



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13413/2019**

THE IMMIGRATION ACTS

**Heard at : Field House
On the 28 January 2022**

**Decision & Reasons Promulgated
On the 28 February 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**AG
(Anonymity Order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Briddock, instructed by Lighthouse Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Kosovo born on 13 June 1986. He arrived in the United Kingdom on 13 May 2000, aged 13 years, together with his brother AJG. He claimed asylum on 23 May 2000. His claim was refused, but he was granted leave to remain, exceptionally, as an unaccompanied minor, on 17 January 2001. His application for indefinite leave to remain, made prior to the expiry of his exceptional leave, was refused on 3 September 2004 and an appeal against that decision was dismissed on 6 January 2005. However, he was subsequently granted indefinite leave to remain under the legacy programme on 27 May 2008.

2. Between May 2006 and April 2010, the appellant was convicted of various offences including driving with excess alcohol and using threatening and abusive words or behaviour, for which he received fines and community orders. Then on 4 July 2018 he was convicted of conspiring to supply a controlled Class A drug, cocaine, and was sentenced on 10 January 2019 to 6 years' imprisonment. The offence details, as described in the OASys report of 7 January 2010, were that the appellant was one of three members of an organised Merseyside crime group who attempted to smuggle £3 million of Class A and B drugs into Dublin. The gang was found with 30 kilos of cocaine, 45 kilos of cannabis, 15 kilos of MDMA and two kilos of ketamine following an investigation by the joint National Crime Agency and Metropolitan Police's Organised Crime Partnership.

3. On 24 January 2019 the appellant was served with a notice of decision to deport and, in response, his solicitors made written representations on his behalf on Article 8 human rights grounds, in February and March 2019, in which it was asserted that there were very compelling circumstances in his case. Details of the appellant's background were given, which referred to him and his brother having fled Kosovo in 1998 after their family home was burned down and having witnessed the murder of their parents; having lived until 2000 as refugees in a Red Cross camp until a cousin in Italy arranged for them to come to the UK; and having been placed with a foster family. It was explained that the brothers became very close to their foster family and adopted the family name and that the appellant was particularly affected by the death of the cousin in Italy and suffered from mental health problems as a result of that and his past experiences. It was explained that the appellant entered into a relationship with a British partner, V, in 2004, formed a close paternal relationship with V's daughter and had two children, a girl and boy, with V. Their relationship subsequently ended, but he continued to have access to his children, A and J, and they visited him in prison.

4. On 29 July 2019 the respondent signed a deportation order against the appellant under section 32(5) of the UK Borders Act 2007 and made a decision to deport him and to refuse his human rights claim. In that decision the respondent accepted that the appellant had a genuine and subsisting relationship with his two children and his step-daughter, but did not accept that it would be unduly harsh for his biological children to relocate to Kosovo or for all three children to remain in the UK without him. The respondent found that the appellant could not, therefore, meet the requirements in paragraph 399(a) or (b) of the immigration rules. The respondent considered that the appellant could not meet the requirements in paragraph 399A on the basis of his private life since, whilst he had been in the UK lawfully for most of his life, he was not socially and culturally integrated in the UK and there would be no very significant obstacles to his integration in Kosovo. The respondent considered that there were no very compelling circumstances outweighing the public interest in his deportation and that the appellant's deportation would not, therefore, be in breach of his Article 8 human rights.

5. The appellant appealed against that decision and his appeal was heard in the First-tier Tribunal on 22 January 2020 by Judge Garratt. The appellant gave oral evidence before the judge, as did his former partner and the mother of his two children and step-daughter, V. In a decision promulgated on 7 February 2020, the judge allowed the appeal on human rights grounds on the basis that there were very compelling circumstances which outweighed the public interest in the appellant's deportation.

6. Permission to appeal to the Upper Tribunal was sought and granted by the respondent and, following a hearing on 29 October 2020, I concluded that the judge had made material errors of law in his decision allowing the appeal, on the following basis:

"11. As stated by Judge Bulpitt in granting permission to appeal in this case, Judge Garratt's decision does not follow a clear structured approach to Part 5A of the Nationality, Immigration and Asylum Act 2002 and it is difficult to make out his findings on the relevant parts of section 117, or the equivalent parts of the immigration rules. His findings at [47] to [49] appear to conflate the considerations under the exceptions to deportation and the question of 'very compelling circumstances' in a rather muddled approach. As Mr Jarvis properly submitted, the approach as set out at [37] of the judgment in NA (Pakistan) v Secretary of State for the Home Department & Ors [2016] EWCA Civ 662, namely to consider the exceptions to deportation first before considering additional factors over and above those exceptions, remains authoritative and, in so far as [60] of HA (Iraq) v Secretary of State for the Home Department (Rev 1) [2020] EWCA Civ 1176 can be said to depart from that approach, the circumstances in which that would occur clearly did not apply in the appellant's case.

12. Despite Mr Briddock's valiant attempt to persuade me that Judge Garratt's decision was sustainable irrespective of its apparent failings, I am unable to agree that the judge's findings and conclusions were based upon a proper engagement with all relevant matters and an application of the correct legal tests. I cannot accept Mr Briddock's submission that the judge's findings at [46] and [47] show that he properly turned his mind to, and applied, the proper test when considering the unduly harsh question in respect of separation of the children from the appellant and that he followed the correct approach when considering the question of "very compelling circumstances". Whilst the judge may well have set out the correct legal approach at [41] and [42], I cannot agree with Mr Briddock that he went on to follow that approach in his subsequent findings and conclusions.

13. Mr Briddock's submission was that the respondent's challenge to the judge's approach to the unduly harsh issue was simply a case of semantics, but in my view that is not the case. I do not agree that it is implicit in the judge's findings at [46] and [47] that he made properly reasoned findings in accordance with the authoritative 'unduly harsh' test. Indeed, the judge's consideration at [47] of the effect of the appellant's deportation on the children as being that they would be "particularly badly affected" cannot be considered as a proper application of the high threshold in assessing undue hardship. Further, the fact that the judge included a consideration of the appellant's offending at the end of that paragraph is further illustration that his findings at [47] did not impliedly constitute an assessment of the relevant 'unduly harsh' issue applying the correct legal test in accordance with the guidance in KO (Nigeria) & Ors v Secretary of State for the

Home Department (Respondent) [2018] UKSC 53. Accordingly, the respondent's first two grounds, challenging the judge's conclusions on family life under paragraph 399(a), are made out.

14. Likewise, the respondent's second and third grounds in relation to private life under paragraph 399A are made out. Whilst the judge did not specifically address the relevant part of the immigration rules, he made findings on private life at [49] of his decision. However, his findings in that regard are brief and quite clearly inadequate. As the respondent submits, the judge's assessment of whether the appellant was socially and culturally integrated in the UK took no account of his offending history and his current lengthy sentence of imprisonment which he was still serving at that time. Neither did the judge at any point consider whether there would be very significant obstacles to the appellant's integration in Kosovo. It was Mr Briddock's submission that the challenge to the judge's findings in that regard was irrelevant, given that the appeal succeeded on the family life aspect of the appellant's case and not on private life. However, that cannot be correct when this was a case which, owing to the length of the appellant's sentence, could not succeed under the family life exception alone without the additional features making it a very compelling case and that, in order to consider whether there were very compelling circumstances for the purposes of paragraph 398, the judge had first to consider all aspects of the exceptions to deportation, as made clear in NA (Pakistan). For that reason too, the respondent's fifth ground is made out and the judge's decision on 'very compelling circumstances' is plainly materially flawed.

15. For all of these reasons I agree with the respondent that the judge's decision contains material errors of law and cannot stand. It was Mr Briddock's submission that if I were to set aside the judge's decision this was a case that required remittal to the First-tier Tribunal. However, I do not see any reason why the case cannot be retained in the Upper Tribunal. It seems to me that there is nothing controversial about the facts of this case and the re-making of the decision simply involves an application of the correct legal tests within paragraphs 399, 399A and 398 of the immigration rules to those facts. The matter will therefore be listed for a resumed hearing on that basis."

7. Judge Garratt's was accordingly set aside, and the matter was listed for a resumed hearing for the decision to be re-made in the appellant's appeal. The appeal was initially listed for hearing on 6 October 2021.

8. The appellant was released on licence from prison on 24 June 2021, to his foster mother's address. However, he was arrested on 18 August 2021 when stopped by police and found to be in possession of three mobile telephones, cannabis edible sweets and 300g of white powder which was believed to be Class A drugs, and having been seen in the company of another member of the group involved in the index offence, all of which breached the terms of his licence. His licence was accordingly revoked on 20 August 2021, and he was recalled to prison.

9. The appellant's solicitors applied for his appeal hearing to be adjourned in order to await the outcome of the investigation into the breach of licence and in order that he be able to attend the hearing. The hearing was accordingly adjourned and was then re-listed for 28 January 2022.

10. Thus, the matter came before me again to re-make the decision.

Hearing and Submissions

11. Mr Briddock confirmed that the investigations into the breach of licence had not been completed and that there had not as yet been any charges against the appellant, although he acknowledged that that could still occur depending on the outcome of the investigations. The white powder found in the appellant's car had still not been identified. No request was made for any further postponement of the appeal to await the outcome. Mr Briddock referred me to the parole board assessment report in the appeal bundle confirming that the appellant had been released on licence again shortly after his arrest, on 17 November 2021.

12. The appellant was in attendance at the hearing and gave oral evidence before me. His son, J, appeared briefly in the courtroom at his request but then remained outside for the hearing. I was informed that his daughter, A, had been too anxious to attend the hearing. A request was made for the appellant to be treated as a vulnerable witness as he suffered from anxiety. Although there was no medical report confirming that, I was provided with a copy of his medication, Sertraline. Mr Walker had no objection to the appellant being treated as a vulnerable witness and he was therefore treated as such, with his examination being brief. He simply adopted his statements and confirmed to Mr Walker that he saw his children about twice a week and at weekends, depending on their activities.

13. The appellant's foster mother, ALG, gave evidence, confirming and adopting her witness statements. V, the appellant's former partner and the mother of his children adopted her statement and, when asked by Mr Walker what the children thought about the appellant having to return to Kosovo, said that they had tried to block it out and were very fearful at the thought. She said that she would not take them to Kosovo to visit him as she did not want to go there, and she feared for their mental health. They had spoken to him regularly when he was in prison and had visited twice. Their visits were restricted by the distance to the prison and by Covid. Her daughter A found it all very difficult as she was a particularly anxious child who needed stability. Prior to the appellant going to prison he had seen the children at weekends and occasionally for dinner after school, but there was no set routine. The appellant's brother, AJG, then gave oral evidence, adopting his statement and confirming that he would visit the appellant if he was sent back to Kosovo, as would the appellant's children, but it was expensive and was not the proper way to maintain the relationship. He said that he had been back there on occasions and had no issues going back, but the appellant had nowhere to live in Kosovo. The main issue was with his brother being able to stay in the UK, rather than his circumstances on return to Kosovo. AJG said that he had a good relationship with his brother's children and spent time with them. Finally, the appellant's

friend MB gave oral evidence, again simply adopting his statement with no questions being asked of him.

14. Both parties then made submissions.

15. Mr Walker submitted that there was a very high test to meet in order for the appellant to succeed under the immigration rules. The appellant could maintain contact with his family from Kosovo and his brother had confirmed that they would go and visit him there. The appellant's residence in the UK, although dating back to 2000, had been precarious given his criminality since May 2006. None of the evidence was able to overcome the high bar of the test to show very compelling circumstances. The appeal should be dismissed.

16. Mr Briddock submitted that the appeal had to be allowed simply on the basis that the respondent's decision was not in accordance with the law, since the Secretary of State had failed to discharge her duty under section 55 of the Borders, Citizenship and Immigration Act 2009, having failed to conduct any evaluation of the best interests of the appellant's children. In any event the Tribunal could consider the matter itself and should conclude that the best interests of the children lay in remaining in the UK with the appellant, which was a primary consideration. Mr Briddock relied upon the reports of the Independent Social Worker in that respect. He submitted that the requirements of both exceptions to deportation in section 117C of the Nationality Immigration and Asylum Act 2002 were met. The appellant had spent most of his life in the UK, he was socially and culturally integrated in the UK and there were very significant obstacles to his integration in Kosovo. It would also be unduly harsh on the children for them to be separated from him. He relied upon the case of NA (Pakistan) v Secretary of State for the Home Department & Ors [2016] EWCA Civ 662 in that respect, referring to the impact of separation upon the children, in particular the appellant's daughter A. There were very compelling circumstances over and above the exceptions, namely the particularly severe impact on the children as well as the appellant's history of losing his family in the genocide in Kosovo and being trafficked to the UK at the age of 13. As for the matter of the appellant's recall to prison, Mr Briddock explained that there had not been any charges as yet and the appellant had admitted to having some cocaine at his home and to taking drugs but had maintained that the bulk of the white powder found on him at the time of his arrest was sports powder and was not heroin or cocaine. He had been apologetic and open and honest and as a result had been released immediately by the parole board. The investigation into the white powder was in progress.

Discussion and Findings

17. I do not find any merit in Mr Briddock's first point, that the appeal should be allowed on the basis of the respondent's decision not being in accordance with the law owing to a failure to assess the best interests of the children. It is clear that the respondent did indeed give consideration to the matter, referring specifically at page 5 of the decision letter to the welfare of the children and the children's best interests. The respondent was not required to cite section

55 specifically, when it was otherwise plain that the relevant consideration had been given. In any event, the children's best interests have been the subject of submissions from both parties, before the previous First-tier Tribunal and before myself and the matter has therefore been given detailed and careful consideration. I therefore reject Mr Briddock's submissions in that respect.

18. Having said that, I completely accept that the best interests of the children do indeed lie in the appellant remaining with them in the UK. That is apparent from the evidence of V and all three of the reports from the Independent Social Worker (ISW), Nikki Austin, and it was not really a matter of contention at the hearing. The children clearly have a close relationship with their father. It is plain from the ISW reports that they have found the periods of separation from him to be difficult and, from V's most recent statement of 19 January 2022, that they thrived when he was released from prison and was able to spend time with them. However, the children's best interests, albeit a material and primary consideration, are not the paramount consideration and they can be outweighed by other considerations, both as part of the 'unduly harsh' assessment but also the 'very compelling circumstances' consideration.

19. Turning to the family life exception to deportation in section 117C(5), there is no question of the children being expected to go to Kosovo with the appellant and it is accepted that such an expectation would be unduly harsh. However, it is the separation of the children from their father that is the real focus of this appeal. Mr Briddock referred to various authorities addressing the 'unduly harsh' test, including TD (Albania) v Secretary of State for the Home Department [2021] EWCA Civ 619 and MI (Pakistan) v Secretary of State for the Home Department [2021] EWCA Civ 1711, both of which rely upon the clarification given by Lord Justice Underhill in HA (Iraq) v Secretary of State for the Home Department (Rev 1) [2020] EWCA Civ 1176 at [56]:

"As explained above, the test under section 117C (5) does indeed require an appellant to establish a degree of harshness going beyond a threshold "acceptable" level. It is not necessarily wrong to describe that as an "ordinary" level of harshness, and I note that Lord Carnwath did not jibe at UTJ Southern's use of that term. However, I think the Appellants are right to point out that it may be misleading if used incautiously. There seem to me to be two (related) risks. First, "ordinary" is capable of being understood as meaning anything which is not exceptional, or in any event rare. That is not the correct approach: see para. 52 above. There is no reason in principle why cases of "undue" harshness may not occur quite commonly. Secondly, if tribunals treat the essential question as being "is this level of harshness out of the ordinary?" they may be tempted to find that Exception 2 does not apply simply on the basis that the situation fits into some commonly-encountered pattern. That would be dangerous. 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". Simply by way of example, the degree of harshness of the impact may be affected by the child's age; by whether the parent lives with them (NB that a divorced or separated father may still have a genuine and subsisting relationship with a child who lives with the mother); by the degree of the child's emotional dependence on the parent; by the financial consequences of his deportation; by the availability of emotional and financial support from a

remaining parent and other family members; by the practicability of maintaining a relationship with the deported parent; and of course by all the individual characteristics of the child.”

20. It is clear from the above that the fact that the separation of children from a parent is an inevitable consequence of deportation and criminal offending is not in itself a reason to conclude that the ‘unduly harsh’ threshold is not met. However, it is a relevant consideration. Of particular relevance, though, following the guidance offered by Lord Justice Underhill, is the nature of the relationships and the impact on the particular children involved. For that reason, there needs to be a detailed analysis of the impact on the concerned children. In *MI (Pakistan)*, Lady Justice Simler said at [25] that: *“a fact-finding tribunal will make no error of law if a careful evaluation of the likely effect of the parent's deportation on the particular child is conducted and a decision is then made as to whether that effect is not merely harsh but unduly harsh, applying KO (Nigeria) in accordance with the guidance in HA (Iraq).”*

21. I accept and take account of the weight to be attached to the fact that the appellant has always played an integral part in the lives of his children since birth and continued to do so after his relationship with their mother ended, although they no longer lived together and did not spend every day together. I accept that the appellant’s contact with his children continued throughout his years of imprisonment. However, the fact remains that, as a result of his own actions, the appellant was separated from his children for three years and, prior to his release from prison, saw them on only two occasions during that period of time, albeit largely for reasons outside his control such as the distance and the impact of Covid and albeit that he maintained contact through regular telephone calls. The most recent report from the ISW refers at page 6 section 3 (page 52 of the appellant’s bundle) to telephone contact having been at times every other day and at times every 2 weeks.

22. According to V, and as confirmed in the ISW’s report, both children have been adversely affected by the separation from the appellant during his imprisonment. His son J’s behaviour was noted by his school as having deteriorated and his daughter A had been biting the skin around her nails until it bled as well as biting her lips and had developed bald patches on her head. V’s evidence before me was that A was a very anxious child who needed stability and who was too anxious to attend the appeal hearing, and further that both children were fearful of their father having to leave the country and that she feared for their mental health. In her statement of 9 January 2020 V referred to J being under observation at school as a result of dyslexic traits ([20]), to occasional outbursts at school ([24]) and to her seeking help and support from a family intervention worker and from the school head and deputy head. In addition, according to the ISW, at page 12 of the most recent report, *“the emotional impact to both children is clear, if their father is not permitted to remain in the UK, once his sentence is completed, then the damage to other areas of [their] lives is likely to continue”* and *“[they] need to have a close and “hands on” relationship with their father. Removal of their father from the UK will most certainly have a negative impact on their emotional health and wellbeing.”*

23. However, without diminishing their anxiety and stress, I note that there is no medical evidence to demonstrate the extent of the impact of the separation on the children and the only independent evidence is that of the ISW which followed three visits to the family home, on 14 March 2019, 7 November 2019 and 14 April 2021. Of course, I give weight to the reports of the ISW, but I observe that there is no evidence of a medical nature to show the extent of any mental health issues and to suggest that there have been any medical interventions. Neither is there any independent evidence, aside from a brief letter dated 15 November 2019 from J's primary school about his change in behaviour (page 198 of the previous appeal bundle) and V's concerns in her earlier statement of 9 January 2020, to show that the children have not been progressing as they would be expected to at school. The children have had a stable life with their mother whilst the appellant was in prison and will continue to do so if he is returned to Kosovo. There is no suggestion that the appellant's deportation would have financial consequences for the children. There is no evidence to suggest that he was providing any financial support to the children and to V and indeed the evidence is that he had no income of his own.

24. In the circumstances it seems to me that whilst the children have undoubtedly been adversely affected by their father's absence during his incarceration and will undoubtedly be adversely affected by his enforced return to Kosovo, and whilst their separation may well be harsh, the evidence before me does not reach the high threshold of demonstrating *undue* hardship. The children have become accustomed to separation from their father for the past three years and, aside from the brief period of time following his release from prison and prior to his recall to prison, have only resumed contact with him outside prison since November 2021. The children would be able to visit the appellant in Kosovo and communicate with him as they did when he was in prison and, whilst that is of course no substitute for regular physical contact, it is what they have become accustomed to. I take note that V's evidence was that she would not take the children to Kosovo and that they would therefore not be able to see their father if he had to return there. However, the appellant's brother's evidence was that he had returned to Kosovo and that he would visit his brother if he was living there and would ensure that the children visited him, albeit with the restrictions of cost. In all the circumstances, I do not accept that the family life exception to deportation has been met.

25. Even if the threshold was met (which I do not accept), the appellant, owing to the length of his sentence, would need to demonstrate very compelling circumstances over and above those described in Exception 1 and 2 in section 117C(4) and (5), which I do not accept that he is able to do.

26. I do not accept that he is able to meet the criteria in the private life exception to deportation. Although he has been lawfully resident in the UK for more than half his life and whilst he is, I accept, socially and culturally integrated in the UK, having lived here since the age of 13 and been through the education system here and lived with an English family and in an English environment, I do not accept that there would be very significant obstacles to

his integration in Kosovo. It would no doubt be very difficult for him to return to the country which he left as a child of 13 years of age and where he experienced war and the loss of his parents in the genocide at the time, his brother's evidence was that they had both returned there several times, that they spoke the language and that there would be no issues going back. Mr Briddock accepted that he would most likely be able to find work there, given his skills and experience as a labourer. Although the appellant's brother said in his evidence that the appellant had no accommodation in Kosovo, there is no question that he would not be able to afford to pay for accommodation and no submissions were made to that effect. Indeed there is reference, in the evidence relating to the restraining order preventing disposal of assets, to the appellant having a substantial balance in his bank account of over £40,000 which he states is from his brother buying him out of their joint property. In the circumstances, the relevant test is simply not met and the appellant cannot meet the requirements of section 117C(4).

27. It was Mr Briddock's submission that the level of harshness for the children in being separated from their father was nevertheless such that that alone would amount to very compelling circumstances, as contemplated in NA (Pakistan) at [30], and that even if that was not the case, the appellant's past experience of being orphaned at the age of 13 having lost his parents during the genocide in Kosovo and being trafficked to the UK would sufficiently elevate his circumstances up to that threshold. As made clear in NA (Pakistan) at [58], the circumstances in exceptions 1 and 2 can form part of the very compelling circumstances assessment and I have of course taken that into account. I have also considered the appellant's circumstances as a whole and indeed have substantial sympathy for him in regard to his childhood experiences. I have also considered ALG's statement as to the care she receives from the appellant, although I note the lack of any evidence, or indeed any suggestion, that she could not manage without his care and presence. Nevertheless I cannot see how, even taking all of those circumstances together, there would be sufficient in the appellant's case to meet the high threshold for demonstrating 'very compelling circumstances'. That is particularly when his criminal offending and the public interest form part of the relevant consideration.

28. The appellant was sentenced to a particularly lengthy term of imprisonment. According to the Judge who sentenced him in the Crown Court, he played a significant role in the conspiracy to supply cocaine, although he was given credit for pleading guilty and had his sentence reduced as a result. The earlier OASys report which addressed that conviction described his role as one of three members of an organised crime group who attempted to smuggle £3 million of Class A and B drugs into Dublin. In mitigation, the appellant was assessed, at that time, as a low risk of re-offending and was described as being very motivated to change and was engaging well with his sentence planning targets. According to his own evidence and that of V and his brother, he had acted out of character and had become involved with the wrong crowd after a downward spiral caused by anxieties about debts, the death of his cousin and V's post-natal depression and he deeply regretted his actions. He had

completed courses in prison and worked hard towards his rehabilitation. It may be that these mitigating factors could be considered to have somewhat reduced the public interest in the appellant's deportation, but it seems to me that he has undermined the benefit of these factors by his behaviour since being released from prison on licence.

29. It is the case, I fully acknowledge, that the appellant has not been charged or convicted with any offence since leaving prison on 24 June 2021 and, thus far, there has been no outcome of the police investigations to contradict his claim that the 300g of white powder found in his car when stopped by the police on 18 August 2021 was body building powder supplement and not cocaine. Neither is there currently anything to contradict his attempt, in his latest statement, at [18] to [20], to provide an innocent explanation for the three mobile telephones found in his car and his association with an individual in breach of the terms of his licence. It is also the case that the parole board was sufficiently impressed with the arguments put forward by the appellant that they agreed to release him into the community again with immediate effect, and that he was released in November 2021.

30. Nevertheless, the fact is that less than three months after being released from prison on licence the appellant was found to have cannabis edible sweets in his car and to have 43g of cocaine at his house, in his bedroom, with a market value of between £3,400 to £4,300 and to have returned to cocaine misuse without disclosing that to the probation services. The appellant does not deny that. That is, unfortunately, significantly damaging to his case, as is the re-assessment of his risk to the community as medium, in the OASys report of 19 August 2021 and as confirmed in the letter dated 24 January 2022 from the National Probation Service. In addition, it is of note that a restraint order was made against the appellant on 28 October 2021 preventing him from disposing of assets on the basis that he was "*currently being investigated for another drug trafficking offence and will have incurred debts in the supply chain*" and that the money in his bank account was likely to "*be used to meet that debt or be shipped out to outside the UK jurisdiction, given his connections overseas*", according to the financial investigator in support of the CPS's application for a restraint order. Again, I acknowledge that there have been no charges or convictions, and have regard to section 117C(7) in that respect, and I have regard to the favourable comments in the letter from the probation service in the letter of 24 January 2022, but that does not mean that the appellant's conduct and the undisputed facts must be ignored.

31. It seems to me that when considering the appellant's criminal offending and the significantly lengthy sentence he received, taken together with his behaviour since leaving prison even on his own account of events and having regard to the fact that there have not been any charges made thus far, and when considering his circumstances overall together and giving full weight to the best interests of his children, it simply cannot be said that he has demonstrated very compelling circumstances or sufficiently compelling circumstances to outweigh the public interest in his deportation. I am very much aware of how upsetting this decision will be for the appellant's children,

but I simply cannot see how he could succeed in his human rights claim when applying the relevant statutory and other legal provisions and the wealth of jurisprudence on the matter.

32. Accordingly, and for all of these reasons, the appellant's appeal has to be dismissed.

DECISION

33. The original Tribunal was found to have made an error of law and the decision was set aside. I re-make the decision by dismissing the appellant's appeal on 8 human rights grounds.

Signed S Kebede
Upper Tribunal Judge Kebede
2022

Dated: 1 February