercise involved in deciding on the best interests of the children. The focus of the decision of Upper Tribunal Judge Freeman was upon the approach of Judge Parkes as to whether it would be unduly harsh for the appellant’s children to remain in the UK without him. He noted that the decision of the Supreme Court in KO (Nigeria) v SSHD [2018] UKSC 53 post-dates the decision of Judge Parkes but establishes that there is no requirement to consider the criminality or misconduct of a parent as a balancing

factor and such a requirement cannot be read in by implication. At paragraphs [9], Upper Tribunal Judge Freeman said:

“In this case, the judge did take significant account of the appellant’s criminal history, not the minor offences between 2010 and 2012, but his conviction for possession of class ‘A’ drugs with intent to supply in 2013, for which he was sentenced to 3 years’ imprisonment. The sentencing judge had regarded his role as significant, though mitigated to an extent by his lack of knowledge of what specific drugs he was storing in his house. Judge Parkes understandably regarded the fact that he was storing class ‘A’ drugs there at all, while his children slept upstairs, as an aggravating feature of the case against him on deportation.”

9. Upper Tribunal Judge Freeman rejected many of the criticisms made regarding the conclusions reached by Judge Parkes. He noted in paragraph [17] of his decision that Judge Parkes had found that the appellant’s removal would cause the children distress, and they might return to bad behaviour which had happened while he was in prison. He also noted Judge Parkes accepted that the appellant’s removal to Jamaica would effectively sever any contact he had with the children, and all this resulted in a positive finding that it would be in the children’s best interests for the appellant to be allowed to stay here. At paragraphs [18] and [19] of his decision, Upper Tribunal Judge Freeman said:

“18. In the end, all that was required was for the judge to give full weight to this finding, as he undoubtedly did; but without taking the appellant’s past conduct against him as now required by *KO*. The experienced judge knows best whether that past conduct was a decisive factor for him, or merely a significant one, and will be perfectly capable of re-deciding the case without taking account of it. As made clear in *RA (s.117C: “unduly harsh”;* offence: seriousness) *Iraq* [2019] UKUT 123 (IAC), the approach is as set out by Jackson LJ in *NA (Pakistan) & another* [2016] EWCA Civ 662.

19. A further hearing will give both parties an opportunity to present any views they may have on the point. Since this exercise will involve subtraction, rather than addition of a factor, I see no reason why any further evidence should be required. The appeal should be re-listed before Judge Parkes: ....”

10. It is against that background that the appeal was listed for a further hearing before First-tier Tribunal Judge Parkes on 9<sup>th</sup> July 2019. Having heard further submissions from the parties, the appeal was dismissed for reasons set out in a decision promulgated on 22<sup>nd</sup> of July 2019. At paragraph [14] of his decision Judge Parkes referred to the error identified by Upper Tribunal Judge Freeman by reference to the decision of the Supreme Court in *KO (Nigeria) v SSHD*. Judge Parkes noted the

appellant had attended the hearing and was supported by his wife and other former partners, although none gave evidence as Upper Tribunal Judge Freeman had previously indicated that the hearing could proceed by way of submissions. His findings and conclusions are set out at paragraphs [18] to [24] of his decision.

11. Judge Parkes referred to the evidence set out in the report of the independent social worker regarding the impact upon children when a parent is deported or when their parents separate. He found, at [20], that the observations made from the studies, apply in all deportation cases and reminded himself of the judgement of Hickinbottom LJ in PG (Jamaica) [2019] EWCA Civ 1213. At paragraphs [21] to [24] of his decision, Judge Parkes said:

“21. The contents of the reports of the ISW are consistent in terms of the role the appellant plays, the feelings and aspirations of all those involved and their serious concerns for the future. However, none of the children have any significant health issues or educational special needs that cannot be met in the absence of the appellant. All will remain living with their respective mothers and there is no reason to believe that those circumstances will not continue as they have up to now. The absence of the appellant will reduce the support he can give and the contact that they have with each other.

22. From the most recent report of the 6th of August 2018, considered in the previous decision, it remains the case that it would be in the children’s best interests if the appellant to (*sic*) remain in the UK. The children maintain strong views on the prospects of his removal from the UK. The view of Mr Musendo in para 17 is that the breakdown in current arrangements would compromise the children’s stability, structure and routine.

23. That observation would apply to children in almost any deportation where an engaged parent is facing ejection from the UK. The children in this appeal will each remain living with their principal carers and immediate families and their schooling will be uninterrupted. There is no evidence that any of the children have needs, whether medically or educationally, that are out of the ordinary or that their circumstances would be significantly different from other children in their situation.

24. The circumstances of the children in the absence of the appellant cannot be described as bleak or severe let alone excessively or inordinately so. In those circumstances the appellant could not meet the requirements the (*sic*) the Immigration Rules or section 117C(5). There is nothing in the evidence to suggest that there are circumstances that exceed those in the relevant sections of the rules or statute and accordingly I find that the appellant’s deportation is a proportionate response and would not place the UK in breach of article 8 of the ECHR and the children’s best interest do not outweigh the public interest in this case.”

12. The appellant applied for permission to appeal and advanced two grounds. First, he claims Judge Parkes applied an incorrect test and/or too high a threshold in reaching his decision as to whether it would be unduly harsh for the children to remain in the UK without the appellant. Second, on the findings made, and/or the evidence before the Tribunal, the required degree of harshness had been made out.
13. It is said Judge Parkes failed to consider the children's wishes and feelings as articulated in the reports of the independent social worker and failed to carry out the subjective and objective evaluation required. The appellant claims that having found that it would be unduly harsh for the children to live in Jamaica, that it is in their best interests to remain living in the UK with their father, and that deportation would effectively terminate the family unit (father/children and children/children), the judge was wrong to reach his conclusion that the required threshold has not been met. The appellant claims that paragraphs 399(a)(ii)(b) of the immigration rules, read compatibly with Article 8 and s55, must be interpreted to mean that even though the children are to remain in the UK without the appellant, family life continues thereafter albeit under strained circumstances. The appellant claims Judge Parkes found implicitly that family life will not be able to continue in any real sense following the appellant's deportation, and that in itself demonstrates undue hardship both in respect of the appellant's relationship with his children but also vis-à-vis the inter-sibling relationships. The appellant also relies upon the best interest principles that were espoused at paragraphs [16] to [24] of the submissions made on behalf of the children in the decision of the Supreme Court in Kiarie & Byndloss v SSHD [2017] UKSC 42.
14. Permission to appeal was granted by Designated First-tier Tribunal Judge Shaerf on 16<sup>th</sup> November 2019. He noted:
  - "6. The President in *RA* conducted an extensive and wide-ranging review of what is meant by "very compelling circumstances" or "undue harshness". Judge Parkes did not cite or refer to the jurisprudence in *RA* and therefore arguably erred in his assessment whether the consequences of the deportation of the appellant would give rise to undue harshness.

7. Permission to appeal is therefore granted. The appellant should note that the grant of permission is no indication that the arguable error is in fact a material error justifying the setting aside of the decision of the First-tier Tribunal.”

### The appeal before the Upper Tribunal

15. The respondent has filed a Rule 24 response dated 27<sup>th</sup> September 2019 confirming the appeal is opposed. The appeal was listed for hearing on 20<sup>th</sup> January 2020, but that hearing was adjourned by agreement of both parties because the scope of s117C(5) of the 2002 Act, relied upon by the appellant, was to be considered by the Court of Appeal in HA (Iraq), which was listed for hearing in March 2020 alongside a challenge to the decision of the President in RA. The decision of the Court of Appeal in HA (Iraq) and RA (Iraq) v SSHD [2020] EWCA Civ 1176 was handed down on 4<sup>th</sup> September 2020.
16. At a hearing before Upper Tribunal Judge Allen on 3<sup>rd</sup> December 2020, the appellant sought a further stay of the hearing of the appeal pending an application for permission to appeal to the Supreme Court. By that time, the appellant’s partner, [CM], had given birth to another child of the appellant, born on 3<sup>rd</sup> April 2020. The Tribunal was informed that although the appellant and [CM] do not cohabit, they are in a relationship and the appellant has daily contact with his daughter. On 3<sup>rd</sup> December 2020, the Tribunal was also informed that the appellant was acting as the main carer for four of his children, since their mother, the appellant’s ex-wife, [CB] had been self admitted to a mental health facility. Upper Tribunal Judge Allen refused the application for a further stay and made directions for the appellant to file and serve any amended grounds of appeal within 21 days of the date of the order. He also directed that the appellant is to file and serve a consolidated bundle comprising all the evidence he intends to rely upon, no later than 14 days before the hearing of the appeal, together with a skeleton argument. The respondent was directed to file and serve a position statement no later than seven days before the hearing of the appeal. Neither party complied with the directions made.



17. In readiness for the hearing of the appeal for form, Counsel for the appellant provided what is said to be a “Note in Advance of the Hearing on 6.7.21 including additional grounds pursuant to s120 Nationality, Immigration and Asylum Act 2002”, dated 5<sup>th</sup> July 2021. It appears from the information provided to the Tribunal in December 2020 and set out in the Note that was filed by the appellant the day before the hearing before me, that there have been further developments in the relevant factual background, but that evidence does not have any bearing on the outcome of the ‘error of law’ decision that I must make. The appellant acknowledges that the Upper Tribunal has yet to consider whether the decision of Judge Parkes promulgated on 22<sup>nd</sup> July 2019 is vitiated by a material error of law. The further evidence may be relevant to the question of disposal if there is any error of law in the decision of Judge Parkes, but it does not assist me in my decision as to whether the decision is vitiated by an ‘error of law’.
18. The appellant, together with a number of other individuals joined the hearing remotely. The appellant joined the hearing from the offices of his solicitors. At the outset of the hearing, I confirmed that the hearing will focus upon the question whether the decision of Judge Parkes is vitiated by a material error of law, based upon the evidence before the First-tier Tribunal and the circumstances as they were, at the time of his decision.
19. On behalf of the appellant, Mr Ul-Haq adopted the written note that I have referred to and submits that what lies at the heart of the appeal, is the welfare of the appellant’s children and the impact upon them, of the appellant’s deportation. He submits Judge Parkes accepted at paragraph [18], that the appellant is an active father who is engaged positively with his children and facilitates all of them meeting when it appears that their mothers would not be minded to do so. He accepted the appellant’s engagement with his children is genuine and has not been contrived for the purposes of these proceedings. He reminded himself that it would be in the children’s best interests for the appellant to remain in the UK.

20. Mr Ul-Haq submits that having considered the reports of the independent social worker, Judge Parkes applied too high a threshold in saying that the circumstances are not bleak or severe, let alone excessively or inordinately so. He submits Judge Parkes did not refer to the 'Written Case' that had been submitted on behalf of the appellant's, children before the Supreme Court, a copy of which is to be found at page 530 of the appellant's consolidated bundle. He submits that at paragraph [8] to [11] of that 'Written Case' there is a summary of the conclusions and opinions of the independent social worker are set out in the reports dated 18<sup>th</sup> September 2015 and 2<sup>nd</sup> February 2017. That 'Written Case' had formed the submissions made on behalf of the children before the Supreme Court and Judge Parkes failed to carry out the 'child centric assessment' required. Mr Ul-Haq submits Judge Parkes did not consider the factors identified in the 'Written Case' and in particular, failed to properly note that the appellant is the catalyst for the inter-dependent sibling relationships of the children. Mr Ul-Haq submits the established principles are now set out by the Court of Appeal in HA (Iraq) and here, the test is met. He submits that on the evidence before the First-tier Tribunal, Judge Parkes ought to have found that the appellant has established that it would be unduly harsh for the children to remain in the UK without the appellant. The threshold applied by Judge Parkes, Mr Ul-Haq submits, was too high.
21. Mr Ul-Haq submits Judge Parkes 's also failed to carry out an adequate assessment of the best interests of the children. He submits that at paragraph [22] of the decision, Judge Parkes failed to give adequate weight to the opinion of the expert that the breakdown in the current arrangements would compromise the children's stability structure and routine. He submits the effect of the decision of Judge Parkes is that it would sever the sibling relationship, and that was a factor that should have properly been weighed in the balance. He submits that in light of the evidence that was before the Tribunal, Judge Parkes should have found that it would be unduly harsh for the children to remain in the UK without the appellant, and in the end, the balance weighs in favour of the appellant.

22. In reply, Mrs Aboni relied upon the respondent's rule 24 reponse. She submits that in reaching his decision, Judge Parkes directed himself appropriately as to the "unduly harsh" test and had proper regard to the best interests of the children. She submits that in reaching his decision, Judge Parkes had regard to the relevant evidence that was before the First-tier Tribunal. She submits the threshold remains a high one, and that having considered all the relevant evidence, it was open to Judge Parkes to dismiss the appeal for the reasons given by him. Mrs Aboni submits the grounds amount to nothing more than a disagreement with a decision that was open to the Tribunal.

### Discussion

23. Section 32 of the UK Borders Act 2007 defines a foreign criminal, a person not a British citizen who is convicted in the UK of an offence and, *inter alia*, sentenced to a period of imprisonment of at least 12 months. Section 32(4) of the 2007 Act sets out the clear proposition that deportation of a foreign criminal is conducive to the public good. That is a statement of public policy enacted by the legislature, which the courts and tribunals are obliged to respect. Section 32(5) of the 2007 Act requires the Secretary of State to make a deportation order in respect of every foreign criminal, subject to the exceptions set out in section 33. Insofar as is relevant that is:

"(2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach-

- (a) a person's Convention rights, or
- (b) ...

...

(7) The application of an exception –

- (a) does not prevent the making of a deportation order;
- (b) results in it being assumed neither that deportation of the person concerned is conducive to the public good nor that it is not conducive to the public good;

but section 32(4) applies despite the application of Exception 1 or 4."

24. Part 5A of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) informs the decision making in relation to the application of the section 33 exceptions. Section 117A in Part 5A provides that, when a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to respect for private and family life under Article 8, and, as a result, would be unlawful under section 6 of the HRA 1998, the court, in considering the public interest question, must (in particular) have regard to the considerations listed in section 117B and, additionally, in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.
25. The core issue in the present case was whether the decision to refuse the human rights claim made by the appellant was a justified interference with the right to respect for family life, in the context of the appellant’s conviction and the fact that he is a ‘foreign criminal’ as defined in s117D(2) of the 2002 Act. Applying paragraph 399(a) of the immigration rules and s117C(3) of the 2002 Act, the public interest required the appellant’s deportation unless Exception 2 set out in s.117C(5) applies. That is, the appellant has a genuine and subsisting parental relationship with a qualifying child and the effect of his deportation on the child would be unduly harsh. In KO (Nigeria) -v- SSHD [2018] UKSC 53, Lord Carnwath considered the meaning of the expression “unduly harsh”. He observed, at paragraph 23:

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

26. I reject the claim that in reaching his decision, Judge Parkes applied an incorrect test and/or too high a threshold. In understanding the "unduly harsh" test as explained by the Supreme Court, the observations of Underhill LJ in HA (Iraq) are of assistance. Underhill LJ said:

"51 ... 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 in the deportation of foreign criminals.

...

"53 ... 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."

27. As Underhill LJ said, at [56] and [57], the test under section 117C(5) does indeed require an appellant to establish a degree of harshness going beyond a threshold "acceptable" level. However, how a child will be affected by a parent's deportation will depend on an almost infinitely variable range of circumstances and it is not possible to identify a baseline of "ordinariness". A fact sensitive assessment was required evaluating the impact of the appellant's deportation on his children and then deciding whether that effect is not merely harsh but unduly harsh.

28. In his decision promulgated on 22<sup>nd</sup> July 2019, Judge Parkes set out his reasons with some brevity, but his reasons must be read in light of the error of law decision of Upper Tribunal Judge Freeman and the narrow issue that required further consideration by him.

29. Here, I am quite satisfied that reading the decision of Judge Parkes as a whole, he had in mind throughout, all the relevant evidence that was before the Tribunal including the evidence set out in the report of the independent social worker regarding the impact of the absence of the appellant, upon the children. He properly acknowledged the role played by the appellant in the lives of the children and noted the reports of the independent social worker are consistent in terms of the role the appellant plays, the feelings and aspirations of all those involved and

their concerns for the future. He noted however that none of the children have significant health issues or educational special needs that will not be met in the absence of the appellant. Judge Parkes noted all the children will remain living with their respective mothers and there is no reason to believe that those circumstances will not continue as they have, up to now. In reaching his decision Judge Parkes was plainly mindful of the evidence before him that the absence of the appellant will reduce the support he can give to the children and the contact that they have with each other. Contrary to what is said by the appellant, it is in my judgment clear from what is said at paragraph [21] of his decision that Judge Parkes did note that the appellant is the catalyst for the inter-dependent sibling relationships of the children. It was plainly a factor that he took into account in his overall assessment.

30. True it is that Judge Parkes does not refer to the 'Written Case' that had been submitted on behalf of the appellant's children before the Supreme Court, but that is no more than the 'Written Case' relied upon by the appellant's children. The foundations for the 'Written Case' are the reports of the independent social worker. Here, Judge Parkes referred to the reports themselves and it is clear from reading the decision as a whole, that Judge Parkes was fully aware of the evidence provided by the independent social worker. He had in mind not only the reports of the social worker dated 18<sup>th</sup> September 2015 and 2<sup>nd</sup> February 2017 that were referred to in the 'Written Case' but also the more recent report dated 6<sup>th</sup> August 2018. He had already found in his previous decision promulgated on 29<sup>th</sup> August 2018, at [48], that given the consistency in the evidence from the ISW, social services, the children and from Shireland School, amongst others, the children would all miss the appellant and the time that they spend with each other. At paragraph [21] of his decision promulgated on 22<sup>nd</sup> July 2019, Judge Parkes reminded himself that the contents of the reports are consistent in terms of the role the appellant plays, the feelings and aspirations of all those involved and their serious concerns for the future.

31. It does not follow from a finding that it would be unduly harsh for the children to live in Jamaica, and that it is in their best interests to continue living in the UK with their father, that the effect of the appellant's deportation on the children would be unduly harsh. Here Judge Parkes carried out an evaluation of all the important factors and reached a rational conclusion that was open to him. He had regard to the s55 duty. The leading authority on section 55 remains ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4. In her judgment, Lady Hale confirmed that the best interests of a child are "a primary consideration", which, she emphasised, was not the same as "the primary consideration", still less "the paramount consideration".
32. Judge Parkes rightly gave significant weight to the interests of the children, but he was entitled to find that the effect of the deportation on the children would not be unduly harsh and in the end, the public interest in the deportation of the appellant outweighed the best interests of the children. His analysis of the evidence and his reasoning accords with the approach that has been laid down in KO (Nigeria) and HA (Iraq).
33. In my judgment, when the decision is read as a whole it is clear that Judge Parkes accepted that there would be an impact on the children, but that impact did not reach the threshold of being unduly harsh. It was open to Judge Parkes to conclude that the circumstances of the children in the absence of the appellant could not be described as bleak or severe, let alone excessively or inordinately so. Judge Parkes acknowledged the impact that the appellant's deportation would have upon his children and the consequences may well be described as harsh, but he did not err in finding that the appellant's deportation is justified by the public interest in the deportation of foreign criminals.
34. Judge Parkes undoubtedly applied the correct test, and I am quite satisfied it was open to him to reach the conclusion that he did for the reasons given. The assessment of an Article 8 claim such a claim is always a highly fact sensitive task. Judge Parkes was required to consider the evidence as a whole and in my judgment

he plainly did so, giving adequate reasons for his decision. The requirement to give adequate reasons means no more nor less than that. It is not a counsel of perfection. The findings and conclusions reached by the judge are neither irrational nor unreasonable. An appellate court should resist the temptation to subvert the principle that they should not substitute their own analysis and discretion for that of the Judge by a narrow textual analysis which enables it to claim that the Judge misdirected themselves. The decision was one that was open to the judge on the evidence before him and the findings made.

35. It follows that I dismiss the appeal

Decision:

36. The appeal is dismissed and the decision of First-tier Tribunal Judge Parkes, stands.

Signed *V. L. Mandalia*

Date

30<sup>th</sup> September 2021

**Upper Tribunal Judge Mandalia**