



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/01346/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16 February 2015**

**Decision & Reasons Promulgated
On 18 March 2015**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**DEVON JUNIOR HARRIS ROWE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

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

For the Respondent: Mr T Bahja, Solicitor, instructed by Jesus Solicitors

DECISION AND REASONS

1. Although the Secretary of State is the appellant before the Upper Tribunal, I shall continue to refer to Mr Rowe as the appellant herein.
2. The appellant is a citizen of Jamaica, born on 14 July 1979. He was convicted on 11 October 2013 at St Albans Crown Court for possession and producing a controlled Class B drug and sentence to two and a half years imprisonment. In light of his conviction, he was served with a Notice of Liability to Automatic Deportation action

on 27 November 2013. He duly responded to the notice by stating that removal from the United Kingdom would breach his Human Rights as he has a child and wife in the United Kingdom. On 19 June 2014 a deportation order was made by virtue of Section 32(5) of the UK Borders Act 2007. The appellant's appeal against the deportation order was allowed by First-tier Tribunal Judge Bart-Stewart on Article 8 grounds.

3. The appellant was convicted with one other after a three day trial for producing cannabis in a three bedroom house in Hatfield, Hertford. The trial judge considered that the operation was relatively sophisticated and established to produce significant quantities of cannabis for commercial supply. The appellant and his co-defendant had keys to the property and the locked stores within the property and paraphernalia in their possession associated with the production of cannabis, including lighting, work gloves, secateurs and £600 in cash received. The appellant and his co-defendant were not considered managers or organisers, but trusted employees. Neither lived nearby and they had to commute some distance to fulfil their role. Both were of previous good character and produced references. The trial judge considered that the operation fell some way short of properly being characterised as industrial scale cultivation of cannabis and put it towards the lower end of that category. The trial judge was satisfied that what was done was for commercial gain and that only a custodial sentence was justified. The appellant was sentenced to two and a half years' imprisonment.
4. The appellant entered the United Kingdom as a visitor on 24 November 2000. He was given six months leave to enter. He subsequently claimed asylum which was refused and an appeal against that was unsuccessful. His appeal rights became exhausted on 5 February 2002. He was given temporary admission and required to report which he failed to do. On 7 September 2002 he married AR. He was removed as an overstayer to Jamaica on 18 February 2003. He obtained entry clearance to re-enter the UK as a spouse following an appeal. Entry clearance was granted from 16 May 2003 until 15 May 2005. He re-entered the UK on 3 June 2003. He was granted indefinite leave to remain in the UK on 28 June 2005. His daughter, S, with his wife was born on 30 July 2010.
5. The evidence before the judge in the form of letters from West London Mental Health NHS Trust indicated that AR has a long history of OCD and an eating disorder. Her daily functioning is grossly affected by obsessions and disassociated compulsions predominantly in cleaning and checking domains and by unhealthy and unusual eating patterns. Her OCD has been manifest since her teenage years, is profoundly debilitating and renders her unable to work. She was receiving support from the local authority with regard to the care of her child and was under the care of a consultant psychiatrist as well as the Trust's psychology service. The judge also had before her the local authority's Child and Family Assessment completed on 14 April 2014. The report had been produced at the request of the UKBA on the impact the appellant's potential deportation would have on S, his involvement with the child and to explore her current care arrangements. The report referred to a referral in April 2013 from the GP and the appellant's partner who were requesting support

during the ongoing situation following his arrest and her health concerns. The case was allocated to the localities team who still remain actively involved.

6. The judge noted that the Secretary of State accepted that the appellant has established a private and family life in the UK. He has a wife with whom he has been in a relationship for fourteen years and has a long marriage. They also have a child. They lived together prior to his imprisonment and on his release from prison in January 2015 it is anticipated that if not deported, he would return to live with his family. The judge found by virtue of Section 117D of the Nationality, Immigration and Asylum Act 2002 that the appellant's wife is a qualifying partner and the child is a qualifying child as both are British citizens.
7. The judge had regard to **MF (Nigeria) [2013] EWCA Civ 1192**, in which the Court of Appeal accepted that in the balancing exercise, great weight should be given to the public interest in deporting foreign criminals who do not satisfy paragraphs 398, 399 or 399A. It is only exceptionally that such foreign criminals will succeed in showing that their rights under Article 8(1) trump the public interest in their deportation. A two stage test is to be carried out.
8. The judge found in respect of the appellant that under paragraph 398(b) prima facie, deportation is conducive to the public interest because he was convicted of an offence for which he was sentenced to a period of imprisonment of less than four years but at least twelve months. She also found that paragraph 399 applies because the Secretary of State conceded that he had a genuine and subsisting parental relationship with his child, who is a British citizen. She found that paragraph 399A does not apply.
9. The judge considered section 117B. She found that the appellant speaks English and it would appear that for most part he was financially independent as until 2011 he ran his own painting and decorating company. Although he formed his relationship with his qualifying partner when he was in the UK unlawfully and his immigration status was precarious, he left the UK and regularised his stay. His private life was established after returning to the UK with the correct entry clearance.
10. The judge then considered the appellant's offence, the trial judge's sentencing remarks and the sentence of two and a half years' imprisonment which indicated that the trial judge considered this to be a serious offence and the appellant's role within it was serious. However, because the period of imprisonment was less than four years she accepted it as not "the" most serious of offences.
11. The judge found that Exception 1 of section 117C(4) does not apply as the appellant has been in the UK for fourteen years and has only been lawfully resident for ten years and five months, taking into account the period of imprisonment.
12. The judge then went on to consider whether Exception 2 of section 117C(5) applies. This is where a foreign criminal has a genuine and subsisting relationship with a qualifying partner or a qualifying child and the effect of the foreign criminal's deportation on the partner or child would be unduly harsh. In the light of the

appellant's wife's eating disorder and the OCD, the judge found that it would not be reasonable to expect the wife to relocate to Jamaica.

13. The judge considered whether the deportation, which would lead to separation in light of her above finding, would be unduly harsh. In considering this issue the judge had regard to the report by social services which recorded that the appellant has played a strong part in his daughter's day-to-day life since her birth. The report described the appellant's wife's appearing to manage the day-to-day tasks of meeting the daughter's needs appropriately but that she has a lot of support from the maternal grandmother. Reference was made to the child's grandmother's diagnosis of terminal cancer and her ability to provide long term care. The report said it was evident from the child's behaviour that she missed her father greatly and was anxious for him to return home.

14. The judge stated at paragraph 44:

In making an analysis of the implications of the information obtained for the child's future safety, health and development, the social worker states, "The result of deportation can result in S's feeling of abandonment as well as a negative impact on her sense of identity and her right to family life". Such feelings can underlie much of the emotional and behavioural problems that can develop in childhood and into adulthood. She continues:-

"I feel that there is currently no concern no concern in AR's ability to care for S with the assistance of Miss I who had taken over the role from Mr. Rowe. It is important however to note that Miss I is suffering from a terminal illness that should this support fall away from AR and S and Mr. Rowe has not returned to the family home, then there will be a potential concern for AR to meet the needs of S. I feel that a potential deportation of Mr. Rowe would have a negative effect on S and her ongoing emotional and behavioural development as well as AR's ability to meet S's long term needs due to her own issues.

Further it is important to note that due to the nature of Mr Rowe's health issues it is not possible for her to reside in Jamaica as she would not be able to access the same level of treatment that she is currently engaging within the UK. Therefore a possible deportation would mean a permanent splitting up of this family with potential negative impact on S's ongoing development, self-esteem and identity. ...Should Mr. Rowe be deported then family services may need to become involved and explore measures to be put in place to safeguard S and support AR".

15. The judge concluded as follows at paragraph 45

"Taking all those matters into account, in particular the appellant's partner's medical condition which is not fully controlled, the fact that her ability to cope with S in the absence of the appellant is very much dependent on her mother who has a terminal illness and may not be able to assist in the long term, the burden of supporting the appellant's partner and child will fall on social services and lead to potential further behavioural problems by the child. I find that it would be unduly harsh for the claimant to be deported.

16. First-tier Tribunal Judge Landes granted the Secretary of State permission to appeal the judge's decision on the basis it is arguable that the judge did not give adequate reasons for her conclusion that the effect of deportation on the appellant's partner/child would be unduly harsh; there was some contradiction between the judge's findings at paragraph 35 that the appellant's wife was able to care for their daughter given the limited evidence of the appellant being a major presence in his daughter's life and her ultimate conclusions; the judge was speculating as to what might happen in the future given the appellant's mother-in-law's medical condition. First-tier Tribunal Judge Landes noted the Secretary of State's argument that the Tribunal approached the appeal from a neutral starting point instead of one heavily weighted in favour of deportation, but that the judge purported to apply the statutory exceptions. He made the comment that the statutory exceptions themselves weight the balance strongly in favour of deportation and it was not obvious that a judge needed to give additional consideration to the public interest.
17. Mr Avery submitted that the issue in this case is the judge's approach to Exception 2 in section 117C. Their challenge is the lack of reasons the judge gave for reaching her conclusions at paragraph 45. He submitted that there are two parts to the unduly harsh test. The first is that it is a high test. It is not sufficient to show the detrimental effect the deportation will have on the family. He accepted that there will be an adverse impact on the family but there was nothing in the evidence that was close to meeting the unduly harsh test. The word "unduly" must be assessed in the round with all other factors.
18. Mr Avery submitted that in considering section 117C the judge had to take into account the public interest in removing the appellant. He relied on **SS (Nigeria) [2013] EWCA Civ 550** where it was held that where the public interest is set out in the Immigration Rules, considerable weight has to be given to it. Mr. Avery submitted that the judge did not do this. He said that much of the determination is good but it falls down when considering the unduly harsh test. He submitted that paragraphs 40 to 44 contained most of what was in the social services report. There was no reference to case law and no real assessment of the public interest.
19. Mr Bajha submitted that the judge at paragraph 32 set out s.117D which defines a qualifying child and a qualifying partner. At paragraph 33 she cited **MF (Nigeria)**. He submitted that the judge had in mind the public interest when she assessed the unduly harsh test. The judge found that the appellant had been married for fourteen years. He had a genuine and subsisting marriage. The couple had a child who was 3 years old and the appellant was involved in the child's life. Mr. Bajha submitted that looked at in the round, there was no contradiction between the judge's findings at paragraph 35 and her ultimate findings. He submitted that the judge's findings from paragraph 28 to paragraph 45 were perfectly sound. There was no need for the judge to rehearse all the case law.
20. Mr Avery in reply submitted that paragraph 39 is where the judge considered the unduly harsh test. Her conclusions at paragraph 45 do not mention the public interest. He submitted that the seriousness of the crime has to be weighed in the

balance but there was nothing to show that the judge considered the public interest in her conclusions.

21. Following consideration of the arguments, I found that the judge made an error of law. The judge's references to paragraphs 398(b), 399 and 399A and her findings at paragraph 35 were in respect of the Rules that were in place in July 2012. Those rules referred to deportation being "conducive to the public good". Those rules were amended on 28 July 2014 with the insertion of "public interest" in addition to the "public good". The "remaining provisos" of paragraph 399 were replaced with the provisos "it would be unduly harsh for the child to live in the country to which the person is to be deported"; and "it would be unduly harsh for the child to remain in the UK without the person who is to be deported". The same considerations apply to the partner. I find that it was as a result of her consideration of the old Immigration Rules that the judge failed to consider the public interest in deporting the appellant. I appreciate that the respondent's decision was made on 19 June 2014. However, by virtue of paragraph A362 of the Immigration Rules, the judge was required to consider the rules as at 28 July 2014 because Article 8 was raised in the context of a deportation order. I find that although the judge cited MF (Nigeria), she did not apply the principle that in the balancing exercise, great weight should be given to the public interest in deporting foreign criminals who do not satisfy paragraphs 398, 399 or 399A.
22. Having found there was an error of law, I heard submissions from the parties.
23. Mr Avery accepted that the findings of fact made by the judge should stand.
24. Mr Bahja submitted that the public interest comes first and it is a weighty matter. Against the public interest are weighty factors. The appellant has been in a genuine and subsisting marriage with his wife for fourteen years. He has a 4 year old child who is British and a qualifying child. The judge found, as did the Secretary of State, that the child being British is not reasonably expected to relocate to Jamaica. The appellant was of previous good character and is therefore unlikely to reoffend. He asked me to attach great weight to the social services report which he said was prepared at the insistence of the Home Office. The appellant was given two and a half years for the offence committed by him and Exception 2 of paragraph 117C applies. In balancing the public interest against the weighty factors outlined by him, he submitted that it would not be in the public interest to deport the claimant.
25. Mr Avery submitted that I have to assess the nature of the claimant's offence, the commercial production of cannabis and damaging effects from a social point of view, that should be the starting point and then to make an unduly harsh assessment. It is not simply the case that the appellant has to show that the interference of his family and private life will be affected by his deportation. The test is more specific. It has to be unduly harsh in relation to all the evidence. The impact of the appellant's deportation through the assessment of the social services report is what you would get as a result of deportation. That is the nature of deportation. Those factors come

nowhere near making it unduly harsh particularly considered the serious nature of the offence.

26. He submitted that the appellant's immigration history is not spotless. He overstayed his first visit. The crime he got involved in involved considerable effort and a period of time. It was considered a deliberate action on the part of the claimant. The Secretary of State's says that the unduly harsh test has not been met.
27. In reply Mr Bahja said that the appellant overstayed for a short time when he was here in 2001. He returned voluntarily to Jamaica and came back with entry clearance as a spouse. That evidence should not count against him.

The Law

28. Section 117C(1) states that the deportation of foreign criminals is in the public interest. Section 117C(2) states the more serious the offence committed by the foreign criminal, the greater is the public interest in deportation of the criminal.

Section 117C(3) states

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.

Section 117C(5) states:

Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

29. The appellant's wife and child are British nationals. It has been accepted by the Secretary of State that the appellant has a genuine and subsisting relationship with his wife and child. The applicable immigration rule in respect of the child is paragraph 399(a)(ii)(a) - whether it would be unduly harsh for the child to live in the country to which the appellant is to be deported; and (b) it would not unduly harsh for the child to remain in the UK without the appellant. The corresponding rule in respect of the partner is 399(b)(ii) whether it would be unduly harsh for that partner to live in the country to which the appellant is to be deported, because of compelling circumstances over and above those described in paragraph EX.2 of Appendix FM; and (iii) it would be unduly harsh for that partner to remain in the UK without the appellant.
30. The judge found that Exception 1 of section 117C(4) does not apply because the appellant has not been lawfully resident in the UK for most of his life. The respondent has accepted that it would not be reasonable to expect S to leave the UK as her best interests are served by her remaining in the UK in the care of her mother.

The judge accepted that the appellant's wife is a qualifying partner and the child is a qualifying child by virtue of paragraph 117D.

31. The question is does Exception 2 apply and if it does, does it outweigh the public interest in the deportation of the appellant.
32. The appellant is liable to automatic deportation under section 32(5) of the UK Borders Act 2007 and by virtue of the Immigration Rules his deportation is in the public interest in the light of his conviction for an offence for which he given two and a half years imprisonment. The appellant was convicted for his part in the production of cannabis. Whilst the trial judge was of the view that it fell well short or some way short of properly being characterised as industrial scale cultivation of cannabis, he put this towards the lower end of that category. Nevertheless the trial judge considered the offence serious enough to impose an immediate custodial sentence on the appellant.
33. Mr Bahja said that the appellant was previously of good behaviour, which I accept. The appellant said he was a painter and decorator. The judge accepted that for the most part the appellant was financially independent as until 2011 he ran his own painting and decorating company. He claimed at the hearing below that at the time he committed the offence, his painting and decorating business was not doing well and he was asked to help in someone's cannabis garden on the promise of a good financial reward. He now regrets this. He is classified as a low risk offender. The claimant said to the judge that it would be harsh, unconscionable and disproportionate to force him to be separated from his family. I find however that he had no thought at the time of the effect his illegal activity would have on his wife and daughter. He had a legitimate means of making money but chose during the down turn to deliberately engage in an offence which has a devastating impact on those who use cannabis. The judge accepted the appellant's evidence that he has a business network that he can access on his release in order to secure work to be able to provide for his family and to prevent a relapse into the criminal justice system. That may be the case, but it is a pity that he did not resort to this business network in order to prevent him from committing the criminal offence.
34. The appellant claimed he had been classified as a low risk offender. However, in the pre-sentence report dated 10 October 2013 he was assessed as posing a medium risk of serious harm to the general public through the production of more Class B drugs. This was because of the significant amount of cannabis that was being produced and the potential harm to the public was significant. The report said that in order to address this risk, the appellant needed to demonstrate that he accepts responsibility for his offences, address his financial circumstances but also improve his decision-making and the thinking skills that he appears to have used for criminal gain and in full knowledge of the potential harm drugs cause the community. There was no evidence before me to show that the appellant has undertaken any courses whilst in prison to address the issues raised in the pre-sentence report.
35. I now consider whether Exception 2 of section 117C(5) applies in this case.

36. The appellant has been in the UK for fourteen years, but he has only been lawfully resident in the UK for ten years and five months, taking into account the period of imprisonment. He married his wife on 7 September 2002, and this means that they have been married for twelve years. It is accepted that they have genuine and subsisting marriage. He has a daughter, S, who was born on 30 July 2010. S is now 4½ years old. His wife and daughter are British citizens and therefore are a qualifying partner and a qualifying child.
37. A Child and Family Assessment was undertaken by a social worker at the request of the Secretary of State. The Assessment was to consider the impact of the appellant's deportation on S. The request was made to Hammersmith & Fulham on 6 January 2014 following the appellant's arrest and imprisonment of the appellant.
38. The Secretary of State relied on parts of this report in making her decision.
39. The report noted that AR has an ongoing struggle with an obsessive compulsive disorder and an undiagnosed eating disorder. With regard to her care of S, AR is said to have told Dr Arora, the treating Consulting Psychiatrist, that due to her compulsive behaviour she is capable of making meals for S. This takes a long time and adds to her stress levels. The report states that there have been no concerns raised about AR's basic parenting skills. There are no indicators that she is not meeting the needs of S. However she relies on her mother, Miss I for support while the appellant is in prison. Miss I has been diagnosed with terminal cancer and although she currently plays an active and supportive role with AR, the continuation of this role may not be possible. Should Miss I's health continue to deteriorate, then the level of support she is able to offer would diminish which would be likely to have a negative impact on her long term support. The report goes on to say that at this stage there are no ongoing indicators that AR is not meeting the needs of S. She demonstrates the ability and insight to safeguard S and is very loving and protective of her. The appellant states that he does worry about AR and S with regard to the effect of AR's health issues. However, he states that she is a very loving and caring mother and he has no concerns about her ability to safeguard S. The social worker said she felt that there was currently no concern in AR's ability to care for S with the assistance of Miss I who has taken over the role from the appellant. Whilst the social worker says that it is important to note that Miss I is suffering from a terminal illness and should this support fall away and the appellant has not returned to the family home, there will be a potential concern for AR to meet the needs of S. Nevertheless for the moment AR has been assessed as having the ability to care for her daughter.
40. In respect of S, the report states that no health issues have been reported in regard to S by her parents. The information received from the GP stated that there were no safeguard concerns. The nursery school which she attends also stated that they have no concerns about S's development or behaviour. She engages well with her peers and with the adult staff members at the nursery. During her visits and prison visits S was seen to have a warm and engaging relationship with both parents. She has a very close relationship with her maternal grandmother, Miss I, who is a regular visitor in the family home. She is an active little girl who was observed to be happy

and comfortable. She engaged well with the appellant during the prison visits and demonstrated an appropriate level of attachment. She did not display strong signs of distress, other than being sad at having to leave her father behind, when leaving the prison. The social worker said this can indicate that she has a secure attachment to him and feels secure in the knowledge that she will be seeing him again soon.

41. The report then addressed the concerns for S should the appellant be deported from the UK and how this will impact on her emotional and behavioural development. The report stated that before his incarceration the appellant offered a high level of support to his wife to ensure that they are able to meet S's needs. Studies have shown that children who lose a parental figure can live with a number of mostly unanswerable questions which reside at a deep and unconscious level, possibly never coming into conscious thought but nevertheless constantly there and constantly troubling them. The result of the deportation can result in S's feeling of abandonment as well as a negative impact on her sense of identity and her rights to a family life. Such feelings and unanswered questions are often too painful for children to face alone and underlies much of the emotional and behavioural problems that can telescope in childhood and further on in adulthood.
42. The report said the appellant has been a constant figure in S's life since her birth in July 2010. He was a daily member of the family living in the same property with AR and S until his incarceration in September 2013. It was observed during her visits that the appellant and S have a warm, loving and engaging relationship. A possible deportation of the appellant could result in damage to S's emotional and behavioural development and missing out on her relationship with her father. It was noted, however, that no developmental concerns have been raised in respect of S by the GP family support worker or by the nursery staff. The child and family assessment has not identified any concerns that AR is not meeting the needs of S. AR is currently able to meet the day-to-day needs of S and shows insight in being able to safeguard her. AR shows insight in how her health issues can potentially affect S and with the help of Miss I is able to safeguard S from this having a negative impact on her emotional and behavioural development. AR is linked with the localities team and is working on establishing boundaries which will continue to assist in S's development.
43. The social worker felt that there is currently no concern in AR's ability to care for S with the assistance of Miss I who is taking over the role of Mr Rowe. She said it was important however to note that Miss I is suffering from a terminal illness and that should this support fall away for AR and S and the appellant has not returned to the family home, there will be a potential concern for AR to meet the needs of S. The social worker felt that the potential deportation of the appellant would have a negative effect on S and her ongoing emotional and behavioural development as well as AR's ability to meet S's long term needs due to her own issues. Furthermore, due to the nature of AR's health issues it would not be possible for her to reside in Jamaica and she would not be able to access the same level of treatment that she is currently engaging with in the UK. Therefore a possible deportation would mean a permanent splitting up of the family with potential negative impact on S's ongoing development, self esteem and identity. Should the appellant be deported family

services may need to become involved and explore measures to be put in place to safeguard S and support AR.

44. I find that this case is finely balanced on the evidence. First of all the deportation of the appellant does not have to lead to a permanent splitting up of the family. The appellant can apply for revocation of the deportation order and the application would be considered in the light of the circumstances of the family appertaining at the date of the application.
45. I am not persuaded by the social worker's report that the appellant's wife is unable to meet S's long term needs due to her own medical condition should the appellant be deported from the UK. The report states no concerns have been raised about AR's parenting skills and there were no indicators that she was not meeting the needs of S. At the moment however AR has the support of her mother, Miss I. I accept that Miss I suffers from a terminal illness. In the absence of a medical report on Miss I, there is no way of knowing how long her support for AR and S can continue. For the moment however she is available and able to give them the support that the claimant is unable to give whilst he is in prison, and indeed while he commuted some distance to take part in the criminal enterprise. No doubt that Miss I will continue support her daughter and S should the appellant be deported from the UK. If there comes a time when Miss I is no longer able to offer them her support, the evidence is that social services will come to their aid. In the light of this evidence I find that the effect of the appellant's deportation on AR will not be unduly harsh.
46. It is the concern for S that makes this case finely balanced. At the moment S seems to be a well adjusted, active and happy child. She is well cared for by her mother and grandmother in the absence of her father. The social worker's report indicates that since his incarceration in September 2013 the appellant has been visited by his wife and daughter approximately once or twice a month. He has telephone contact with his family almost daily and also writes letters to his daughter which she talks fondly of. S makes lots of drawings for her father which she takes with her when visits him. On this evidence what will cease in the event of his deportation will be the regular visits by his wife and daughter. I am assuming that he will continue to maintain telephone contact with his family and continue to write to his daughter. The social worker relies on studies which have shown that children who lose a parental figure can live with a number of mostly answerable questions which reside at a deep and unconscious level, possibly never coming into conscious thought but nevertheless constantly there and constantly troubling them. The result of deportation can result in S's feelings of abandonment as well as a negative impact on her sense of identity and her right to family life. Such feelings and unanswered questions are often too painful for children to face alone underlines much of the emotional and behavioural problems that can develop in childhood and further on in adulthood.
47. I find that the appellant's deportation will mean that he will no longer have a physical presence in the UK and therefore S will lose a parental figure. Nevertheless his contact with her by telephone and letters will mean that the loss will not be a total abandonment. In any event, the report when on to say that AR and S have a good

level of support from the localities team, family as well as mental health professionals and that should the appellant be deported, family services may need to become involved and explore measures to put in place to safeguard S and support AR. This means that AR and S will not be left without support. I find on the evidence that the effect of the appellant's deportation on his wife and child would not be unduly harsh.

48. I find that there is a strong public interest in deporting the claimant from the UK. The trial judge considered it a serious offence such that it merited a custodial sentence. The trial judge was well aware of the health difficulties of the claimant's wife and the fact that they were reliant upon the care that he offered. Despite his circumstances, the trial judge took the view that only a custodial sentence could be justified in this case. His family have coped in his absence. I find on the evidence that the public interest in deporting the claimant outweighs the impact his deportation would have on his wife and child.

49. The appellant's appeal against the deportation decision is dismissed.

Signed

Date **17 March 2015**

Upper Tribunal Judge Eshun