



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/16908/2018

THE IMMIGRATION ACTS

Heard remotely at Field House
On 25 February 2021 *via Skype for Business*

Decision & Reasons Promulgated
On 13 April 2021

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR OYEWOPOL OLOKUNDE
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr C. Avery, Senior Home Office Presenting Officer

For the Respondent: Ms A. Radford, Counsel instructed by Turpin & Miller LLP

DECISION AND REASONS (V)

This has been a remote hearing which has been consented to / not objected to by the parties. The form of remote hearing was V (video). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

The documents that I was referred to were the evidence that was before the judge of the First-tier Tribunal, the grounds of appeal, and the decision of the First-tier Tribunal, the contents of which I have recorded.

The order made is described at the end of these reasons.

The parties said this about the process: they were content that the proceedings had been conducted fairly in their remote form.

1. This is an appeal by the Secretary of State. For convenience, I will refer to the parties as they were before the First-tier Tribunal, where appropriate.
2. The Secretary of State appeals against a decision of First-tier Tribunal Judge Buckwell promulgated on 14 April 2020 in which he allowed an appeal by the appellant, a citizen of Nigeria born on 23 August 1990, against the Secretary of State's decision of 3 August 2018 to refuse his human rights claim and uphold a decision to deport him.

Factual background

3. The appellant was born to his Nigerian mother in this country. He spent the first nine years of his life travelling between the United Kingdom and Nigeria, before returning here for the final time with his mother in October 1999. He enjoyed only limited leave to remain as a visitor. He has never left. He was issued with residence documentation under the Immigration (European Economic Area Regulations) 2006 on 24 August 2007, valid until 15 February 2011. That application appears to have been granted in relation to his sister, who was born in Ireland in 2001. On 3 November 2011, the appellant was granted discretionary leave outside the Immigration Rules, valid until 3 November 2014. On 31 October 2014, before the expiry of his then extant leave, the appellant made a further application for leave to remain outside the rules. That application remained outstanding until the refusal of the appellant's human rights claim on 3 August 2018, as outlined below, when it was refused under paragraph 322(5) of the Immigration Rules (character, conduct and associations) on account of his convictions.
4. On 13 September 2016, the appellant was convicted at trial of two counts of the possession of a Class A drug, namely crack cocaine, and heroin, with the intention to supply, and the concealment or conversion of criminal property. He was sentenced to a total term of imprisonment of four years.
5. On 16 May 2017, the appellant pleaded guilty to two offences of violence; assault occasioning actual bodily harm and battery. He was sentenced to a total of eight months' imprisonment, to run concurrently with the four-year sentence he was already serving for his earlier convictions. These offences were committed in 2013.
6. On 10 July 2017, the Secretary of State served the appellant with a notice stating she had decided to deport him, pursuant to the automatic deportation provisions contained in the UK Borders Act 2007. The appellant made a human rights claim in an attempt to resist deportation. The letter making the claim is undated, but the copy I have is stamped as received by 'Workflow Support' on 27 July 2017, suggesting it was sent to the Secretary of State at around that time. The absence of a date on the letter appears to have caused some confusion, because the *Immigration history* part of the Secretary of State's decision dated 3 August 2018, and the chronology in the appellant's bundle, state that a human rights claim was made on 19 February 2018. I have not been referred to an *additional* human rights claim from that date. It appears

that the only substantive human rights claim made by the appellant is that which featured at Annex T to the Secretary of State's bundle, stamped as set out above, which was re-considered in the substantive decision under challenge.

7. The appellant's human rights claim, and his case before the First-tier Tribunal, had several strands. The appellant claimed he does not know Nigeria. He was last there as a small child and knows only life in this country. He considers himself to be British. He could not integrate in Nigeria. His family could not afford to support him financially, and, without connections or introductions 'on the ground', could not expect to be able to find work and settle in Nigeria. The offences for which the Secretary of State pursued his deportation were committed some time ago. The appellant had reformed since then, obtained work, and now presented no risk of reoffending. He was rehabilitated.

The decision of the First-tier Tribunal

8. The decision of the First-tier Tribunal is 27 pages long, with 149 paragraphs. The operative reasoning features at paragraph 120 and following. There had been some discussion before the First-tier Tribunal as to whether the appellant was entitled to, or otherwise held, British nationality. The judge made clear findings that the appellant was not British, although he accepted that the appellant's sister was Irish (see [123]). The judge found that, upon the birth of his sister on 14 September 2001, the appellant enjoyed a directly effective right to reside under EU law. The respondent has not challenged that finding, and I say no more about it. The appellant enjoyed EU residence rights until 15 February 2011, when an EEA renewal application was unsuccessful. The appellant's lawful residence resumed on 3 November 2011 upon the Secretary of State granting him discretionary leave, which, the judge found, was valid until 3 November 2014. See [126]. I address the precise date of the expiry of that leave, below, as Ms Radford's rule 24 response raises a query in relation to the judge's reasoning.
9. The judge addressed the Immigration Rules concerning deportation and Part 5A of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act'). He calculated that the appellant had been lawfully present in the UK for 12 years, five months and a day, which was less than 'most' of his life, for the purposes of 'Exception 1' contained in section 117C(4) of the 2002 Act. The appellant's total residence exceeded 20 years. The judge later held that the appellant's immigration status as a child should not be held against him [132], when addressing the points at which he was lawfully resident.
10. At [128], the judge identified the essential question: whether the appellant had established that there were 'very compelling circumstances' over and above the statutory exceptions to deportation contained in section 117C of the 2002 Act? The judge directed himself that the existence of the two statutory exceptions informed and calibrated what amounted to 'very compelling circumstances', noting that it was a higher threshold: [129].

11. At [133], the judge identified that the only exception which the appellant could, in principle, be capable of meeting was that contained in paragraph 399A of the Immigration Rules, which, of course, corresponds to Exception 1 contained in section 117C(4) of the 2002 Act. Having found that the appellant had not been lawfully resident for 'most' of his life, the judge held at [134] that the 'very compelling circumstances' threshold must be 'high'. At [137] and following, the judge repeated some of the above analysis, this time by reference to the corresponding statutory provisions in the 2002 Act. He recalled that the deportation of foreign criminals and the maintenance of effective immigration controls are both matters that are in the public interest, pursuant to Parliament's statutory endorsement of the same. The judge again directed himself that the extent to which the exceptions were met informed the 'very compelling circumstances' test: [140].
12. The judge was unimpressed with the evidence of the appellant's parents, who claimed to run a family business, but purported not to be able to recall any details concerning its profitability or turnover. But he did accept their evidence that they would support the appellant and continue to deter him from the commission of further criminal offences: [142]. The appellant's offences were committed over six years before the hearing, the judge noted, and since his release from prison he had secured two employed roles. He had shown determination that must be acknowledged and had paid his penalty to society through his sentence of imprisonment. His rehabilitation had been positive. He assisted with the family business. The appellant had made 'every effort' and the judge 'should recognise that'. The appellant was 'socially and culturally integrated', notwithstanding his past offences.
13. The appellant had relied on an expert report from a Victoria Nwogu, and travel advice from the Foreign and Commonwealth Office. At [145], the judge said that he had taken those materials into account 'with reference to paragraph 276ADE(a)(vi) [sic] of the Immigration Rules' pertaining to whether there would be 'very significant obstacles' to the appellant's re-integration in Nigeria. The judge found:

'He would have no recollection of the country and overall there would be significant obstacles as to his integration into Nigeria. I am guided by the Court of Appeal judgment in Kamara [2016] EWCA Civ 813 in that respect. Of course I take into account the issues raised in the expert opinion of Miss Nwogu additionally in making that finding.'
14. The judge's operative findings were at [146]:

'Notwithstanding that the appellant is not found to have been lawfully resident in this country for most of his life, it is found that he has established very compelling circumstances for the reasons which I have set out above. On that basis he does establish an exception with reference to both the Immigration Rules and the terms of part 5A of the 2002 Act. With specific reference to an assessment of his Article 8 ECHR private life rights outside the Immigration Rules, but of course having given weight to the considerations applicable within section 117B and 117C of the 2002 Act, it is on balance found that based on very compelling circumstances the consequences of requiring the appellant to return to Nigeria

would not only in all the circumstances be harsh, but unjustifiably so. In reality he knows only the United Kingdom. The appellant has shown genuine remorse and I believe that he still has a bright future ahead of him. The commission of any further criminal offences, for which the risk is low, would be unlikely to result in the appellant successfully resisting a further deportation decision.'

15. The judge allowed the appeal.

Permission to appeal

16. Permission to appeal was granted by First-tier Tribunal Judge Povey on the basis that the judge failed to provide sufficient reasons for why the support of the appellant's parents, his rehabilitation, and the difficulties he would find integrating into Nigeria met the threshold of 'very compelling circumstances'. That grant of permission reflected grounds three and four of the Secretary of State's grounds of appeal. Ground three is a sufficiency of reasons challenge, as identified by Judge Povey. Ground four is essentially a rationality challenge, contending that the judge failed to identify any circumstances which could rationally be described as 'very compelling.'

Submissions

17. Mr Avery submitted that the judge failed properly to take into account the public interest considerations inherent to the deportation of foreign criminals. The judge's focus on the appellant's offending conduct was brief, especially in light of the violent and drug-related nature of the appellant's conduct. The judge purported to identify 'very compelling circumstances', but in reality merely identified factors that could not rationally be described as attracting such weight. All members of society are expected to conduct themselves without committing criminal offences. Similarly, the appellant's employment is not a factor capable of meriting a finding that there are 'very compelling circumstances'.
18. In relation to the appellant's likely difficulties in integrating to Nigeria, the judge's reasoning was so brief as to be inadequate, submitted Mr Avery. Although the judge expressly rejected the appellant's parents' evidence concerning their business activities, in relation to which they had purported not to be able to recall basic financial details such as turnover and profit, he failed to make a finding concerning whether they would be able to support the appellant financially in Nigeria. Their former business enterprise had been in import/export, between this country and Nigeria. That suggested significant contacts within Nigeria. That would have enabled the appellant to re-establish himself in Nigeria, as a fit and healthy man, with relative ease. Those were factors that the judge simply failed to consider, even though many of them logically flowed from the judge's rejection of the appellant's parents' attempt to minimise their financial standing. The 'very compelling circumstances' test is a high threshold and the judge simply failed to take that reality into account. Although he purported to direct himself in relation to the threshold, his operative reasoning demonstrates that he applied a materially lower threshold.

19. Resisting those submissions, Ms Radford relied on her rule 24 notice. She submitted that the decision featured a 'textbook self-direction', featuring multiple self-directions as to the high threshold embodied by the 'very compelling circumstances' test. In relation to the application of the statutory threshold, it was incumbent upon the judge to apply the criteria enunciated by the Strasbourg court in Üner v The Netherlands (2007) 45 E.H.R.R. 14 and Boultif v Switzerland (2001) 33 E.H.R.R. 50, in order to ensure he reached a conclusion compatible with the European Convention on Human Rights. As such, given the statutory regime contained in section 117C must be interpreted consistently with the Convention, and given the inherent (albeit limited) flexibility which the statutory considerations feature, it is possible for an application of the statutory provisions to lead to the conclusion that a person succeeds on 'very compelling circumstances' grounds, even though they do not meet the letter of either of the statutory exceptions. It would have been an error of law for the judge to have failed to engage with the appellant's post-conviction record, and, as such, it was not an error of law for him to take into account his recent good character. Those were considerations relevant to the public interest in the deportation of foreign criminals, as identified in the Supreme Court in Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60 at [38].
20. In relation to whether the appellant would encounter 'very significant obstacles' to his integration in Nigeria, the judge had relied upon the unchallenged expert report provided by the appellant. Taken with the FCO travel advice, there was sufficient material before the tribunal to merit the judge's findings. The informal economy would be difficult to access, there was a risk of terrorism, relocation to the south of the country would be impractical, and the appellant would stand out due to the stigma of his enforced return. It is trite law, submits Ms Radford, that the judge does not have to address each submission advanced by an appellant if there were grounds upon which it could have been rejected. Nothing turns on the judge not addressing the possibility of remittances to the appellant. The family were in receipt of legal aid, suggesting their finances had been scrutinised. The judge did not need expressly to address that issue. In any event, money from abroad does not amount to integration.
21. Properly understood, therefore, the Secretary of State's submissions were essentially a series of disagreements with the legitimate findings of the judge concerning the weight to be attached to the deportation of this appellant.

Legal framework

22. Section 32 of the UK Borders Act 2007 ('the 2007 Act') defines those, such as this appellant, who have been sentenced to a period of imprisonment of at least 12 months as a 'foreign criminal'. Pursuant to subsection (5), the Secretary of State must make a deportation order in respect of such a foreign criminal. There are a number of exceptions contained in section 33, of which the only relevant exception is 'Exception 1', namely that 'removal of the foreign criminal in pursuance of the deportation order would breach - (a) a person's [ECHR] rights...' (see section 33(2)(a)).
23. Section 117C of the 2002 Act provides:

- '(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.

[...]

(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.'

Discussion

24. The Secretary of State's grounds of appeal may be distilled into the following propositions:
- a. The judge failed to ascribe sufficient weight to the public interest in deporting this appellant, in light of his convictions for offences of violence and drugs, reflected in a total period of imprisonment of four years, which is the highest category of offending under the regime contained in section 117C.
 - b. The reasons given by the judge for finding that the appellant would encounter 'very significant obstacles' to his integration in Nigeria were insufficient, such that the assessment of whether there were 'very compelling circumstances' 'over and above' Exception 1 was flawed, as it was based on the wrong starting point.
 - c. In identifying 'very compelling circumstances' over and above, the only factors to which the judge could point was the appellant's rehabilitation, a factor which, at best, is capable of attracting minimal weight, and certainly not determinative weight in the 'over and above' assessment.

Public interest: sufficient weight

25. I reject the submission that the judge failed properly to ascribe significance to the public interest in the deportation of foreign criminals. At multiple points throughout the decision, the judge directed himself as to the public interest in deporting such persons. At [118], he observed that there is a 'very high threshold if the public interest in deportation is to be outweighed.' At [129] and [134], the judge directed himself that the threshold for very compelling circumstances was high; the context of

those observations was the judge addressing the fact that the appellant's offending placed him beyond the ordinary remit of exceptions 1 or 2, such that stronger reasons were required for the appellant to resist deportation. At [137], the judge expressly addressed the statutory considerations contained in section 117C of the 2002 Act; noting both that the deportation of foreign criminals was in the public interest, and that the more serious the offence, the greater the public interest in the foreign criminal's deportation. At [140], the judge identified that the appellant's offences were 'serious', as reflected by the total sentence of 48 months.

26. Properly understood, Mr Avery's submission in this respect is that the judge did not ascribe sufficient weight to the public interest in the deportation of foreign criminals, by reference to the overall outcome of the appeal. That is a question of weight, rather than rationality. Barring irrationality, provided the judge took into account all relevant considerations as was plainly the case here, questions of weight are matters for the trial judge, with which this tribunal will not interfere.

Very significant obstacles: sufficiency of reasoning

27. I do not consider that the judge gave insufficient reasons for finding that the appellant would encounter 'very significant obstacles' to his integration in Nigeria. This appellant was born in this country and lived here and in Nigeria until his ninth birthday. Since then he has known only life in this country. As the judge noted at [145], the appellant would have no recollection of the country given the time that has elapsed since then. The reality of that factual foundation underpins the subsequent findings of the judge. It was entirely rational. With respect, I agree with the finding.
28. The expert report outlined in considerable detail the difficulties the appellant would be likely to encounter in the event he was to return to the country. It was open to the judge to ascribe significance to the contents of that report, when considered in the context of the appellant's return to what would now be a very different country, to the one he last visited aged nine. The judge also had the Foreign and Commonwealth Office travel advice which featured a range of warnings about terrorism, crime, and general personal safety matters in Nigeria. While not all judges would have reached the conclusion that this fit and healthy young man would face very significant obstacles to his integration in Nigeria, it was a finding rationally open to the judge on the evidence before him.
29. I accept that the judge did not address the appellant's parents' ability to support him financially from this country, nor their former field of import/export. The logical conclusion of the judge's rejection of the parents' evidence concerning their business activities was that they did have some funds, and certainly that they were not in the destitute position they had purported to be. However, as noted by Ms Radford in her rule 24 response, living off remittances is not the same as integrating. In Kamara, cited by the judge at [145], Lord Justice Sales (as he then was) held at [14]:

'The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to

participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.'

30. Again, while not all judges would have reached this conclusion, the judge's findings concerning the appellant's likely integration were entirely consistent with the approach of the Court of Appeal in Kamara. The possibility of living off remitted financial support is not capable of dealing a knockout blow to the very real difficulties that, on any view, an adult returning to a distant country he knew only in childhood would be likely to encounter.
31. In her rule 24 response, Ms Radford identifies what she terms an 'immaterial error' of law by the judge. At [125] – [126], the judge concluded that the appellant enjoyed leave to remain only until 3 November 2014. That analysis informed the judge's findings that the appellant could not satisfy Exception 1, for the appellant had not been 'lawfully resident' for 'most' of his life. However, as highlighted by Ms Radford at [9], the appellant made an in-time application for further leave to remain, which was not determined until the refusal of his human rights claim in the impugned decision. So much is clear from the terms of the decision itself. At page 9, under the heading '*Outstanding application*', the respondent considered, and refused, that application, in light of the appellant's convictions. The significance of the application being outstanding for so long was that the appellant enjoyed leave under section 3C of the Immigration Act 1971 from the submission of the application until the refusal. The judge failed to identify that reality.
32. Ms Radford was right to use the rule 24 notice to set out the error in that way. As held by the Court of Appeal in Secretary of State for the Home Department v Devani [2020] EWCA Civ 612 at [31], a respondent to an appeal is obliged to use a rule 24 notice to challenge a point upon which they were not successful in the tribunal below, despite being successful overall, as this appellant was. Mr Avery did not challenge that assertion in his submissions, and nor could he have done so. The judge's failure to acknowledge the role of section 3C of the 1971 Act was an error of law, the effect of which was that the judge incorrectly calculated the total length of the appellant's residence. The Secretary of State has not challenged the judge's findings that the appellant enjoyed 12 years, five months and one day's lawful residence. To that unchallenged calculation must be added the additional three years and nine months' lawful residence under section 3C of the 1971 Act, extended by the submission of an in-time appeal until the hearing before the First-tier Tribunal, giving a total of six additional years. The true figure of the appellant's lawful residence, based on the judge's unchallenged earlier calculations, is in the region of 18 years and 5 months. The judge was wrong to conclude that the appellant had not been here lawfully for most of his life. He had.
33. In additional unchallenged findings of fact, the judge found that the appellant was socially and culturally integrated.

34. It follows, therefore, that the appellant *did* meet the requirements of Exception 1, on the judge's reasoning, adjusted to take into account the section 3C point. The appellant had resided here lawfully for most of his life, was socially and culturally integrated, and would face very significant obstacles to his integration in Nigeria. While that cannot be positively determinative of the appellant's appeal in light of his sentence of four years' imprisonment, it casts a different light on the judge's findings that there were 'very compelling circumstances' over and above the exceptions, for the simple reason that the appellant *did* meet one of the exceptions, namely Exception 1.
35. The remaining question is whether it was rationally open to the judge, on the basis of the evidence before him, to find that the appellant could point to 'very compelling circumstances' over and above the exceptions.
36. All factors relied upon by the judge concerning 'very compelling circumstances' related to the appellant's apparent rehabilitation. Ms Radford relies on Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60 where, at [38], Lord Reed held that the assessment of the proportionality of a person's deportation:
- '...can include factors bearing on the weight of the public interest in the deportation of the particular offender, such as his conduct since the offence was committed...
37. Lord Kerr, in his dissenting judgment in Hesham Ali, concurred with the majority on the rehabilitation point, submits Ms Radford. At [164], he said:
- '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 re-offending, and the success of rehabilitation, etc. 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 disorder, and thus, as pointed out by Lord Reed at para 26, inform the strength of the public interest in deportation.'
38. That passage, highlights Ms Radford, was endorsed by the Court of Appeal in [49] of Akinyemi (No. 2) v Secretary of State for the Home Department [2019] EWCA Civ 2098, where it was described as a conclusion 'not doubted by anyone.'
39. The Court of Appeal addressed rehabilitation in HA (Iraq) v Secretary of State for the Home Department [2020] EWCA Civ 1176. After having surveyed the authorities (noting that he had 'some difficulty' with a suggestion by Hamblen LJ at [84] of Binbuga v Secretary of State for the Home Department [2019] EWCA Civ 551 that rehabilitation would 'generally be of little or no material weight'), Underhill LJ held, at [141]:
- '...the fact that a potential deportee has shown positive evidence of rehabilitation, and thus of a reduced risk of re-offending, cannot be excluded from the overall proportionality exercise. The authorities say so, and it must be right in principle in view of the holistic nature of that exercise. Where a tribunal is able to make an assessment that the foreign criminal is unlikely to re-offend, that is a factor which can carry some weight in the balance when considering

very compelling circumstances. The weight which it will bear will vary from case to case, but it will rarely be of great weight...'

40. The Strasbourg authorities relied upon by Ms Radford also demonstrate that rehabilitation is not a factor that is irrelevant to the question of proportionality. For example, in Boultif at [48], the court held that:
- 'In assessing the relevant criteria in such a case, the Court will consider the nature and seriousness of the offence committed by the applicant; the length of the applicant's stay in the country from which he is going to be expelled; the time elapsed since the offence was committed as well as the applicant's conduct in that period...'
41. The offences committed by this appellant were in 2013. The hearing before the First-tier Tribunal was in February 2020. That was a reasonable passage of time capable of informing a finding as to rehabilitation. The judge reached unchallenged findings of fact at [142] that the appellant's parents would support him and prevent him from committing further offences. The appellant had secured two employed roles, an achievement not reached by all those released from serving four year sentences of imprisonment.
42. Drawing this analysis together, rehabilitation is capable of attracting some weight. The judge ascribed weight to the appellant's rehabilitation. I do not consider that the weight ascribed by this judge, bearing in mind the moveable quality of the public interest in the deportation of foreign criminals (as to which, see section 117C(2) of the 2002 Act, and Akinyemi (No. 2) at [39]), and the fact that the appellant met the full requirements of Exception 1, combined with the appellant's placement at the very lowest point on the 'four years or more' top category of offending under section 117C by virtue of his four year sentence of imprisonment, was irrational. The appellant was in the top category of seriousness, but only just. He was on the cusp. Barring irrationality, weight is a matter for the judge.
43. To summarise, I have reached the following findings:
- a. The judge was fully cognisant of the public interest in the deportation of foreign criminals, and correctly directed himself on the issue throughout the decision.
 - b. His findings concerning the 'very significant obstacles' the appellant would be likely to face in Nigeria were rationally open to him, with the effect that the appellant met the full requirements of Exception 1, the judge having erroneously failed to take into account the impact of section 3C of the 1971 Act concerning the appellant's lawful residence, taken with the unchallenged findings that the appellant was socially and culturally integrated.
 - c. The finding that the appellant's rehabilitation amounted to 'very compelling circumstances' was rationally open to the judge.
44. Accordingly, by allowing the appeal on the basis that he did, the judge applied the statutory framework contained in section 117C of the 2002 Act, and the decision did

not involve the making of an error of law. It was not a decision all judges would have reached, but it was not unlawful for this judge to resolve the case on this basis.

45. As the judge observed at [146], if the appellant were to commit further criminal offences, he would be unlikely to be able successful to resist a future deportation decision. I echo those remarks.
46. This appeal is dismissed.

Notice of Decision

The decision of Judge Buckwell did not involve the making of an error of law.

This appeal is dismissed.

No anonymity direction is made.

Signed *Stephen H Smith*

Date 31 March 2021

Upper Tribunal Judge Stephen Smith