



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-001904
First-tier Tribunal HU/50923/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22nd of March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE BOWLER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

H B
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Parvar, senior presenting officer

For the Respondent: Mr Lee, Counsel instructed by Turpin Miller LLP

Heard at Field House on 15 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

PROCEDURAL BACKGROUND

1. The appellant in the appeal before me is the Secretary of State for the Home Department and the respondent to this appeal is HB. However, for ease of reference, I refer below to HB as the Appellant and the Secretary of State as the Respondent.
2. The Appellant made an asylum claim on 2 October 2018 but that was treated as withdrawn on 27 November 2018.
3. The Appellant appealed against a decision of the Respondent of 26 September 2018 to refuse his human rights claim and to make him the subject of a deportation order. That appeal was dismissed by First-tier Tribunal Judge Bristow in a decision promulgated on 19 December 2018.
4. On 24 June 2019 the Appellant made further submissions to the Respondent, which were supplemented by representations relying, in particular, on the content of the report prepared by an independent social worker. The Appellant relied upon his family life with his children. The Respondent accepted that this was a fresh claim, but refused it on 26 January 2022. The Appellant's appeal was allowed by First-tier Tribunal Judge Sweet in a decision promulgated on 22 April 2023.
5. The Respondent was granted permission to appeal Judge Sweet's decision and following a hearing on 17 July 2023, Upper Tribunal Judge Mandalia decided that the decision of First Tier Tribunal Judge Sweet should be set aside as a result, in particular, of inadequate consideration of the elevated threshold that applies in order to conclude that the effect of the Appellant's deportation would be unduly harsh on the Appellant's children. No findings from the decision of First-Tier Tribunal Judge Sweet are preserved.
6. On 13 November 2023 Judge Mandalia and I granted the Appellant an unopposed application for an adjournment. There was evidence from the Appellant's younger son's mother that his son's behaviour had recently deteriorated and an opportunity to obtain an updated social worker's report was sought.
7. The appealed decision before me is that made by the Respondent on 26 January 2022.
8. The Respondent provided a PNC report just one day before the hearing which Mr Lee considered before the start of the hearing. Mr Parvar sought to rely upon entries relating to the Appellant being remanded upon bail currently. Mr Lee objected on the basis that there had been no charge of any offence, let alone conviction and the threshold for police bail was very low. After hearing submissions from both representatives, I decided that my decision would take no account of the police bail entries. I agreed with Mr Lee that the circumstances

were entirely unknown. Moreover it is trite law that a person is presumed innocent until found guilty.

9. I am grateful to the representatives for the constructive ways in which they represented the parties at the hearing, (in particular in the context of some confusion about witness statements which I explain later); seeking to facilitate the process; and making focused and clear submissions.
10. The Appellant is a vulnerable witness as a result of his mental health and a pronounced speech impediment. Accordingly it was made clear by me that the Appellant would be given as much time as he needed to give answers as requested by Mr Lee, particularly in cross-examination; and that he could request a break as and when needed. In fact he did not ask for a break in the hearing.

FACTUAL BACKGROUND

11. The Appellant is a national of Ghana aged forty-three years. He came to the UK on 24 September 2006 with entry clearance as the spouse of a settled person in the UK. He was granted indefinite leave to remain on 18 December 2008. On 15 May 2013, he applied for naturalisation as a British citizen, but due to criminal convictions that application was refused on 18 December 2013. On 8 February 2018 the Appellant was convicted of bringing a List A article into prison on 18 May 2017 after he had taken Class A drugs into a prison for his brother. He was sentenced to a period of two years' imprisonment. On 24 July 2017 the Appellant committed the offence of possession of cannabis. He was given a concurrent sentence of one month for that offence.
12. It is the offence of bringing the List A article into prison which resulted in the prison sentence and which has led to the Respondent's deportation decision at the heart of this case.
13. The Appellant has three children all of whom are British citizens: his son M, the eldest is aged 19; his son X is 8 and his daughter C is 3. It is not in dispute that the Appellant has a genuine and subsisting relationship with his children. The Appellant's relationship with M's mother broke down in 2010. Around that time he and Ms R started a relationship. Ms R is the mother of X and C. The Appellant is no longer in a relationship with Ms R. The Appellant is now in a relationship with Ms D.

SUBMISSIONS

14. The submissions made before me and in skeletons are extensive. I have read the skeletons fully but only summarise below the points emphasised in oral submissions before me.

The Respondent's submissions

15. Mr Parvar submits that the starting point is the findings of Judge Bristow applying the principles of Devaseelan. The only new elements are the birth of C and the Appellant's new relationship with Ms D.
16. Mr Parvar submits that circumstances like this, involving distress for the children and losing contact with their father, are normal in a deportation case. The evidence does not show that the consequences will be bleak for them. The evidence from their school and nursery is positive. Ms R is primarily responsible for the children's care. Her care of them while the Appellant was in prison shows that she is capable of coping without the Appellant's presence. She has family located close by and it is not plausible they would decline to help her. Current financial pressures claimed by Ms R to exist have little bearing on this case. The Appellant could send money to support his children from Ghana. Little weight should be given to the Appellant's relationship with Ms D.
17. The Appellant has provided inconsistent evidence regarding the location of his mother. It is likely that she remains in Ghana. It is telling that there is no evidence from his family in the UK. He has failed to show that he would face obstacles on return to Ghana as he has simply not checked the position. He has described job offers in the United Arab Emirates and Portugal and therefore he can be resourceful and obtain work. He has ample work experience in the UK. His health issues are not major problems. The Appellant says that he is motivated and wants to work. The children can continue their relationship through electronic means and have the benefit of the support of their half-brother, M. The children and M could visit the Appellant in Ghana.
18. In considering the extent of the Appellant's rehabilitation, Mr Parvar referred to the findings in the psychologist's report. While the most recent offences were not serious they took place while the Appellant was facing deportation where his relationship with his children was at stake. The index offence involves cocaine which has a devastating impact on the community and there is therefore a weighty public interest in the deterrence of such offences.
19. The case of RLP (BAH revisited - expeditious justice) Jamaica [2017] UKUT 00330 shows that delay on the part of the Respondent is unlikely to tip the balance and in this context there is no unexplained delay given that the Appellant's application was considered during the time of the pandemic.

The Appellant's submissions

20. Mr Lee recognised the application of the Devaseelan principles, but noted this should be applied in the context of the Respondent treating the Appellant as having made a fresh human rights claim on the basis of new evidence.

21. He submits that HA (Iraq), RA (Iraq), AA (Nigeria) v Secretary of State for the Home Department [2022] UKSC 22 makes clear that it is not correct to make any comparison to a normal expectation of distress for children. While it is accepted that the consequences must be found to be “bleak” or “severe” for X and C, that is likely to be the case here as shown by the social worker’s reports in particular. That report was particularly carefully prepared given the series of meetings and telephone calls with the Appellant, the children, Ms D and Ms R described therein. The social worker, Ms Soroya, says that the impact will be “immense”. X’s teacher also expresses concern about the traumatic impact on him. Ms Soroya considers the network of potential support from extended family, but notes, in particular, that Ms R’s sister is limited in her ability to assist given her need to care for her own children. Visits to Ghana would be sparse at the least and the relationship between the children and their father could not carry on as it does now. The cumulative effect would be bleak for X at least.
22. Clearly the legislation envisages that separation will take place and specifies that the consequences must be “unduly harsh”. However, not every deportation case will involve a qualifying child, but here there are two. Not every case will involve a strong relationship with children, but here the evidence shows a very strong relationship. In some cases a person may be deported somewhere closer where physical contact is more realistic or where there is more money to finance visits.
23. In considering very compelling circumstances all factors must be taken into account including the low risk assessment of the Appellant by the psychologist and probation, his length of residence in the UK, his mental health and speech impediment, the existence of family in the UK, the impact on the children including M and the relationship with Ms D (even though little weight can be given to it). The Respondent’s delay should weigh in the Appellant’s favour.

LEGAL FRAMEWORK

24. The Appellant seeks to rely on provisions in the legislation which apply where his deportation would be “unduly harsh” for his “qualifying children”. It is accepted by the Appellant that only X and C are qualifying children given that M is over 18 years of age. In addition, the Appellant says that there are very compelling circumstances in his case.
25. The legislative framework is set out in section 117C Nationality, Immigration and Asylum Act 2002 (“Section 117C”).
26. Section 117C(6) provides, so far as relevant:

“(1) the deportation of foreign criminals is in the public interest.

(2) the more serious the offence committed by 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 UK for most of C’s life,

(b) C is socially and culturally integrated in the UK, and

(c) there would be very significant obstacles to C’s integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a ... genuine and subsisting parental relationship with a qualifying child, and the effect of C’s deportation on the... child would be unduly harsh.

(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.”

27. It is not in dispute that:

- a. by virtue of the Appellant’s criminal conviction and sentence to imprisonment for two years he is a “foreign criminal”;
- b. the Appellant cannot rely upon Exception 1 because he has not been lawfully resident in the UK for most of his life although facts which would be relevant to consideration of that should be taken into account if it is necessary to consider whether there are very compelling circumstances; and
- c. the Appellant has a genuine and subsisting parental relationship with his children, X and C

28. The Supreme Court in HA (Iraq), RA (Iraq), AA (Nigeria) v Secretary of State for the Home Department [2022] UKSC 22 has set out the way in which the deportation legislation should be applied, in particular at paragraphs [46] to [52]. Those principles (so far as relevant to this case) can be summarised as follows:

- (1) An appellant, such as here, who has been sentenced to imprisonment for less than 4 years can succeed in an appeal if he meets Exception 1 or Exception 2. Exceptions 1 and 2 are considered and determined without reference to any balance between interference and public interest. “The consideration of whether those Exceptions apply is a self-contained exercise governed by their particular terms” (at [47]).
- (2) When considering the meaning of unduly harsh, the description in MK (Sierra Leone) v Secretary of State for the Home Department [2015] INLR 563, was affirmed that: “‘unduly harsh’ does not equate with uncomfortable, inconvenient, undesirable or merely

difficult. Rather, it poses a considerably more elevated threshold. 'Harsh' in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb 'unduly' raises an already elevated standard still higher."

- (3) If an appellant cannot meet either of the two exceptions, Section 117C (6) requires a balancing assessment weighing the interference with the Article 8 rights of the person intended to be deported and his family against the public interest in his deportation. Although that section is expressed as applying only to those offenders who are sentenced to more than four years in prison, the Court of Appeal has determined that it applies equally to an appellant sentenced to less than four years if the offender cannot meet the exceptions ([47] and NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662 as cited with approval at [4]).
- (4) Section 117C (6) is considered to provide "a safety valve, with an appropriately high threshold of application, for those exceptional cases involving foreign criminals in which the private and family life considerations are so strong that it would be disproportionate and in violation of article 8 to remove them" (per Rhuppiah v Secretary of State for the Home Department [2016] 1 WLR 4203 cited at [48]). There is no exceptionality test, but "it inexorably follows from the statutory scheme that the cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare" (per NA Pakistan cited at [50]).
- (5) If the intended deportee could only show a "bare case of the kind described in Exceptions 1 and 2" that could not be described as very compelling circumstances over and above those exceptions. "On the other hand if he could point to factors identified in the descriptions of Exceptions 1 and 2 of an especially compelling kind ...going well beyond what would be necessary to make out a bare case of the kind described in Exceptions 1 and 2, they could in principle constitute 'very compelling circumstances, over and above those described in Exceptions 1 and 2', whether taken by themselves or in conjunction with other factors relevant to application of article 8" (per NA (Pakistan) cited at [50]).
- (6) When applying Section 117C(6), all relevant circumstances are to be balanced against the "very strong public interest in deportation" ([51]) following the approach described in Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60.
- (7) Case-law of the European Court of Human Rights continues to be relevant to the factors which have to be considered ([51]), in particular:
 - a. Nature and seriousness of the offence(s) committed by the intended deportee;
 - b. Length of time that the intended deportee has remained in the UK;

- c. Time elapsed since the offending and conduct in that period;
 - d. Nationalities of those affected by the decision;
 - e. The family circumstances of the intended deportee;
 - f. Whether a spousal relationship was formed at a time when the spouse was aware of the offending;
 - g. Whether there are children of the marriage and their ages;
 - h. Seriousness of the difficulties faced by the intended deportee in the country to which he/she would be expelled;
 - i. Best interests and well-being of the children, in particular the seriousness of the difficulties which they would face in the country to which the intended deportee would be expelled; and
 - j. Extent of the intended deportee's social, cultural and family ties with the host country and country of destination.
29. In carrying out the proportionality exercise required to decide whether very compelling circumstances exist RLP confirms that where the public interest favouring deportation is potent and pressing, even egregious delay on the part of the Respondent is unlikely to tip the balance in an appellant's favour. The case of Yalcin v SSHD [2024] EWCA Civ 74 (at [47]) acknowledges that delay is endemic in the system. Its relevance is in leading to an appellant's ties in the UK being further cemented.
30. Exception 2 requires consideration of whether it would be unduly harsh to expect X and C to accompany the Appellant to Ghana, or to remain in the UK without him. In this case, I do not have to consider the children going to Ghana as the Respondent accepts that it would be unduly harsh for them to go with the Appellant.
31. Mr Parvar's submissions regarding the application of Exception 2 and the need to recognise what will normally be expected to happen in these cases is rejected by me. HA Iraq made clear that there is no notional comparator ([31 - 40]).
32. When making my decision I must recognise that Section 55 Borders, Citizenship and Immigration Act 2009 requires the Secretary of State to have regard in the discharge of his immigration functions to the need to safeguard and promote the welfare of children in the UK. In doing so the best interests of the children are a primary although not the primary or paramount consideration (see [25] of the judgment in ZH (Tanzania) v SSHD [2011] UKSC 4).
33. It is for the Appellant to prove on the balance of probabilities that he has a family or private life to which Article 8 ECHR could apply: EH Iraq [2005] UKIAT 00062. If Article 8 is engaged a balancing exercise is then required (Quila [2011] UKSC45).

EVIDENCE AND FINDINGS OF FACT

Evidence

34. Both parties continue to rely upon the evidence before First Tier Tribunal Judge Sweet. In addition, the Appellant has provided updated evidence for this hearing including updated Witness Statements which were adopted by the witnesses and second expert reports of the independent social worker and the forensic psychologist, as well as letters from the children's school and nursery. There was some confusion during the hearing as to which witness statements the Appellant wished to rely upon. There was a third witness statement which had been provided for the hearing before First-Tier Tribunal Judge Bristow, but Mr Lee initially understood that one was no longer relied upon. It became apparent that the latest Witness Statement updated the one before Judge Bristow (rather than the one before Judge Sweet) and that reference to that earliest statement was also required.
35. The two reports prepared by an independent forensic psychologist, Ms Davies dated 17 January 2023 and 15 November 2023 in which she particularly assesses the extent of the Appellant's rehabilitation and risk of reoffending have not been challenged by the Respondent and I give the evidence therein full weight.
36. A key element in this appeal is the expert evidence of an independent social worker, Ms Soroya. I have before me two reports from Ms Soroya dated 16 February 2023 and 7 February 2024 as well as an expert report of another independent social worker, Mr Mann dated 28 January 2020. The last of those reports is somewhat outdated in relation to the current family arrangements, although I do refer to it in the context of assessing conflicting evidence later.
37. Given its importance in assessing the effects of the Appellant's deportation on X and C I have considered Ms Soroya's reports with the utmost care.
38. Ms Soroya's February 2024 report had been the basis for the adjournment granted by Judge Mandalia and I. It was supposed to have addressed Ms R's stated concerns about recent changes in X's behaviour. In fact it went much further considering matters such as changes in contact arrangements as well as M reaching adulthood. Generally its conclusions are consistent with those of the 2023 report (and I revert to this consistency below).
39. Mr Parvar submitted that the evidence of Ms Soroya was very one-sided and she stepped into the arena of being an advocate for the Appellant. She did not recognise that the relationship with the Appellant would not cease on his deportation and some elements of her report stray into speculation. Mr Lee rebutted the submissions with reference to the care taken in producing the reports as shown by the meetings and calls she has listed.

40. Having considered Ms Soroya's reports in the context of the evidence as a whole I have concluded that there are some issues with the reports which mean that I do not attach full weight to all of her evidence therein, as I now explain.
41. At times Ms Soroya considers the worst position after deportation of the Appellant. For example, she notes the children's contact with the Appellant's brother and his family and the close relationship between them, but then expresses concern about that stopping. However, there appears to be little if any basis to consider that the contact would stop. The relationship between the Appellant's children and his brother and his family is consistently described as being very close. There is no reason identified why Ms R would stand in the way of that contact. Similarly, Ms Soroya postulates that Ms R's paths and that of her sister RR (who has provided her support historically) "may potentially digress" with no explanation of why that digression would happen.
42. At times Ms Soroya strays outside her remit as an expert; for example, commenting that the Appellant's mental health can best be supported by specialists in the UK, but that is outside her expertise. Ms Soroya challenges Judge Bristow's conclusion that deportation would not be unduly harsh for the children (at the time M and X) but this is not her role. Her role is to provide expert evidence; it is the preserve of the judge to apply the law to the evidence overall.
43. Ms Soroya also, as Mr Parvar correctly submitted, fails to give much consideration to the possibility of X and C visiting Ghana - perhaps with Ms R or with M. Even if this is not straightforward given the distance and cost, there is barely any exploration of it as a possibility in her interviews with the family and at times the report reads as if X and C's relationship with the Appellant will cease.
44. Ms Soroya also fails to consider some of the information provided to her in the context of the full history shown by the evidence as a whole. For example, she was told by Ms R that X's behaviour deteriorated and he had nightmares when the Appellant was in prison. Ms Soroya views this as a basis to conclude that separation from the Appellant now after contact visits triggers that trauma and is evidence of the vulnerability of X if his father is deported. However, there is no recognition that X was aged 2 year to just over 3 years when his father was in prison and his father had moved out of the home where X and Ms R lived more than a year before imprisonment. I am therefore concerned that Ms Soroya does not appreciate all the family history and circumstances when reaching some of her conclusions.
45. While Ms Soroya describes the measures which may be accessed to assist X and C in adjusting to their father's deportation, by the end of the report Ms Soroya describes the impact on them in terms which are absolute and far reaching, saying that: "such a separation will impact the children's sense of self, identity, well-being, emotional

development, education, behaviour and peer relationships. This is immense and will be to the detriment of their future life chances.” There is very little assessment of the extent to which family support and the support of professionals would have any impact on that conclusion.

46. Furthermore, Ms Soroya included the same far-reaching conclusion in her 2023 report. Given that the contact between the Appellant X and C was much less regularised and was notably less, it appears that Ms Soroya’s fundamental conclusion is that removing the availability of even limited in person contact with a parent has those extensive implications regardless of family and other support. While I fully recognise that deportation will be traumatic for the children and particularly X, I have to remember that what I am required to identify is whether the harshness is what was described as “acceptable” or “justifiable” in HA Iraq (at [31]) or is “unduly” harsh.
47. I have therefore considered Ms Soroya’s evidence in the reports alongside the other evidence rather than simply relying upon her conclusions wholesale. I have considered evidence from her reports (and especially the latest as being the most up to date) as a whole, taking account of not only the undoubtedly negative effects on the children of their father being deported, but also the mechanisms which can support them.
48. In addition to the documentary evidence I heard evidence from the Appellant, his ex-partner Ms R, his current partner, Ms D, and his son M.
49. The Appellant’s evidence regarding family in Ghana was challenged by Mr Parvar in cross-examination. I found the Appellant to be inconsistent in his responses regarding the location of his mother. In the Appellant’s Witness Statement dated 28 February 2023 he says that he returned to Ghana in 2005 to marry M’s mother, but has had no contact with his mother since then. He visited Ghana in 2016 but was told she had moved to the Ivory Coast. However, in his Witness Statement dated November 2018 he said that his mother was living at that time in Ghana and he had occasional contact with his mother by telephone. When this was put to him in cross-examination his answers were inconsistent, finally stating that sometimes he hears of her and since 2005 contact has been by telephone either from Ghana or from the Ivory Coast. This is not consistent with his February 2023 Witness Statement which he confirmed and adopted. It is also not consistent with the description he gave to the independent social worker in 2020 whom he told that his mother (then aged around 62 years) lives in Ghana on her own, is retired, they have some telephone contact and he occasionally sends her money. Similarly, he told Ms Davies as recently as 2023 that his mother is in Ghana.
50. While I recognise that a person may embellish some parts of their account and be truthful in relation to other parts, the Appellant is well aware that the existence of supportive family in Ghana is relevant to his

case as his Witness Statements, which seek to minimise family support there, show. I conclude as a result of the inconsistencies in his evidence that he has not shown that he could not call upon his mother for support if he returned to Ghana.

51. I also found the Appellant to seek to minimise the support of his extended family in the UK saying that his brother would not assist Ms R if he was deported because his wife has had a heart operation, yet only last month he told Ms Soroya of the good relationship with the brother and his family and the ongoing contact with the children, such that Ms Soroya expressed concern if that relationship should not continue in the future if the Appellant was deported. Again I find that the Appellant is seeking to embellish his case.
52. These conclusions mean that I reduce the weight given to the Appellant's own witness evidence, particularly where that evidence is inconsistent with other evidence or findings made by Judge Bristow.
53. Ms D and M have given consistent evidence to which I attach full weight.
54. The evidence of Ms R raised more issues. She has been keen to attribute any misbehaviour of X to the issues for him in potentially experiencing the deportation of his father. For example, she has claimed that there was an incident of physical aggression at school caused by his stress, whereas the school have written to say that it was an innocent accident in the normal activities in a playground and that they have no concern about X's behaviour. Similarly, Ms R told Ms Soroya that X can become overwhelmed by emotion and stress causing outbursts at home, but Ms Soroya advised that what was described to her was instead a response to an exciting time at New Year. In relation to the existence of support for her and the children in the event of the Appellant's deportation, Ms R has been at pains to emphasise potential problems (such as her sister Ms RR now having a one year old child) with little recognition of the wide extent of potential support. I have therefore given less weight to her evidence where other evidence contradicts it.

Findings of Fact

55. The relevant findings of Judge Bristow are the starting point, but in this case the circumstances and evidence have changed so much that there is little benefit in reciting them: C was not born, X was much younger, M was still a teenager living with his mother with little contact with the Appellant since going into custody, the Appellant was still in a relationship with Ms R and in contact with M's mother and the independent social worker's report had not been prepared. However, the evidence before me does not justify departure from the following findings:
 - a. Ms R is a British citizen;

- b. The Appellant's brother was serving a prison sentence for supplying Class A drugs on 18 May 2017. The Appellant's brother took advantage of him and got him to bring Class A drugs into the prison.
- c. The Appellant did not plead guilty and was convicted after trial. The Judge noted that Class A drugs are a menace in prison leading to all sorts of problems, not least the violence associated with the supply of those and disputes about the supply of those. The Judge concluded that there were no very unusual circumstances which would make suspension of the sentence appropriate.
- d. The Judge concluded that it was pressure from the Appellant's brother and loyalty to him rather than financial gain that motivated the Appellant's offence. The Judge also concluded that the Appellant acted out-of-character and cited referees who spoke very highly of him. The sentence of 2 years immediate imprisonment was at the bottom of the range for List A offences. The positive aspects of the Appellant's character referred to by the sentencing judge have continued whilst he has been in custody.
- e. The Appellant speaks English;
- f. The Appellant was not financially independent. He was dependent on the UK state. That was a situation he had brought about by his own behaviour.
He was not dependent on the UK state before he went into custody. He intends not to be dependent on the UK state if and when he returns to society.
- g. X accompanied Ms R on visits to see the Appellant in prison. He had been asking Ms R for his father.
- h. The British citizenship, accommodation and finances of Ms R and the children would not be affected by the Appellant's deportation.
- i. The Appellant has been in the UK for a considerable period of time. He has close relationships with family members other than his partner and children, in particular two godchildren.
- j. The Appellant understands the consequences that committing criminal offences can have on his immigration status. The Respondent informed him that he had been refused naturalisation as a British Citizen because he had committed the failing to provide a specimen offence. Yet the Appellant went on to offend again in 2016 and 2017.

56. I now turn to my findings beyond the starting point of Judge Bristow's decision.

57. In addition to his immediate family the Appellant has one brother and his father living in the UK. His father has Parkinson's disease. The Appellant has two nieces and two nephews in the UK. He is in regular contact with his brother and his children. He also has a few aunts living in the UK with whom he has limited contact.

58. The Appellant lives in a town on the south coast of England and Ms R lives in a town some 50 miles away along the coast. Ms D lives in the same town as the Appellant.
59. Ms R looks after X and C for most of the time. The children go to stay with the Appellant at Ms D's home every other weekend and at times in school holidays. X attends school and C attends nursery. This contact has significantly increased and become more regularised in the last year. Indeed, the evidence shows that contact between the Appellant and his children has been limited for much of the past 7 years. The Appellant moved out of the house where he was living with Ms R in February 2017 because it became overcrowded when she took in her younger sister and brother. Although he has described spending time with Ms R, I and M at that time he was not living with any of them. The Appellant then went to prison from 11 April 2018 until release in June 2019. By early 2020 his relationship with Ms R had begun to seriously deteriorate. He moved out for weeks to stay with friends. In late 2021 he and Ms R separated. His contact with X and C was generally limited to them spending one or two nights per month with him and was more random than now.
60. The Appellant and Mr R have said that the Appellant sometimes picks up the children from school and nursery for the visits, but this appears to be rare at most given that the school has written to say that they have no contact with the Appellant.
61. Ms R currently works 22.5 hours per week as she has done for some years. She receives state benefits but no financial support from the Appellant.
62. Ms R is one of four siblings. One of those, RR is in her early thirties and lives locally with regular contact with Ms R. RR has two children of her own, the youngest of whom is one year old. Another sister lives with Ms R when not attending university. She has been residing with Ms R since around 2017 and is a key family figure for X and C when she is at home.
63. The Appellant and Ms D met in the summer of 2022 and started a relationship as a couple in around November 2022. They do not cohabit, although when the children stay with the Appellant they all stay at Ms D's flat. Ms D is studying at university completing a Master's degree in Digital Marketing and Management and she works as a Content Marketing Coordinator at a jewellers.
64. In Ms Soroya's 2023 report she describes the close relationship between M and X and C. He identifies them "100% as his brother and sister" and would want to maintain this connection. His close connection with the younger children was confirmed at the hearing before me. In the 2023 report Ms Soroya said that M is the most

familiar male contact for Isaiah and someone he feels very comfortable with. Inevitably if the Appellant is deported M will feel increasing responsibility for the younger children. M has made clear that he will maintain and build on his relationships with X and C. He will take it upon himself to do so and the visits to see X and C have been made independently of the Appellant for some time. There is no evidence from Ms R that the relationship would be anything other than valued by her, X and C.

65. Ms Soroya's latest report confirms that during contact visits with their father X and C also meet their uncle and aunt and three cousins. They are reported as having good relationships and two of the cousins are of similar ages to X and C. Ms Soroya says that she would be concerned if this family contact was lost in the event of the Appellant's deportation, but given how Ms R has described the difficulties of being a single parent and the close relationship between the Appellant's brother, his family and X and C, I find little basis for this concern. I find that the relationships have endured and that the concern of Ms Soroya is misplaced.
66. X's school writes to say just last month that he is working at the expected standard and the school do not have any direct concerns in relation to his behaviour. It is said that he is always smiling, takes part in discussions well and is extremely creative.
67. C's nursery describes as a happy little girl who is doing well in all areas of her development. There are no concerns regarding her emotional state. The nursery was asked for a professional opinion about the impact of the Appellant's deportation and stated that she would not be able to understand the reason, would miss her father and may be caused emotional difficulties or attachment issues.
68. I place the nursery's evidence alongside that of Ms Soroya who says that C would suddenly experience of trauma and loss to contend with which would certainly impact in all areas of her life. Ms Soroya says that the Appellant's deportation would be extremely negative on X's well-being and his ability to engage and learn. As a result she considers that both children would need focused support. In C's case support from the nursery may be adequate, but X may need additional specialist input and Ms Soroya comments on the potential for delays in obtaining NHS child mental health support. However, she also identifies a support programme designed to help children deal with challenges and advocates starting that as soon as possible in advance of any final decision. She considers that X is already experiencing insecure attachment issues and therefore needs some focussed support.
69. The Appellant, the witnesses and Ms Soroya (relying upon what she has been told by the Appellant and Ms R and Ms D) describe X being upset when he leaves his father currently. Ms Soroya says that X

experiences each separation from his father after their contact at weekends and in holidays as a traumatic experience and that he is in a hypervigilant state fearing that things may change. She has encouraged increased discussion with X so that he is prepared. Ms R and the Appellant have started to do so. However, Ms Soroya also makes clear that on return to his mother X can be settled back into her care and the familiarity of home and the routine of his school life which are providing a stabilising influence.

70. I find that despite his increasing awareness of the situation, X continues to do well at school, always smiling and fully participating. He readjusts quickly when he leaves his father. There are support programmes which can help him further.
71. Ms R is generally in good health. She told Ms Soroya that she had to take a month off work in 2023 because of the stress caused by the uncertainty of the Appellant's situation. One thing is clear from the evidence is that all involved need to have the position about whether the Appellant will be deported made clear as soon as possible. Otherwise I find that Ms R is in good health.
72. Ms R's evidence about coping without the Appellant when he was in prison has been inconsistent: she told the previous psychologist on 2020 that she needed to take a month off work stress having built because of trying to cope and then deteriorating because of the loss of her maternal grandfather with whom she had been very close. When telling Ms Soroya about the month off work Ms R made no reference to the loss of her grandfather and attributed it all to the Appellant's imprisonment and struggling to cope with the children.
73. Ms R says that not having the Appellant here would affect her mental health and well-being. I refer to the history of the extent of the Appellant's involvement with Ms R and the children over the years. While it will clearly be harder coping without the assistance of the Appellant in caring for the children in the agreed contact times, Ms R is clearly a very independent and capable woman who has spent much of the children's lives coping substantially alone. She has the support of not only her own family (in particular her sister RR and her younger sister, but also the support from the Appellant's brother and family.
74. In making an overall assessment under Section 117C (6) I also need to consider the extent of family life between the Appellant and M and Ms D as well as his private life.
75. M is 19 years of age and currently a student at college, planning to start an apprenticeship later this year. He describes seeing his father every one or two weeks, often together with X and C. He values the Appellant's guidance and support. He says that it would not be possible to benefit from his father's advice if his father were to be deported but advice and guidance can be provided via electronic

communication. Clearly there are financial costs in M travelling to see his father but there are no other impediments.

76. Mr Parvar challenged the existence of a genuine relationship between the Appellant and Ms D. However, given consistent evidence from four witnesses: the Appellant, Ms R, Ms D and M I find that there is ample weight to find that they are in a genuine relationship which has been ongoing as such since November 2022. Ms D confirms that the Appellant has told her about his immigration issues from the start. The relationship has therefore commenced in full knowledge of the Respondent's decision that the Appellant would be deported. As such, applying the principles described in R (on the application of Agyarko v SSHD [2017] UKSC 11, I reduce the weight given to that relationship.
77. Ms D is a Spanish citizen born in 1996 who has a Bachelors and Masters' degree and is currently working as a marketing coordinator for a nursery. She has lived in the UK for eight years and has indefinite leave to remain under the EU Settlement Scheme.
78. At the hearing she told me that she has no plans to move to Ghana but continuation of the relationship long distance would be something to be explored. I find there is no evidence to show that if Ms D so wished she could not relocate to Ghana to join the Appellant.
79. I now move on to consider the facts beyond those relating to the Appellant's family life in the UK.
80. Although the Respondent said in the refusal letter that the Appellant arrived in the UK in 2006, the findings of Judge Bristow include a finding that he was cautioned for possession of cannabis on 15 June 2002 and on 19 July 2002 he committed the offences of obtaining or attempting to obtain property by deception for which he was sentenced to community punishment order. He was therefore clearly in the UK before 2006. The Appellant has consistently stated in his Witness Statements that he was brought to the UK by his uncle with his brother in June 2000. However, there is no claim that he had any immigration status. Indeed Mr Mann was told that he had none until 2006 and I conclude that he was in the UK illegally. He then left in 2005 to marry M's mother in Ghana and returned a year later with a spouse visa. Although he was granted indefinite leave to remain in 2008 he failed in his application to be naturalised in 2013 because of criminality.
81. The Appellant was educated to A' levels in Ghana. He studied IT level 1 to 3 in the UK and completed a HND in Business Management. He has taken further courses including in building and construction, administration and IT in prison and told me that he would seek work in construction as an electrician.
82. The Appellant worked for his father's company in a management role, in the security industry, and then on a self-employed basis combining

work as a delivery driver with being a handyman and a tester of electrical appliances in homes, hospitals and IKEA as well as setting up his own website.

83. The Appellant has described obtaining four overseas job offers for work in Dubai and Portugal after his release from prison. He has therefore shown an ability to obtain work, albeit not in Ghana. He describes this as being for his self-employed job which was to test electrical appliances to ensure that they were safe for use. He has provided no evidence that he would be unable to seek work on a similar basis in Ghana or find some other work to support himself given his wide-ranging work experience and qualifications. He was educated in Ghana and has travelled there on various occasions: 2005 to 2006, in 2010 for a funeral; on various occasions to assist with his father's business there; and for a holiday every couple of years until about 2016. He has not visited since 2016, but in the years up until that point he has maintained connection with the country, its society and its culture. Indeed, there is reference in the reports to the Appellant being keen to bring his children up understanding their Ghanaian heritage, identity and culture.
84. The Appellant takes sertraline as an antidepressant, but is not receiving any other input for his mental health. He takes Co-codamol for back pain. He has a speech impediment - a stammer - but has been able to manage this sufficiently to be able to carry out various jobs in the past. He was referred for speech and language therapy in 2012 but is not currently receiving any treatment for his stammer. He has not shown that he would be unable to access appropriate antidepressant and pain medication in Ghana.
85. In terms of the offence which has led to the deportation notice of 19 September 2018, I refer to Judge Bristow's findings set out above.
86. I therefore find that the offence was of moderate seriousness, given in particular the range of sentencing and the starting point for it. The supply of Class A drugs in any context is a serious matter for society; and clearly in the context of prisons there is a strong need for deterrence.
87. The Appellant has a history of offending prior to the offence of conveying cocaine into a prison on 18 May 2017:
- a. Attempt/obtaining property by deception on 5 September 2002
 - b. failing to provide a specimen for analysis on 26 November 2013;
 - c. possession of controlled class B - cannabis on 8 September 2017
 - d. destroy or damage property 2 December 2017
88. None of the earlier offences led to a custodial sentence.

89. After release in April 2019 he then committed the offence of driving a motor vehicle with the proportion of a specified controlled drug above the specified limit on 11 October 2020. This conviction led to a fine and disqualification from driving for three years. Notably, this was at a time when the Appellant was already facing deportation as a result of his 2018 conviction and the dismissal of his appeal by Judge Bristow.
90. Then, only a few months ago he was convicted of driving offences committed on 15 February 2023: using a vehicle while uninsured; driving whilst disqualified; and using a vehicle with no test certificate. His licence was endorsed and he was given a community order of unpaid work.
91. His evidence in his latest Witness Statement addresses the 2023 offences, but is surprisingly dismissive of them saying that he was in a rush to get to an appointment and took the easy way of borrowing his friend's car. At the hearing he said that the appointment was to sign in at the police station and his friend who was driving became sick. That is not the same explanation. Even on a matter such as this the Appellant is not providing consistent, straightforward evidence. In relation to the earlier driving offence in 2020 the Appellant told me that he did not plan to commit an offence; it was just the circumstances of being pulled over by the police which led to the conviction. The evidence shows that the Appellant fails to acknowledge the seriousness of his behaviour time and again.
92. I find that the Appellant's inconsistent explanations and dismissive attitude towards the convictions shows not only a lack of respect for the judicial system, but also for the rules which govern society in this country. In the case of Binbuga v SSHD [2019] EWCA Civ 551 Lord Justice Hamblen at [57 and 58] stated that:
- “cultural integration refers to the acceptance and assumption by the following criminal of the culture of the UK, its core values, ideas, customs and social behaviour. This includes acceptance of the principle of the rule of law....
- ...Social and cultural integration in the UK connotes integration as a law-abiding citizen.”
93. Therefore while I recognise that the Appellant has become integrated into this country in the sense of living here, working here and having a family here, his social and cultural integration is undermined by his repeated criminality. His description of courses taken while in prison as evidence of rehabilitation is undermined by the subsequent criminality.
94. Ms Davies has provided an independent psychological risk assessment report dated 17 January 2023 which was then updated on 15 November 2023 in response to the latest offences. Her reports conclude that his general offending risk is in the moderate range, while

a structured assessment of the risk of violence indicated a low risk of future violent reoffending and a low risk of causing serious harm to others if allowed to remain in the UK. There is a low to moderate risk of him engaging in further antisocial behaviours and accruing further convictions for cannabis use and possession of cannabis. The latest offences would be included within the ratings of the risk factor for antisocial behaviour. I rely on this expert evidence to make findings of fact regarding the Appellant's risk of reoffending in line with Ms Davies' conclusions. The low to moderate risk of anti-social behaviour offences is consistent with my conclusions about the extent of his rehabilitation and his lack of respect for the rule of law in this country.

ASSESSMENT AND CONCLUSIONS

Exception 2: Family life

95. This is the primary provision relied on by the Appellant, as recognised by Mr Lee. When making the assessment I must recognise the high threshold which applies to the issue of whether it would be unduly harsh for X and C to remain in the UK without the Appellant.
96. Having carefully considered the evidence, I do not consider that it would be unduly harsh for X and C to remain in the UK without the Appellant.
97. Considering the evidence and my findings overall, I have no doubt that the children would be detrimentally affected by the deportation of their father; X particularly so. It will be a traumatic time for him. Although he is currently flourishing at school despite the uncertainties in his life, I take into account the fact that his father's deportation is a dramatically different and traumatic event as emphasised by Ms Soroya. He and his mother may well need professional help to navigate through the trauma, but they both have an extensive range of support from family. C, being younger will be less affected as Ms Soroya confirms, but she will also undoubtedly be adversely affected by the lack of the presence of her father. It is in the best interests of the children for them to maintain physical contact with their father.
98. I recognise that remote communication would be no substitute for physical contact. Indeed, Ms Soroya explains that children often try to avoid indirect contact as it can be distressing. Visits are likely to be difficult. They will be expensive and the children will need M or Ms R to take them. However, visits are not unrealistic in the circumstances of this family given that M and/or Ms R could take the children once the Appellant can fund the flights.
99. Despite the current strains and tensions X and C are well adjusted children doing well at school and nursery. I am entirely satisfied that their mother would be able to cope. She currently juggles work and childcare as the Appellant only spends limited time with the children.

She has family of her own to give her support as well as the Appellant's brother and family whom I have little doubt would remain in contact with the children. While it is important that M is able to focus on building his own life, he will undoubtedly be able to provide much valued support to Ms R and more particularly the children.

100. Considering the reports from Ms Soroya carefully it is clear that X in particular will find the deportation of his father traumatic and the effect on both of the children is likely to be substantial. However, X is coping well with the repeated upset of being separated from his father at the end of contact visits. I recognise that deportation is a far greater separation, but the evidence of how X copes with what he already finds stressful is relevant, particularly in the context of the fears of separation Ms Soroya describes. He has not only his mother and M to support him but also extended family of his mother's and the Appellant's.

101. Overall therefore it is clear that the deportation of the Appellant will be harsh for the children, and particularly X. However, given the circumstances overall, including in particular the fact that they live primarily with their mother now, have the support of extended family as well as the clear love affection and support of their half-brother M, are currently thriving despite the stresses for X in particular due to the ongoing uncertainty, I am not satisfied that the elevated threshold of "unduly harsh" involving the sense of bleakness or severity described by the Supreme Court applies in this case.

Section 117C(6)

102. I refer again to the best interests of the children. This is a primary consideration. As stated already it is in the best interests of the children for their father to remain in the UK.

103. I now turn to the matters addressed in Exception 1 which, while not relied on as applying to the Appellant, refers to matters which are relevant to this assessment.

104. I have addressed the limitations on treating the Appellant as socially and culturally integrated. He speaks English but that is no more than neutral in the proportionality exercise. He has worked in the UK although is currently not entitled to do so.

105. I do not find that there would be very significant obstacles to the Appellant's integration in Ghana. He has been away from that country for a significant period, but he has visited on numerous occasions, spent a year living there in 2005-2006 and last returned to visit in 2016. He has therefore maintained connections in visits up until 2016. He has been keen to hold onto and value his Ghanaian heritage. He has not shown that he would be unable to find work there. He has ample experience to use in seeking work. He is keen to do so if he remains

here, with no suggestion that his health conditions would prevent him doing so, and has found opportunities to use his skills in other countries. If that is so then he can also find work in Ghana. I have found that his mother resides there and she will therefore be able to assist his reintegration. The evidence does not show that he would be unable to access his current anti-depressant medication.

106. The Appellant's private life developed while in the UK illegally and before he was granted indefinite leave to remain in December 2008 can be given little weight. As for his private life otherwise I have addressed the extent of his social and cultural integration earlier in this decision.

107. The Appellant principally relies upon the weight to be given to the family life of the Appellant and in particular the impact of his deportation on his family. The Appellant is likely to be separated from his children for the foreseeable future. He would be able to continue that relationship day to day only via remote means which are no substitute for physical contact. It is in the best interests of X and C for their father to remain in the UK. Whilst I have found that the impact on X and C does not reach the threshold of undue harshness I accept that a physical separation of the Appellant from X and C for the foreseeable future would have a significant impact on all involved. The effect on M, being older, is less but still weighs in the Appellant's favour.

108. There is little weight though to be given to his family life with Ms D and that family life could continue with her relocating to Ghana. She is not a British citizen, but Spanish with indefinite leave to remain here.

109. However, weighed against the weight given to the Appellant's life in the UK and, in particular, his family life with his children M, X and C, I must weigh the public interest. There is a very strong public interest in deportation. As stated in section 117C(1), deportation of foreign criminals is in the public interest. That public interest involves the prevention of crime and disorder, not simply due to the risk posed by the offender, which in this case remains moderate for what Ms Davies describes as the lower level anti-social behaviour type offences; but also based on deterrence of others.

110. The more serious the offence the greater the public interest. I have found the Appellant's index offences to be of moderate seriousness given the implications for society of Class A drugs and the particular implications for prisons - although I recognise that it was not an offence of violence.

111. The offence was committed more than 6 years ago. However, the Appellant has offended both before and more importantly after the offence. Those offences were less serious, but cannot be ignored. They are consistent with the conclusion that the level of risk which he poses is low to moderate for further anti-social behaviours. My findings

about the latest of the offences show a disregard for society and culture in the UK.

112. This is therefore not a case where there are compelling circumstances going beyond the factors considered in Exception 2. I conclude that in this case the public interest clearly outweighs the implications of the interference with the Appellant's life and especially his family life in the UK. The deportation of the Appellant would be a proportionate interference with the private life of the Appellant and his family life with M, X, C and Ms D.

113. For these reasons, I dismiss the appeal.

Notice of Decision

114. The appeal is dismissed on human rights grounds.

115. As the appeal is dismissed no fee award is appropriate.

T. Bowler

Deputy Upper Tribunal Judge Bowler
Judge of the Upper Tribunal
Immigration and Asylum Chamber

15/03/2024