Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/24321/2018

THE IMMIGRATION ACTS

Heard at : Field House
On : 14 December 2021

Decision & Reasons Promulgated
On : 21 January 2022

Before

UPPER TRIBUNAL JUDGE ALLEN
UPPER TRIBUNAL JUDGE KEBEDE

Between

ME
(ANONYMITY ORDER)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr H Southey QC, instructed by Wilsons Solicitors LLP
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Egypt born on 15 June 1982. He has been given permission to appeal against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his human rights claim following the making of a deportation order against him.

2. The appellant applied for, and was granted, entry clearance to the UK as the spouse of his British wife, JB (born on 11 June 1947), whom he had married in Egypt on 28 March 2006. He entered the UK in December 2006 and on 4

November 2008 was granted indefinite leave to remain on the basis of his marriage.

3. On 4 August 2012 the appellant was cautioned by the police for battery. On 10 May 2013 he was convicted of making false representations to make gain for self or another or cause loss to other or expose another to risk, as well as conspiring to commit arson. He was sentenced to 3 years and 8 years imprisonment respectively, to be served concurrently. The offences were described in detail by the Sentencing Crown Court Judge, as follows:

> "The criminality that I am required to deal with is of the most serious sort. If we start with the fraud first, the fraud was a well-organised fraud, it was carefully thought. It had international ramifications. It involved the co-operation knowingly or unknowing of people in Egypt, primarily of course. Mr Elharty who gave evidence via the video link it was entirely dishonest from its inception and whether or not the VAT returns were equally dishonest is a matter about which I need not concern myself, but every single step of the whole of the way, from the start to the finish, this fraudulent endeavour was utterly and comprehensively and totally dishonest, carefully planned, carefully organised and potentially very successful in terms of the financial return that might have been available, obviously primarily to [ME], even to including the particular steps of distancing yourself Mr [ME], from the location of the fire, because of course, the primary anticipation might have been from the authorities that the person who was gaining from the fire had actually set it. That could never be the case because you were not even in the United Kingdom. This is obviously a case involving the use of carefully managed pay as you go telephones with a view to avoiding being caught, sensible in criminal terms, recruitment, manipulation, deceit, dishonest start to finish.
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> I have little doubt that although the insurance companies will no doubt not pay out in respect of the loss to Finesse Furnishings, it is almost inevitable that they will have to pay out to the neighbouring premises, whose losses may be significant as a result of smoke damage, things of that sort, if indeed the fire didn't actually spread to other premises. So the fraud, a serious one of its type, deliberately planned, deliberately organised and really nothing more should be said or could be said about it.
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> As far as the arson is concerned well the seriousness of that I would have thought is patently obvious. Whilst this is not a case of arson where there is a deliberate intention to endanger life, nor is it an arson where there is a component of what we call recklessness with regard to the protection of life, it follows that in respect of anybody who sets a serious fire for utterly commercial dishonest reasons that they will inevitably both place the property of other people at risk and in reality create a risk to those people who are called upon in due course to deal with the fire, namely the fire services officers and people like that. So irrespective of which category of arson it is, I am required by law to keep in mind the full context in all of the circumstances when dealing with any defendant and it is patently obvious to me because I was compelled to listen to people who were at the scene that this was a severe fire apparently requiring the use of the high level hosepipe machine and at one point [thankfully it turned out to be wrong] at one point there was even the thought that there might be people inside the premises, which would inevitably have led to breathing apparatus use and would inevitably have led to a greater risk to the fire service as they went about their business as they thought it at the time of saving lives. So a deliberate carefully planned fraud. An

> acutely damaging fire, a high value potential and deceit, dishonesty and deception start to finish.
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> Listening to the evidence as an independent observer because of course I was not at the fact finding tribunal that was a matter for the jury and nobody else the dishonesty of large parts of the evidence frankly was staggering, in particular with regard to [ME] primarily, the incapacity to demonstrate any visible means of support to be claiming to be entitled to Job Seekers Allowance whilst claiming at the same time to be a person with a legitimate one third share of up to £80 million was frankly beyond belief and I have no doubt that the jury formed that view as well."

4. As a result of his convictions, the appellant was served with a liability to deportation notice, initially on 1 July 2013, but then subsequently on 2 May 2017 and again on 8 August 2018 after being released from custody on 26 May 2017. He made written representations in response on 10 September 2018, on Article 8 human rights grounds based upon his marriage to JB and the fact that she was unable to relocate to Egypt with him.

5. In those representations it was stated that JB suffered from a number of medical conditions, including psoriasis and joint pains, problems with her sight and anxiety and depression, as well as having suffered a stroke in 2017, and that the appellant was her sole carer. It was asserted that there would be a lack of care in Egypt for JB and on that basis, and also because of the discrimination suffered by women in Egypt, it was unreasonable to expect her to relocate there with the appellant. Reference was made to the successful business established by the appellant in the UK, of which both he and JB were directors, and to the importance of that business as demonstrating the appellant's significant contribution to the UK economy and enabling him to provide support for his wife. It was asserted that many of the adverse factors in section 117B of the Nationality, Immigration and Asylum Act 2002 did not apply in the appellant's case. His deportation would violate Article 8 because of the strength of his family and private life and the reduced public interest in immigration control in his case, arising from his hard work in reforming himself and his low risk of re-offending.

6. The respondent, however, proceeded with deportation action and on 21 November 2018 the appellant became the subject of a Deportation Order pursuant to section 32(5) of the UK Borders Act 2007. On 22 November 2018 the respondent made a decision to refuse his human rights claim. In so doing, the respondent noted the nature and seriousness of the appellant's offending and concluded that the public interest in removing him from the UK was fully engaged. The respondent had regard to the appellant's claim to have established a family life in the UK and accepted that he was married to a British citizen but considered that it was not unduly harsh for his wife to live in Egypt with him as she had converted to Islam and that she had lived with him in Egypt previously at the time of their marriage in 2006. The respondent also considered that it would not be unduly harsh for the appellant's wife to remain in the UK without him. The respondent rejected the suggestion that the appellant's presence was required in the UK to continue caring for his wife who had various health issues, noting that she had managed without him when he

was in prison for 4 years and considering that she would have access to other services for support in the UK if required. The respondent did not consider that there would be any very significant obstacles to the appellant's integration in Egypt as he had spent his youth and formative years there, having come to the UK at the age of 24. The respondent noted the appellant's various university degrees and other qualifications, as well as the fact that he had previously worked in Egypt and considered that he would be able to find employment on return there and to readjust to life in that country. The respondent had regard to the fact that the appellant and his wife ran a successful online business, but considered that since it was online it could be run from anywhere in the world. The respondent considered that the appellant posed a danger to the community and did not accept that he was fully rehabilitated. It was not considered that there were very compelling circumstances which outweighed the public interest in his deportation and accordingly it was not accepted that his deportation would breach the UK's obligations under Article 8 of the ECHR. The respondent did not accept that the exceptions to deportation in section 33 of the UK Borders Act 2007 applied and noted that section 32(5) therefore required that a deportation order be made against him.

7. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Welsh on 21 January 2020. The judge heard from the appellant, his wife and four friends, one of whom gave evidence through Skype from Qatar.

8. Judge Welsh had regard to the sentencing remarks of the Crown Court Judge in the criminal proceedings following the appellant's conviction for the index offences and noted that he had been found to be "the prime mover and main intended beneficiary of a dishonest enterprise which culminated in the deliberate fire-setting of his own commercial premises and an associated fraudulent insurance claim". The judge accepted the conclusion of the OASys assessment, that the appellant posed a low risk of re-offending with a medium risk of harm to the public should a further offence be committed, although noting that he had consistently denied his guilt and had put forward an innocent explanation contrary to the jury's verdict. The judge considered that that denial, and the appellant's refusal to accept responsibility, was relevant to the assessment of risk of re-offending. She noted that that had been taken into account in the OASys risk assessment, but she nevertheless gave little weight to the assessment of low risk of re-offending. The judge rejected the appellant's claim as to the loss to the community of the benefits of the appellant's business if he were deported and concluded that the benefits to the public of the continuation of the business were so minimal as to not amount to a factor relevant to the assessment of the public interest. She concluded that the public interest in the appellant's deportation was very significant.

9. With regard to the appellant's family and private life, the judge noted that he had been lawfully resident in the UK for less than half his life, she considered that he was not socially and culturally integrated into the UK, and she concluded that there were no very significant obstacles to his integration into Egypt. She found that the private life exception to deportation was not met. As for the family life exception, the judge noted that the respondent had

accepted that the appellant and his wife were in a genuine and subsisting relationship, having married in Egypt on 28 March 2006 after meeting online in a chat room in 2004. The four witnesses attending the hearing all gave evidence about the genuine nature of the relationship and, in light of the unchallenged evidence, the judge accepted that it was a genuine relationship. The judge did not, however, accept that it would be unduly harsh for JB to relocate to Egypt with the appellant or for her to remain in the UK without him. In so doing, the judge considered the medical and country expert reports before her including medical reports from the appellant's GP, Dr Sinclair, and reports from a registered practitioner psychologist, Ms Woolf, and a consultant psychiatrist, Dr Persaud. She gave little weight to the report from Dr Persaud for various reasons. The judge considered that the description of JB's physical limitations and claimed resulting reliance upon the appellant had been exaggerated for the purposes of the appeal and she did not consider that the consequences of the appellant's deportation on JB's mental health would be unduly harsh. The judge concluded that there were no very compelling circumstances outweighing the public interest in the appellant's deportation and that his deportation would be proportionate. She accordingly dismissed the appeal.

10. The appellant sought permission to appeal that decision to the Upper Tribunal. His application was refused in the First-tier Tribunal, and he then renewed it to the Upper Tribunal, expanding upon the previous grounds and responding to the First-tier Tribunal's decision to refuse to grant permission.

11. The renewed grounds are very lengthy but can be summarised as follows: the judge reached the wrong conclusion when dismissing the human rights appeal; the judge failed to make reference to Covid 19, which was relevant to the unduly harsh assessment and the proportionality assessment, as well as to the potential loss of the government investment into the appellant's business; the judge followed a flawed approach by looking at numerous factors individually and discounting many of them rather than considering all factors in the round when conducting the Article 8 assessment; the judge erred by comparing the situation of the appellant's spouse to other elderly people rather than to other partners as part of the assessment under section 117C(5) of the NIAA 2002; the judge made a number of findings that were not based upon an express challenge by the Secretary of State, such as the willingness of the appellant's wife to lie and the reliability of the appellant's business projections; the judge erred by finding that the appellant's refusal to accept responsibility for his offending was relevant to risk; the judge failed to take account of relevant factors such as the problems experienced by the appellant's wife during her previous visit to Egypt, the appellant's lack of ties to Egypt and the impact of the appellant's successful business; the judge failed to take proper account of the judgment in Boultif v Switzerland - 54273/00 [2001] ECHR 497 and the factors relevant to the appellant's wife's age and vulnerability; and that there were various factors which meant that deportation was disproportionate.

12. Permission was refused again in the Upper Tribunal on 6 August 2020. In a "Cart" challenge to the Administrative Court, the appellant sought to judicially

review the refusal to grant permission. Permission to apply for judicial review was refused by the Honourable Mrs Justice Stacey in an Order dated 10 November 2020.

13. The appellant then applied to the Court of Appeal for permission to appeal against that decision. Permission was granted by the Rt. Hon. Lady Justice Andrews DBE in an Order sealed on 16 March 2021 on the following basis:

> "This case raises some difficult issues which this Court is best placed to address, and which might not be addressed at all if the process 'under CPR 54.7A (9) were followed, yet it does not seem right to me to try and address them in the context of an appeal against a refusal to grant permission to bring JR.
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> Two of the grounds plainly merited the grant of permission to bring JR of the UT's refusal of permission to appeal (irrespective of whether the UT may turn out to have been right at the end of the day). The substantive claim for JR raises two issues of principle of wider importance both of which were sufficiently arguable and met the test in Cart. The first concerns the approach that must be taken by an UT judge when considering whether to grant permission to appeal in an Art 8 case when it is contended that the balancing exercise admits of only one answer which is different to that given by the FtT. The second is the important issue of how a UT judge should approach an application for permission to appeal based on the implications of COVID-19 when they were not a matter raised before the HT judge (nor could they have been) but they arose before the determination was promulgated and could have made a material difference to the outcome.
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> Both these matters seem to me to be appropriate for consideration by this Court in the context of a substantive judicial review of the UT decision to refuse permission to appeal. rather than an appeal from a refusal to grant permission to bring judicial review. The focus of scrutiny should be the UT's decision to refuse permission to appeal and whether or not that decision was tainted by public law error.
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> The other 2 grounds are more case-specific but both are sufficiently arguable; one concerns procedural fairness and I do not find Stacey J's reasoning on that issue properly characterises the finding by the FtT judge. It is at the very least, a finding that the Appellants wife was reckless (in the sense of not caring whether her evidence was truthful) and recklessness can be a form of dishonesty. There is a strong argument that that should have been put to her, and that the finding should not have been made if it was not put.
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> The other ground feeds into the Art 8 issue and whether the FtT judge failed to deal appropriately with the question of undue harshness in the light of the age of the Appellant's wife. Both seem to me to meet the Cart test under "some other compelling reason" because of the consequences for the Appellant's wife if he has to leave the jurisdiction. Had those been the only grounds I would have sent the matter back to the High Court (in the hope that the matter would be resolved by an appeal to the Upper Tribunal) but given that the other issues are suitable for determination by this Court, it makes sense for everything to be dealt with together."

14. Despite Lady Justice Andrews's direction that the judicial review claim should continue in the Court of Appeal, the matter was settled between the

parties and a Consent Order sealed on 30 June 2021 on the basis of the following Statement of Reasons:

> "The parties are agreed that it would not be proportionate for this claim for judicial review to continue in the Court of Appeal. In circumstances where the claim for judicial review has been found to be arguable, it would be more proportionate to allow the claim for judicial review on the basis that there is an arguable error of law in the decision of the First-tier Tribunal. The Upper Tribunal can then apply its usual procedure of first considering whether there is an error of law and, if there is, considering whether to redecide the appeal for itself or whether to remit it further. That has the additional advantage that the Upper Tribunal is better placed to make factual findings in the event that it concludes that there was an error of law in the decision of the First-tier Tribunal and that it is necessary for such findings to be made.
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> The agreement is entirely without prejudice to the Interested Party's submission that, properly analysed, there was no error of law in the decision of the First-tier Tribunal."

15. Accordingly, the matter came back to the Upper Tribunal to determine whether First-tier Tribunal Judge Welsh's decision contained errors of law requiring it to be set aside and the appeal came before us. We had before us a Rule 24 response from Mr A Tan for the Secretary of State opposing the appeal and a skeleton argument from Mr Southey. Both parties made submissions.

Hearing and Submissions

16. Mr Southey relied upon the findings of the Supreme Court in R (R) v Chief Constable of Greater Manchester Police [2018] UKSC 47, that the proper standard of review for an appellate court in an Article 8 case, was not whether the judge had made a 'significant error of principle' in the narrow sense, but whether the judge had erred in principle or had been wrong in reaching his conclusion. He submitted that Judge Welsh had erred by reaching her conclusion on "very compelling circumstances" upon an approach which did not reflect Lord Thomas's 'balance sheet' approach as set out in the case of Hesham Ali (Iraq) v Secretary of State for the Home Department [2016] UKSC 60. Her approach was to discount factors, such as the 'unduly harsh' question, on a factor-by-factor basis rather than by conducting an overall balancing exercise, which he submitted was wrong. Mr Southey took us through the developing caselaw which set out the correct approach to the balancing exercise, in NA (Pakistan) v Secretary of State for the Home Department & Ors [2016] EWCA Civ 662, Hesham Ali, GM (Sri Lanka) v The Secretary of State for the Home Department (Rev 1) [2019] EWCA Civ 1630 and HA (Iraq) v Secretary of State for the Home Department (Rev 1) [2020] EWCA Civ 1176. He also relied upon the case of Unuane v. the United Kingdom - 80343/17 (Judgment : Remainder inadmissible : Fourth Section) [2020] ECHR 832 in submitting that the European authorities, and in particular the criteria and factors set out in Boultif v Switzerland - 54273/00 [2001] ECHR 497 and Uner v. the Netherlands - 46410/99 [2006] ECHR 873, were relevant to the proportionality assessment and that it was relevant that the appellant's offending did not include violence or drugs. He submitted that in Unuane, as in this appellant's case, the Court

had erred by focussing only on 'very compelling circumstances', without carrying out its own balancing assessment.

17. Mr Southey submitted that the judge ought to have followed the Boultif criteria and balanced issues such as JB's difficulties in coping as a result of her age, her inability to live in Egypt, her lack of support other than from the appellant and her need for the business to continue, against matters such as the appellant's low risk of re-offending, the absence of violence or drugs as part of his offending and his establishment of a successful business. He relied on the United Nations Principles for Older People in asserting that the judge had failed to give proper weight to JB's age and to her needs as a result of the aging process. He submitted that the judge had erred in her consideration of JB's age and her increased need of support as a result of the ageing process and the deterioration in her health. She had followed an incorrect approach by discounting and minimising the impact of JB's age on the basis that other people of her age had similar difficulties. Mr Southey submitted further that the judge had erred by failing to consider the impact of Covid 19 and its relevance to JB's age, to the stress caused by lockdown and the need for mutual support, and to considerations of the impact on the economy and the appellant's business being successful. He submitted that the judge had also erred in her approach to the appellant's refusal to admit his guilt for the criminal offending and by linking that to the risk of re-offending when she was not an expert in the matter. Also related to the appellant's conviction was the judge's error in effectively finding at [95] of her decision that JB was willing to lie and thus challenging her credibility without putting the matter to her and giving her an opportunity to respond. The judge also failed to give weight, in the balancing exercise, to the benefits provided by the business, but simply discounted the benefits as a discrete issue.

18. Mr Melvin, in his submissions, replied upon the respondent's rule 24 response and suggested that Mr Southey's lengthy arguments on the judge's findings on proportionality were not the basis for the Court of Appeal remitting the matter to the Upper Tribunal. He submitted that the grounds relating to the impact of Covid 19 should be rejected as that was not a matter raised at the hearing before Judge Welsh. As for the judge's findings on proportionality, all the evidence had been considered at length and detailed findings made on all relevant issues. The judge's consideration of very compelling circumstances was consistent with the guidance in NA (Pakistan) and was consistent with the 'balance sheet' approach. The judge gave proper consideration to the appellant's wife's age and to the impact upon her, as an aged person, of the appellant's deportation. The judge's rejection of Dr Persaud's conclusion was not challenged in the grounds. The seriousness of criminal offences was not confined to crimes of violence of drugs, as the appellant was suggesting. The judge was entitled to consider that there was an exaggeration of the level of care which the appellant's wife required and to consider that she would say whatever it took to keep the appellant in the UK. The judge gave full consideration to the care available to the appellant's wife in Egypt and considered her vulnerabilities. The judge's decision was very well written and did not contain any errors of law.

19. In response Mr Southey reiterated his earlier submission that the judge had failed to conduct a balancing exercise in accordance with the guidance given by Lord Thomas in Hesham Ali, that the judge had followed the wrong approach to the appellant's wife's age by considering that there was nothing out of the ordinary for someone of her age and that she had erred by failing to put her credibility concerns to the appellant's wife.

Consideration and findings

20. Mr Southey's principal challenge to Judge Welsh's decision was that she did not conduct a balancing exercise when assessing proportionality and that her conclusions on proportionality were accordingly wrong. He submitted that, rather than conduct a balancing exercise as she was required to do, the judge focussed on whether there were very compelling circumstances outweighing the significant public interest in the appellant's deportation and that that was the wrong approach and gave rise to the wrong conclusion in a case where there was otherwise, in circumstances similar to that in Boultif, a strong argument that the appellant's deportation was disproportionate. In so asserting, Mr Southey relied upon the recent judgement of the European Court of Human Rights in Unuane.

21. However, it seems to us that in his reliance upon Unuane and its relevance to the current proceedings, Mr Southey has over-simplified the context in which the Court found that the Upper Tribunal had erred in its Article 8 assessment in that case. The context was plainly quite specific to that case. In Unuane, the Court concluded that the Upper Tribunal had erred in its assessment by considering that, having conducted a balancing exercise in relation to the interests and circumstances of the appellant's wife and non-British children and having allowed their appeals following that proportionality assessment, it was unable to allow the appellant's appeal due to the constraints in paragraph 398 of the immigration rules which required it to find 'very compelling circumstances' over and above those matters relating to his wife and children which it could not do. Rather, found the Court, the Tribunal ought to have undertaken a full balancing exercise separately for the appellant, taking account of the nature of his offending and all other relevant matters including the strength of his ties to his wife and children and the best interests of his children.

22. That is an entirely different scenario to the appellant's case before us and to the approach taken by Judge Welsh, which was to consider all of the appellant's circumstances as she was supposed to do. Indeed, it was on the same basis that the Supreme Court distinguished the appellant's case to that of Unuane in Sanambar v Secretary of State for the Home Department [2021] UKSC 30, at [51], making it clear that "very compelling circumstances" was the correct test:

> "Unlike in *Unuane* the Upper Tribunal gave careful consideration to the particular circumstances of the appellant's situation. It carried out its assessment of the decision to deport in accordance with the statutory criteria set out in the 2002 Act and the terms of the 2014 Rules. The statute and Rules provided that the

> public interest required his deportation unless the relevant exception applied or there were very compelling reasons to prevent his deportation. The first step was the consideration of the nature and seriousness of the offences…"

23. Mr Southey's submission was that the judge wrongly considered, and gave reasons for discounting, discrete factors relating to the public interest and the appellant's private and family life, rather than undertaking a balancing exercise which reflected the balance sheet approach advocated by Lord Thomas in Hesham Ali. However, we do not agree. In order to consider the whole picture, the judge clearly had first to consider its parts which is what she did, and we consider that she did so by effectively following the "balance sheet" approach. It was not necessary for her specifically to state that that was what she was doing, as the Court of Appeal made clear in AS v The Secretary of State for the Home Department [2019] EWCA Civ 417, when they held at [14] of their judgment that:

> "Failure to include a balance sheet in a determination does not give rise to an independent right of appeal if otherwise the assessment of the issues is satisfactory and appropriate."

24. At [13] the judge started by considering the public interest factors in favour of deportation and, in so doing, took account of matters which impacted upon the public interest and which may have had the effect of reducing the strength of that public interest, such as the nature and the seriousness of the appellant's offences, the risk he posed to the community and the benefits he claimed to have provided to the community and the economy through his business. She then went on to consider the appellant's own private and family life considerations from [41] which naturally included his ability to meet the family and private life exceptions to deportation and which focussed in particular on the 'unduly harsh' issue in the family life exception, taking account of the appellant's wife's age and health concerns, the difficulties she may face in relocating to Egypt and her previous experiences of living in Egypt and also, in the alternative, her ability to cope with separation from the appellant. From [116] to [117] the judge took account of any other matters not considered within those exceptions and then provided a conclusion at [118] and [119] in line with NA (Pakistan). We simply cannot agree with Mr Southey's submission that this did not amount to a full balancing exercise which took account of the Boultif criteria and all other relevant factors, and we entirely reject his attempt to challenge the judge's decision as falling within the errors identified in Unuane.

25. Turning to the more specific challenges to the decision, it was Mr Southey's submission that the judge, when considering the public interest factors and the nature and seriousness of the appellant's offending, had failed to consider the relevance of the fact that the offending, whilst attracting a long sentence, did not include violence or drugs. He relied in particular on the observation at [87] of the judgment in Unuane, that "the Court has consistently treated crimes of violence and drug-related offences as being at the most serious end of the criminal spectrum… the fact that the offence committed by an applicant was at the more serious end of the criminal spectrum is …one factor which has to be weighed in the balance, together with the other criteria which emerge from the judgments

in *Boultif* and *Üner*." However, there was no requirement for the judge to make a specific reference to the absence of violence or drugs when it was clear that she plainly had full regard to the nature of the appellant's offending at [15] to [17] and gave it appropriate weight when going on to consider the risk he posed to the community. We do not consider that the judge's assessment was lacking in that respect, and we reject Mr Southey's assertion that it was. Likewise, we reject the challenge to the judge's assessment of risk. The grounds assert that the judge erred by finding, at [21], that a refusal to accept responsibility was relevant to the risk of re-offending and that she did not have the expertise to make such an assessment. However, the judge was plainly not attempting to take on a role of expert in that regard. She gave careful consideration to the OASys assessment and made it clear that she accepted and followed the conclusions of the Offender Manager who prepared the OASys report. She went on, at [22], to provide cogent reasons why she nevertheless accorded the limited weight that she did to the low risk of re-offending, as she was perfectly entitled to do.

26. Mr Southey also challenged the weight given by the judge to the appellant's business and the benefits it provided to the economy and the community as well as the employment opportunity it provided for his wife. He submitted that the judge recognised the benefits but then discounted them and did not factor them into the overall balance. However, that was plainly not the case. On the contrary, the judge considered the business and its benefits at great length over a number of paragraphs, from [24] to [38], undertaking a full and comprehensive assessment in line with the guidance in Thakrar (Cart JR, Art 8, Value to Community) [2018] UKUT 336. She considered the consequences of the business ceasing to trade as a result of the appellant's deportation, in terms of the loss to the economy of the taxes paid by the company and by the appellant and JB, the impact upon employees and suppliers and contractors and the impact of JB no longer having employment. At [38] she made findings on the weight to be given to that aspect of the public interest and at [40] she set out her conclusions on the weight to be given to the public interest overall.

27. As for the challenges made to the judge's findings on the private and family life aspects, one of the main grounds, which was material to the Court of Appeal's decision to quash the refusal of permission to appeal (albeit not greatly focussed upon in his submissions before us), was the impact of Covid 19 on the appellant's case. In his submissions before us Mr Southey gave three reasons why the impact of Covid 19 was particularly relevant in this case: firstly in relation to the appellant's wife's age and the limitations that Covid-19 would impose upon her access to quality health care, secondly in relation to the increased mutual support that the appellant and JB would need to provide to each other as a result of the added stress of Covid 19 and lockdown, and thirdly in relation to the success of the appellant's business despite the impact of Covid 19 upon the economy.

28. However, none of these reasons, or indeed any other reasons, have been expanded upon in any detail or supported by any evidence specific to the appellant or his wife and they remain unsupported and nebulous assertions. At

the time of the hearing before Judge Welsh the full impact of Covid 19 was completely unknown and unanticipated. The matter was never raised before her either at the hearing, by way of a request for an adjournment to provide further materials or otherwise, or after the hearing by way of a request for further submissions to be made. As the respondent properly points out in her rule 24 response at [8] and [9], there is no reason to believe that it was "obvious" that Covid 19 would be relevant, as the way in which Covid 19 has impacted upon individuals has been completely fact specific and the epidemic has taken different courses in different countries and has not been predictable in its impact in less developed countries. Indeed, even now, nearly two years since the hearing, the appellant has provided no evidence demonstrating how Covid 19 could have affected or could now affect him and his wife if they were living in Egypt and how the pandemic could have materially affected the outcome of this case. The judge cannot be criticised, in such circumstances, for failing to address the matter. Indeed, any findings made either at the time, or as a result of postponing the hearing, would have been pure speculation. If Mr Southey is right, that the judge ought to have adjourned the hearing, despite there being no adjournment request and despite the matter never being raised at the time nor any further information or supporting evidence produced thereafter, then that would apply to most, if not all, of the hearings listed at that time, which simply cannot be the case. We therefore reject this ground of challenge entirely.

29. Another significant challenge made by Mr Southey was to the judge's approach to the matter of JB's age. He submitted that her approach was flawed in a number of respects, including the fact that she failed to recognise that JB's age meant that particular weight needed to be given to her right to continue to receive support from her husband in a society with which she was familiar and which reflected her values, that she compared JB to others of the same age rather than focussing on her as an individual when considering the 'unduly harsh' questions, that she failed to consider JB's vulnerability and ability to access medical care in Egypt in particular in light of Covid 19, and that she ought to have considered JB's health and social needs in the same manner as the best interests of children are required to be considered in international law. However, we do not find any such errors in approach in Judge Welsh's decision and, on the contrary, consider that she gave very detailed consideration to JB's age in all relevant contexts. In relation to the Covid 19 context, we refer to our findings above and reiterate the lack of any supporting evidence.

30. We refer in particular to the following findings made by the judge. At [29] she considered JB's age in the context of the business which the appellant had established and with which they were both employed and concluded that she would not be able to continue the appellant's role in buying stock so that the business would cease trading upon his deportation. At [37] and [38] the judge considered the implications for the taxpayer if JB could no longer work in the business. These were all matters relating to the strength of the public interest in the appellant's deportation as it was claimed that they directly and indirectly impacted upon the economy and the community (as we have discussed above), but they were also issues that directly related to JB personally in terms of her ability to support herself without the appellant owing to factors such as

her age. The judge then went on to give lengthy consideration to JB's age in the context of the appellant's family life and the relevant exception to deportation, in particular when considering the 'unduly harsh' questions. From [62] to [75], when considering the 'relocation to Egypt' option, the judge considered JB's medical and mental health problems and the question of access to healthcare in Egypt, which was inevitably related to JB's age. At [78] the judge specifically considered JB's age in the context of adapting to a new language and assessed how that impacted upon the unduly harsh question. From [82] to [96], when considering the 'remaining in the UK' option, the judge gave detailed consideration to the evidence relating to JB's dependence upon the appellant as a result of her physical limitations due to her medical conditions and her age, even going so far as to consider her ability to handle the family dog in the appellant's absence. From [99] she considered her mental health and her emotional dependency upon the appellant, again taking her age into account. The impact of JB's age was therefore a significant feature in the judge's findings.

31. As for Mr Southey's challenge to the judge's approach in comparing JB to others of her age, we again find no merit in the arguments made. We do not agree with his depiction of the judge's findings in that regard as comparable to the situation in HA (Iraq) where Jackson LJ warned against focusing on the position of children generally rather than on the best interests of the individual child. We see no reason why the judge should not have given some consideration to how others of JB's age would deal with similar issues when assessing the level of harshness of the consequences of the appellant's deportation. In any event that certainly did not detract from the judge's detailed consideration of how JB herself would adapt to certain situations in relocating to Egypt or remaining in the UK without the appellant.

32. In any event the judge considered at [83] that the descriptions of JB's physical limitations and resulting reliance upon the appellant had been exaggerated to the extent that she could not rely upon their accounts, and she went on to give detailed and cogent reasons for so concluding at [84] to [96]. At [84] to [88] the judge undertook a detailed analysis of the medical evidence relating to JB's physical medical conditions, noting the absence of any independent assessment of her day-day needs such as from an occupational therapist ([84] and [85]) and concluding at [86] that the medical evidence contained in the report of Dr Sinclair "did not support the contention that JB is unable to walk down the stairs, get in and out of the bath, walk far enough to use public transport and shop locally." At [88] the judge noted that Dr Sinclair's record conflicted with JB's evidence that she was unable to go out without her husband and was wholly reliant upon him to drive her everywhere. At [89] the judge commented that:

> "[JB] works full-time, Monday to Friday, between 9am and 6pm in the office of the business. It is a desk job. In oral evidence, she stated that she does basic administrative work, such as printing labels for customer orders. Stills from the office CCTV footage showed her seated at one of the desks in the office. In my view, I am entitled to draw the inference that being able to function to the extent that she has the physical strength to get up, get out and do a full-time job, no

> matter how basic the administrative tasks or how sedentary the role, is inconsistent with her and the Appellant's account of her limitations."

33. At [90] to [94] the judge gave detailed reasons for concluding that JB's description of the appellant as her "carer" was not supported by the evidence and that the timing of the communications with her GP referring to him as such was "more consistent with being triggered by developments in the Appellant's appeal proceedings than by JB's particular needs." ([94]). Similar findings on the exaggeration of JB's symptoms and health status were made by the judge in relation to a psychiatric report from Dr Persaud, at [105] to [113].

34. The judge's adverse findings in this respect – in particular her finding at [95] that, by maintaining her claim that the appellant was innocent of the crimes for which he had been convicted, JB demonstrated a willingness to "say whatever she thought needed to be said, irrespective of whether it is true, false or embellished, in order to keep him in the UK"- are the subject of a separate challenge in the grounds and the subject of much criticism by Mr Southey. Indeed, the allegation of dishonesty on JB's part formed part of the Court of Appeal's reasons for quashing the decision to grant permission to appeal. It was Mr Southey's submission that such an allegation ought to have been put to JB and that she ought to have been given an opportunity to provide a response, and that the judge's failure to do so amounted to an error of law.

35. However, it is clear from the above that the allegation at [95] did not stand alone but was supported by lengthy reasoning based upon a careful assessment of the medical and other evidence over several paragraphs. It was not a case of the judge making adverse credibility findings on matters upon which no evidence had been led at the hearing or upon matters which were unknown to the parties. This was simply the judge's assessment of the reliability of the evidence based upon a very detailed examination of that evidence and supported by cogent reasoning. We cannot see how the judge suggesting to the appellant and his wife that they were embellishing their accounts would have benefitted her assessment or that a failure to do so undermined her conclusions. Furthermore, it is an established principle that it is not a requirement that each and every credibility issue be put to a witness. It is a matter for the judge what weight should be accorded to the evidence. It seems to us that the judge was perfectly entitled to conclude as she did and that there was nothing erroneous in her approach.

36. Accordingly, we reject the challenges made by Mr Southey to the judge's approach to the evidence and her findings on the evidence in relation to JB's age and her dependence upon the appellant. The judge's decision is a particularly detailed and admirably comprehensive one which includes a careful assessment of all aspects of the appellant's and JB's life, taking full account of their personal, employment, financial, medical, social and other circumstances in the UK and the circumstances which they would likely encounter in Egypt. The decision involves a detailed balancing exercise of these interests against the relevant public interest factors in line with the statutory requirements and the authoritative guidance.

37. In terms of the approach taken by the Supreme Court in R (R) v Chief Constable of Greater Manchester Police [2018] UKSC 47 at [64] to the proper standard of review in an Article 8 case, as relied upon by Mr Southey, we consider that there was no "identifiable flaw in the judge's reasoning, such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion" which meant that the decision was wrong. In so far as Mr Southey suggests that it was, we find that to be no more than a disagreement with the judge's properly reached decision. The judge's findings and conclusions were fully and properly open to her on the evidence before her and we accordingly uphold the decision.

DECISION

38. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. We do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity Order

Judge Welsh made an anonymity order in her decision in the appeal. On the basis of the submissions made in response to our directions of 5 January 2022 in regard to our proposal to lift that order, specifically with reference to the disclosure of the appellant's wife's confidential medical records, we are prepared to maintain the order. Accordingly we continue the anonymity direction, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed S Kebede
Upper Tribunal Judge Kebede Dated: 17 January 2022