



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/01955/2013

THE IMMIGRATION ACTS

Heard at Field House
On 16 October 2018

Decision & Reasons Promulgated
On 14 November 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

K J
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: In person

For the respondent: Mr Chris Avery, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

The Court of Appeal made an anonymity order in this appeal. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant or his family members, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

1. This appeal returns to the Upper Tribunal from the Court of Appeal which in a judgment reported as *NA (Pakistan) and others v Secretary of State for the Home Department* [2016] EWCA Civ 662 allowed the Secretary of State's appeal against the decision of the Upper Tribunal setting aside the decision of the First-tier Tribunal dismissing his appeal against deportation and substituting a decision to allow the appeal on Article 8 ECHR grounds, with reference to section 117C(6) of the Nationality, Immigration and Asylum Act 2002 (as amended).
2. The appellant has been found to be a citizen of Angola, though he now claims to be stateless. He has never made a statelessness claim to the respondent.

Background

3. The appellant came to the United Kingdom in 1989, age 7, and suffered abuse and neglect such that he was taken from the 'uncle' who brought him here and brought up in care. He told Dr Joanne Lackenby, who has prepared psychological assessments throughout these proceedings, that as a teenager he carried a knife for protection.
4. His first known offence was committed when he was 15. The appellant said he had retaliated to racial abuse. On 28 June 1998, he was sentenced to a 12-month supervision order and £50 compensation for possession of an article with a blade in a public place and assault occasioning actual bodily harm.
5. On 10 September 1999, aged 17, the appellant was convicted of robbery and sentenced to a 2-year conditional discharge and £100 compensation order, for taking a person's wallet and phone. He denied having used force.
6. On 20 July 2000, now age 18, the appellant was convicted of having a bladed article in a public place, theft, and assault with intent to resist arrest; he had taken someone's wallet. His conditional discharge was revoked and he was sentenced to 15-months in a young offender institution.
7. On 8 November 2002, with another defendant, the appellant was sentenced to 10 years imprisonment for aggravated burglary, while suffering from crack cocaine use and withdrawal. The appellant had a drug habit and had run out of supplies that morning; they wanted the money for drugs. He and three other men had set out to rob an Asian man whom they thought was a drug dealer who would have both drugs and money at home. They entered his flat in London as trespassers, intending to burgle the flat and rob the owner. They attempted to force him to tell them where the money was, in front of his wife and children. Only one other man was tried with the appellant, the other two were not traced. The sentencing Judge treated them as equally culpable.
8. The appellant was released on licence in 2008. On 31 October 2015, he committed an offence of robbery, entering a bookmakers with two other men. They all left, then the appellant returned, leapt over the counter shouting 'give me the fucking money' and took a quantity of money from the tills and a purse from a handbag, belonging to a

member of staff. On his way out, he headbutted one of the other men, which he claimed not to remember but was clear on the closed circuit television cameras. He was under the influence of crack cocaine and alcohol. He used the money to pay a loan shark to whom he owed money. He was sentenced to 42 months (3 years 6 months) imprisonment and electronic tagging, both while on bail before the trial in April 2017, and after his release in August 2018.

9. The appellant's accepted history is set out in the *NA and others* decision at [64]-[69] (I have anonymised the names of his partner and the 'uncle' who brought him to the United Kingdom:

"64. KJ is a national of Angola, born on 2 June 1982. He was brought to the UK in December 1990, aged 8, by a man [the 'uncle'] who posed as his father. There was a report when KJ was aged 9 that [the 'uncle'] had abused him, and he was taken into foster care for a while. But he was then returned to [the 'uncle'], who was believed to be his father. There was further abuse by [the 'uncle']. At the age of about 13 KJ was taken into care. On 12 November 1997, at the age of 15, he was granted indefinite leave to remain.

65. From 1997 KJ started getting into trouble and began committing offences. In March 1998 he was convicted of possession of an article with a blade and assault occasioning actual bodily harm. In June 1998 he committed a robbery whilst on bail. On 20 July 2000 he was sentenced for an offence of having a bladed article, theft and resisting arrest and sentenced to 15 months' detention in a young offenders' institution. On 7 November 2002 KJ was sentenced to 10 years' detention in a young offenders' institution for a grave offence of aggravated burglary committed with three others, who had together entered a flat during the night, tied up the occupant and assaulted him (one of them stabbing him) in an attempt to make him divulge where money was kept. KJ was 19 at the time he committed this offence. The length of KJ's sentence means that this is again a case to which section 117C(6) applies.

66. While in detention, KJ began a relationship with [his partner], who visited him in prison from about the end of 2003.

67. On 11 December 2007, the Secretary of State made a deportation order in respect of KJ. KJ's appeal against that order was dismissed on 12 November 2007. However, he was not deported at that stage because of difficulties in obtaining a travel document to send him to Angola.

68. In October 2008 KJ was released from immigration detention on bail to reside at the home of [his partner's] mother. Initially he reported in accordance with his bail conditions, but fearing deportation in October 2010 he absconded.

69. In March 2013 [his partner] was pregnant by KJ and KJ's solicitors wrote to the Secretary of State with representations and evidence and offering to report to the immigration authorities on condition that he was not detained. The evidence included a report dated 15 September 2012 from a consultant psychiatrist, Professor Cornelius Katona, which assessed KJ to be suffering from depression, anxiety and post-traumatic stress disorder (PTSD) and to be at risk of suicide if returned to Angola. KJ was sent a reporting notice and on 25 March 2013 commenced reporting again. On 31 March 2013 KJ's and [his partner]'s daughter was born."

10. On 12 September 2013, the Secretary of State refused to revoke the deportation order. The appellant appealed to the First-tier Tribunal which allowed his appeal, finding it probable that the appellant had some relatives in Angola, but that since he had been so long in the United Kingdom, it could not be assumed that they would support him to build a new life there. The Upper Tribunal set aside the decision for failure to refer to paragraphs 398 and 399A of the Immigration Rules and proceeded to remake the decision.
11. The Upper Tribunal gave very great weight to the appellant's offending history, which had attracted a sentence of 10 years' detention in a Young Offenders' Institution. The Tribunal found that it would not be reasonable to expect the appellant's partner and their (elder) daughter to go with the appellant to Angola, but that those factors alone did not outweigh the public interest in his deportation. The Upper Tribunal considered Exception 1 to section 117C and the Court of Appeal accepted that the Upper Tribunal had been entitled to find that he had no familial ties in Angola of any materiality.
12. The Upper Tribunal allowed the appeal under section 117C(6), finding that there were very compelling circumstances which warranted allowing his appeal against deportation. The Secretary of State appealed to the Court of Appeal.
13. Meanwhile, on 30 June 2015, the couple had a second child, a daughter; the appellant's partner (his fiancée) was supporting the whole family but she was earning less on maternity leave, and going through a job restructure. She had fallen behind with rent and council tax and was receiving letters threatening eviction. She tried to keep the matter from the appellant, but when he discovered a letter from the landlord threatening proceedings, the appellant was very upset, partly because he had not been told of the problems.
14. During 2015, the appellant attempted suicide again, going out in his pyjamas, heading for a motorway bridge. The police found him and talked him into getting into a police car. He broke down and said that his girlfriend would be better off without him as he could not contribute to the family (he was not allowed to work) and he had nothing to offer. He was admitted to the local mental health unit and assessed, then sent home.
15. On 31 October 2015, the appellant committed a further offence of robbery, for which he was sentenced on 4 April 2017 to 42 months' imprisonment. He served 16 months of that sentence before being release in August 2018.

Court of Appeal judgment

16. The analysis of the Upper Tribunal's judgment in the Court of Appeal continued:

"76. ... He had no ties with Angola and no communication skills, so removal there would be to an alien environment without any support system at all; and this had to be added to his mental state, and the risk it would deteriorate, so that he would be at risk of depression, worsening symptoms of PTSD, drug-taking

and even committing suicide if deported, as explained by Professor Katona and Ms Lackenby in their reports: paras. [43]-[51].

77. The Tribunal noted that counsel for KJ canvassed the possibility of an Article 3 ECHR claim against deportation by KJ based on his risk of suicide, but did not develop this. The Tribunal noted that the Secretary of State in her decision letter of 12 September 2013 stated that Angola had relevant drugs and medical treatment available, but dismissed this as an answer: "It is hard to see how a man with no language skills and no familial ties in Angola could avail himself of the limited healthcare there" (para. [47]).

78. The Upper Tribunal correctly directed itself as to the test applicable under section 117C(6). It also correctly recognised that the strength of KJ's claim to fall within Exception 1 could in principle furnish grounds on which it might be said that there were "very compelling circumstances over and above those described in Exceptions 1 and 2".

79. However, Mr Tam submits that the Tribunal erred in the weight it placed upon the medical evidence in KJ's case. The Tribunal ought to have considered KJ's case based on Article 3 first, against the very high threshold required to be satisfied for such a claim to be made out, and should have found that KJ's case clearly did not meet that test: see *GS (India) v Secretary of State for the Home Department* [2015] EWCA Civ 40 for a detailed recent discussion of the relevant authorities. The Tribunal ought then to have addressed the question whether the lesser standard of medical treatment which might be available in Angola impacted in any relevant way on his family life or private life interests in the UK, bearing in mind that a similar rigorous standard of relevance of difference in medical treatment is applicable in the context of a claim under Article 8 as it is in the context of a claim under Article 3, since both Articles reflect in that respect an underlying principle

"that the ECHR does not impose any obligation on the contracting states to provide those liable to deportation with medical treatment lacking in their 'home countries'. This principle applies even where the consequence will be that the deportee's life will be significantly shortened ..." (*MM (Zimbabwe)* [2012] EWCA Civ 279, [17]-[18] per Moses LJ; see also *GS (India)* at [85]-[87] per Laws LJ and [111] per Underhill LJ).

80. In our judgment, this criticism of the Upper Tribunal judgment is made out. The Tribunal erred in law by failing to direct itself properly regarding the stringency of the test to be applied when considering whether a difference in availability of medical treatment as between Angola and the UK could play any significant role in bolstering KJ's claim to have the deportation order set aside, let alone whether it could make any significant contribution to establishing that there were other "very compelling circumstances" for the purposes of section 117C(6).

81. We therefore allow the appeal on this ground and remit it to the Upper Tribunal for the decision to be re-made. This is not a case in which it can be said that KJ's appeal against deportation must necessarily succeed or must necessarily fail."

17. The appeal was remitted to the Upper Tribunal on that basis.

Upper Tribunal hearing 2018

18. Pursuant to the decision of the Court of Appeal in *NA and others*, the appeal was listed for hearing on 16 August 2018. On 9 July 2018, the appellant's then representatives, Legal Rights Partnership solicitors, wrote to the Upper Tribunal, giving paragraph 15(2A) notice of his intention to rely on updated evidence, as the last First-tier Tribunal decision in this appeal was in 2014 based on evidence dating back to 2013.
19. The appellant sought an adjournment because he wished to submit updated witness statements, an up-to-date psychiatric report from Professor Katona, an updated forensic psychologist's report from Joanne Lackenby, and an updated Independent Social Worker report from Judi Lyons, all of whom had previously provided expert reports on his behalf and were willing to do so again.
20. On 10 July 2018, Upper Tribunal Judge Plimmer granted an adjournment, directing that the appellant file and serve all evidence relied upon in one comprehensive indexed and paginated bundle, by 27 September 2018, and a skeleton argument cross-referencing to that bundle no later than 7 days before the hearing. The appeal was to be relisted in the Upper Tribunal not before 10 October 2018.
21. The appellant was unable to comply with Judge Plimmer's directions. On 10 September 2018, Legal Rights Partnership wrote to the Tribunal to say that they were no longer able to represent the appellant on legal aid as they had withdrawn from the legal aid contract, but were assisting the appellant in his adjournment application. The appellant did not have the money to pay privately but would make strenuous efforts to find another legal aid solicitor, if time was allowed for him to do so. They enclosed a statement from his partner, showing efforts made by her to contact legal aid solicitors on 17 July 2018, without success.
22. The appellant's partner in her statement said that he was released on licence in August 2018. His sentence had allowed him to complete a lot of therapy and his mental health was noticeably better, according to his partner, who has nothing but praise for the appellant's skills and commitment as a father to his daughters. He takes his medication regularly, and goes to the gym which really helps. He is receiving support through MIND and on the waiting list for intensive psychiatric counselling following his childhood trauma. His daughters, who thought 'daddy was away working' have been delighted to have him home and behavioural problems caused by his absence are beginning to resolve. However, the appellant's partner also gave details of suicide attempts by the appellant, one when he had taken all of his sleeping tablets and was referred to the mental health services, and another when he walked in front of a car.
23. The adjournment was refused on 11 September 2018 and the hearing came before me as listed on 16 October 2018. The appellant represented himself, with His partner assisting him as a McKenzie friend. The appellant said that he was terrified at the prospect of dealing with his appeal in person but did not apply for an adjournment as he had no realistic hope of finding a legal aid solicitor to assist him. The appellant

and his partner gave oral evidence, the partner remaining outside the hearing room while the appellant gave evidence.

Appellant's evidence

24. The appellant adopted his prepared statement, which stands as his evidence-in-chief. In that statement, he said he arrived in the United Kingdom when he was 7, but did not know who his parents were. He received indefinite leave to remain when he was 15. He was unable to obtain British citizenship as the Angolan Embassy could not verify his identity and provide him with a birth certificate to use in his application.
25. The appellant has been in the United Kingdom for most of his life, having been born in 1982 and arrived here in 1989. He is 36 now. He was abused by his guardian (the 'uncle') as a child and was removed into the care of Tower Hamlets Social Services. His social services files say he is Angolan, but he does not remember that. He no longer speaks the language.
26. In 2007, the Secretary of State made a deportation order. In 2008, he was released on bail due to the inability or unwillingness of the Angolan authorities to provide him with a travel document: his bail conditions included residence and reporting restrictions. The appellant was not permitted to seek employment, claim benefits, engage in studies or gain unpaid work. He had to sign in weekly at an immigration centre in Solihull. He had no money to make the 80-mile round trip to Solihull every week but managed to comply, and to survive without income, with the help of his partner and her mother. The appellant appealed against the deportation order.
27. The appellant began to have mental health and physical problems, losing weight, suffering anxiety and sleep problems. In 2009, he visited his general medical practitioner and was given tablets and some counselling. In 2011, the appellant was diagnosed with post-traumatic stress disorder following his childhood physical abuse and neglect. The counselling sessions later terminated, because he was not receiving benefits and ceased to qualify for them.
28. In 2013, the appellant and his partner had a baby daughter, who is now 5 years old. The appellant looked after her while his partner worked.
29. In 2014, the appellant won his appeal in the First-tier Tribunal, after a lengthy battle, but the respondent appealed out of time and the appellant attempted suicide. The appeal succeeded again before the Upper Tribunal at the end of 2014, but the respondent appealed to the Court of Appeal.
30. The pregnancy and birth of his second child kept the appellant from further suicide attempts but he could not come to terms with being unable to work and contribute financially to the household in which his partner and his young children lived. He was starting to wonder what kind of a future he could give his children, if he could not provide for them. He wanted to be able to take his children on holiday, and more importantly, to give them the future he never had himself. The peer group

with whom he had grown up were moving on with their lives. He felt British and it was a very raw wound that he could not be naturalised.

31. The appellant has never been able to find lawful employment, no matter how hard he tried, because he has no identity documents at all (passport, birth certificate or identity card). In fact, without genuine photographic identity, the appellant claimed that he could not even go into a public house (although, given the context of his latest offence, it does appear that he manages to do so).
32. The Court of Appeal did not list the appeal for 18 months, during which time the appellant's state of mind deteriorated. He felt useless and afraid, worrying because he still could not provide a good quality of life and a future for his children. He was not eating properly, and locked himself away at home for 6 months. The Angolan Embassy continued to say that they would not issue him with travel documents as there was no evidence he was Angolan. The appellant felt that he was not welcome there or anywhere.
33. His partner was trying to encourage him to do things, and occasionally he did; she would give him pocket money, but when she was on maternity leave, he felt he had to refuse it. They received an eviction notice because there was a delay in increasing their housing benefit due to a reduction in the appellant's partner's income while she was on maternity leave.
34. Towards the end of 2015, the appellant was drinking heavily. In November 2015, the appellant went out for drinks with some people. He had been offered cash in hand work by them, which he took, as it would give him some money for Christmas. After he had done the work, the man put off paying him. The appellant was feeling really angry and frustrated.
35. At the public house, the appellant's employer pulled out a wallet which had 'wads of cash' in it and the appellant felt that was very unfair. Other people could behave badly but he had no way out of his situation. He felt 'fit to burst' and as if the pressure of the Home Office proceedings would never go away.
36. The appellant and his employer went on from the public house to a betting shop where the man began putting a lot of money into cash betting machines. The appellant 'lost it' and started fighting the man, then jumped over the counter and stole money from the betting shop till. He understood that the person would have been frightened by his behaviour, though he did not use any violence. The appellant regrets that behaviour. He considers he was an idiot and that 'only a mental person would act in such manner'. He had stayed out of trouble, after his very serious offence in 2002, for 15 years. He says it was entirely out of character and he could not believe what he had done. He was arrested, and bailed pending trial till April 2017.
37. Towards the end of 2016, when the family's financial difficulties hit hardest, and while he was still on bail for his criminal offence, the appellant began drinking again and his partner caught him trying to take all the Prozac pills he had been prescribed.

He was referred to the mental health team and sectioned under section 2 of the Mental Health Act 2918 for 3 weeks. He felt 'utterly helpless, hopeless, stressed and useless'.

38. The appellant says he is not a bad person and has never intended to hurt anyone. He has no family except his partner and their children. He is taking steps to deal with his post-traumatic stress disorder and on a waiting list for a psychologist. He has made mistakes, but he asks for another chance and for forgiveness, which 'would also enable me to look at my past and turn all the negatives into positives which I know that with the support of my family and the mental health team I can do'.
39. The appellant was then cross-examined. In answer to Mr Avery's questions, the appellant said he had no memory at all of his life in Angola, if indeed that was where he lived before coming to the United Kingdom. He could not remember any family links there, nor with the 'uncle' who brought him to the United Kingdom. He thought the 'uncle' was just a person he travelled with. The appellant could not remember who the 'uncle' was, nor what his role was in relation to the appellant: he just knew he had to travel with this adult. The 'uncle' had never told the appellant anything about his birth family. The 'uncle' had not only abused the appellant himself, he had lent him to other family members who wanted to commit benefit fraud, so that they could claim for an extra child in the family. The appellant had been taken into care and his 'uncle' was deported, but he did not know to which country his 'uncle' was removed.
40. The appellant's evidence about his nationality was confusing, and discrepant with statements he made earlier that he lived in Angola before coming to the United Kingdom, and that his parents died when he was very young. Before me, the appellant said that he did not think that he was an Angolan citizen; he had visited the Angolan Embassy but without a birth certificate or any real memory of his early life, they had been unable to confirm his citizenship.
41. The appellant said he had no idea where he might be from. At one point, the respondent had considered that he was likely to be a citizen of the Congo, but that had been retracted, and the appellant was sure, at least, that he was not Congolese. The suggestion had not come from him. Documents on which he had travelled showed that he and the 'uncle' had flown to the United Kingdom from Zimbabwe, but the appellant did not consider that this proved that he was from there. He did not know what language was spoken in Angola and had no contact with anybody there since coming to the United Kingdom. The appellant said that he was still confused as to where he was from, but that as you got older, certain things became more clear to you; he had been trying to get a document from the Angolan Embassy to have a sense of belonging.
42. Mr Avery put to the appellant the account of his history in his latest psychiatric report, which was that his mother had died when he was an infant and he had been exposed to war as a child. The appellant said he did not know why the doctor had recorded that as his history, as he had not said it. At least, he did not remember

saying that, but when he saw the doctor, he was in a very low mood, stressed and anxious. He was in a confused state of mind regarding where he came from when he saw her.

43. The appellant said that he had no direct contact with his birth family since coming to the United Kingdom, but when asked, he always told people that his mother and father were dead, as a way of explaining why he had no direct family. A lot of the information about where he came from was not concrete, such as whether he had any parents elsewhere, or even the country he was supposed to come from. There was a lot of confusion. He understood that he was required to tell the truth to the Tribunal, but he said that he had never told the doctor that he lived with his mother in Angola or that she had died.
44. In relation to his mental health, the appellant said he had been prescribed fluoxetine (Prozac) in 2009. Fluoxetine was an anti-anxiolytic medication which he understood was a treatment for anxiety, depression, and calming moods. He takes 40mg a day. He also said that he was attending counselling sessions twice a week at Borough North, and attends SMART and MIND. All of that was recent and there was nothing in the bundle to support this part of his evidence.
45. The appellant had finally been given permission to work and was training with the Probation Service to get a Constructions Skills Certification Scheme (CSCS) card again, which he would have in the next week or two, after which he would be qualified to work on a building site. He would shortly be having a practice test and then the Probation Service would book him a real one. He was also renewing his forklift truck driving qualification. He had obtained both these qualifications and numerous others in the past, but they are time-limited and he was unable to use them before they expired, because he was not allowed to work.
46. The appellant's partner was also working, in a part time job for MIND, working with drug addicts and so on, in Oxford. He said that she worked from 8 am – 5 pm, three days a week, but occasionally she might work an extra day. In the past, before he was imprisoned for his latest offence, the appellant had helped his partner by picking up the children from school and looking after them. If his partner was at work, he was the sole carer then, and he would give them their meals.
47. The younger child (now just 3 years old) went to nursery, one or two days a week, but child care was not cheap. The older child, now 5 years old, had been going to [~] primary school for one or two years. Because of his latest offence, the appellant had not been there when they celebrated their birthdays; he sent cards and letters, and the children just thought he was working away from home. Today, as both parents were at the hearing, his partner's mother had dropped them off at school and nursery and would collect them, at least he thought that was the arrangement. His mother-in-law had a car, so the arrangement was convenient. The appellant asked why details about his children were important: was Mr Avery suggesting that they were not his children? He loved his children dearly and coming from his difficult background, he considered them his biggest achievement.

Evidence of appellant's partner

48. The appellant's partner had waited outside during his evidence. She adopted her statement of 9 September 2018 and asked that it be treated as her evidence-in-chief. In that statement, she said that she had been in a relationship with the appellant for 12 years (since 2006). She gave details of attempts to contact legal aid solicitors to represent him at the hearing, which reflect the parlous state of legal aid provision in the immigration sector. I accept that the partner and the appellant have done everything they can to seek representation but that there is no firm willing to take him on.
49. The partner asserts that she knows the appellant is no danger to anyone. If he is allowed to work, he will be transformed. When he left custody in October 2008 following his 10-year sentence for aggravated burglary in 2002, the appellant went to live with her in Oxford. She has supported him for 10 years now, as he was released on immigration bail with a restriction order which prevented him from working, claiming benefits or accessing education. He was required to travel to Hounslow every week, a 100-mile round trip, to report at an immigration centre.
50. The partner was working and they had a very young baby, so she was not able to support the appellant emotionally as much as she would have liked. She also began to suffer depression and anxiety and received treatment from their general medical practitioner. The appellant helped with childcare for the baby, as did his partner's mother: she looked after the child when the appellant worked, or if the appellant's mental health meant he was not capable of taking care of the child. He attempted suicide twice, once by taking all of his Prozac pills, and once, after they heard about the appeal to the Court of Appeal, by walking in front of a car.
51. Following the birth of their second child, the partner describes the financial difficulties which she had on maternity leave. Sometimes they had to rely on her mother for food. She did not tell the appellant what was happening until the landlord delivered a notice of eviction proceedings. The appellant was devastated, not just by that news but because she had not shared her financial and emotional struggles with him. Communication had broken down between the couple, due to the strains on their relationship and the mental health problems each of them faced.
52. At this time, the appellant had anxiety, depression and post-traumatic stress disorder, but was not taking his medication. His partner had post-natal depression. They were both desperate: it was during this period that the appellant committed the second offence. His partner was very angry and devastated, but in retrospect, she thought he had done 'the only thing he knew how to do to survive'. There was a third suicide attempt in 2015 when the appellant left home at 10 pm in his pyjamas and was later found by police walking towards the motorway bridge a few miles from home. The police persuaded him to get in their car and took him off for psychiatric assessment.
53. The appellant's partner recognises that he has done wrong in his life: she does not condone committing an offence, under any circumstances. However, she says that

he is not a bad person, and that he loves his daughters dearly and is desperate to work and provide for them.

54. The appellant's mental health since returning home in August 2018 (just 2 months before the hearing) seems better as he had access to a lot of therapy during the sentence. The appellant has been re-referred for intensive psychological counselling but is likely to have to wait for up to 2 years. In the meantime, he has signed up for some courses with MIND which will help him while he waits.

55. In everyday life, the appellant manages situations better. He is more settled, taking his medication every day and going to the gym, which really helps. She hopes that the matter will not drag on for another decade, as it affects not just the appellant but all of them as his family. The partner's statement concluded:

"When my daughters were reconciled with their daddy, they were so happy, although they are still young and thought that daddy was working away for a while. Our youngest daughter, in particular, has been much happier since her daddy returned home, and this difference has also been passed on by her nursery teachers in the last month.

It would break their hearts if he were to be taken away from them. He is an integral part of our family, we have been on a massive journey together and I honestly don't know what I would do without him. [The appellant] is an amazing man with so much to offer in this life if only he would be given the opportunity to flourish without any restrictions. "

56. The partner was then tendered for cross-examination and was asked about the appellant's early life. She said that he did not remember very much, but that she considered the fact of his mother's death to be significant. The appellant had always told her that he was in the United Kingdom because his mother had died, and he had spoken about being in very hostile situations and hearing guns fired. The appellant found it very difficult to speak about his childhood, as it triggered his post-traumatic stress disorder, but he had spoken to their general medical practitioner and to Professor Katona about it.

57. After his mother's death, the appellant had been brought to the United Kingdom by the 'uncle' who neglected and abused him, following which he grew up mainly in the care of Tower Hamlets Social Services. There was a suggestion that the 'uncle' was a relative of some kind but the appellant had told her that he was not sure about that; he had been a young boy when brought to the United Kingdom. Her own experience was that memories of family before the age of 8 were sketchy. His partner was certain the appellant had not contacted anyone in Angola since she had known him. He did not have many friends or social contacts. She had been introduced to four people he knew, none of whom were Angolans. They included a friend, Judy, who had been a great support to the appellant and his partner.

58. Regarding the appellant's mental health, his partner confirmed that he takes Prozac and sometimes a short course of diazepam. Through the GP, the appellant attended Talking Space Plus and Turning Point (which helps with substance abuse, a problem

he had in the past). He was on a 2-year waiting list for counselling, which had been interrupted by his latest sentence. He was seeing his GP for some support but as far as counselling is concerned, he was not receiving any and it was all a question of waiting lists at present.

59. The appellant was not currently working, although he wanted to. The appellant would remain on licence and under probation supervision until 2020, the current conditions being that he report to the Probation Officer, attend Turning Point and access support for his mental health. The appellant was actively looking for work and renewing his CSCS Card and forklift licence. Finding appropriate work was difficult as the appellant was still on an electronic curfew and had reporting requirements, which were quite expensive to meet as he had to travel to Solihull twice a week to sign in. His partner felt that the appellant was in a 'no win' situation. The appellant had asked to vary the tagging requirements to give him more chance of working but so far, that had not been granted.
60. Two people had said they would employ him once he had his forklift licence and CSCS card. Construction work was a better option for the appellant, but the difficulty was the early morning starts, as he was not allowed to leave the house before 8 am under the electronic curfew order. The appellant had been offered shift work but could not take that either, for the same reason. In order to come to the Tribunal hearing, they had left home early and the appellant had breached his electronic curfew, but would have to deal with the consequences on their return home.
61. The partner said that she was the main carer for the children. Until recently, she had worked for 21 hours across 3 days a week, from 8 am - 5 pm, and on a Tuesday, from 9 am - 2 pm because of school hours. She had recently increased her hours to 28 hours a week across 4 days. While she was at work, the children went to nursery two afternoons a week, but when the appellant was imprisoned again, she had to put both of them into childcare. The elder child had started school in September 2017 and his partner took her in early, for the breakfast club at school, so that she could get to work herself. It was inconvenient but the only real option. She worked as a substance misuse practitioner. Her father lived in London, near where the appellant and a friend of his used to go to college, which was how they had met.
62. Asked about the appellant's reoffending, his partner said that it had been an extremely stressful period for them as a couple, with massive financial and personal hardship caused by her maternity leave, a new baby, and the appellant's suicide attempt. It had been almost inevitable that something would happen: the appellant was still on the waiting list for counselling and she had been focusing on the baby and their financial difficulties.
63. The partner said that she had been experiencing postnatal depression at the time. Everything that could happen in a woman's life happened at once. She had been surprised and disappointed that the appellant had chosen to reoffend, her understanding was that he had just exploded. She had found it difficult as she was

not used to being on her own with the children, she was used to having him around. Their relationship at present was fine and she was enjoying having the appellant back home, despite the difficulties with his electronic curfew order.

Report of Dr Joanne Lackenby

64. Dr Lackenby is a chartered and registered forensic psychologist. Her report builds on a previous report, which would have been before the Court of Appeal and the previous Tribunals. She recorded her opinion in November 2013 that if the appellant's appeal were unsuccessful, there was a significant risk of suicide and professional support might be required when he was served with travel documents. The appellant had expressed no current suicidal ideation but Dr Lackenby considered that his suicide risk would increase to very high, if he were served with travel documents now.
65. Dr Lackenby had access to all the relevant documents and reports, and has been involved in this case throughout. She interviewed the appellant on 27 September 2018 at his home, for 3 hours. The appellant's partner was present some of the time, as was one of his young daughters. Dr Lackenby had a discussion with the partner without the appellant for about half an hour, as well as with him. The report uses the HCR-20 violence risk assessment and the Structured Assessment of Risk Factors.
66. The appellant told Dr Lackenby that he had relapsed to using alcohol and drugs while in prison. He remained very angry against the immigration system for the length of time the proceedings had been going on, and the respondent being permitted to appeal out of time.
67. Dr Lackenby categorised certain factors as present and relevant and/or absent and not relevant. The following matters in the appellant's history were treated as present and highly relevant as predictive of future violence:
 - (a) Serious problems with violence (robbery conviction as an adolescent, aggravated burglary age 20, robbery age 34 and fights in prison);
 - (b) Antisocial behaviour, based on the appellant having carried weapons in his adolescence and having convictions for possession of weapons, coupled with his association with antisocial peers and the use of drugs;
 - (c) Lack of any employment history. The appellant has never had a job apart from some limited casual employment, for which he was not paid, triggering the final offence.
 - (d) Relationship problems with his carers and peers in childhood and adolescence. He has a long-term stable and protective relationship with his partner, but when she was unable to support him emotionally and financially during their financial problems and her maternity leave, he returned to violent crime.
 - (e) Substance abuse. The appellant had begun using drugs and alcohol when he was 12 years old (1994). He regularly used crack cocaine before the 2002 offence, which was a significant antecedent in that offence. He relapsed again

into using alcohol and crack cocaine in 2015 before the latest offence, to ‘numb the pain of his problems’. He did not use crack cocaine at home or return home when under the influence, and was adamant that he would not use around his children. As a result, he spent large amounts of time away from the family home, without explanation, concealing his drug and alcohol use from his partner. Drug and alcohol testing and monitoring were conditions of his licence, with which so far he had complied;

- (f) The appellant’s mental health problems, although there was no suggestion of a personality disorder.
- (g) Traumatic experiences:

“[The appellant] reported a clear history of problems arising from trauma. *His mother died when he was very young.* He was trafficked to the United Kingdom when he was 7, by a man who claimed to be his uncle. He struggled to integrate into United Kingdom culture due to his inability to speak English and his restrictive and abusive home life. [The appellant] was beaten, sexually abused, and neglected. He was taken into care where he had difficulty settling and integrating. ...Given [that the appellant] arrived in the United Kingdom as an unsupported minor who was then subject to abuse and neglect, it is a tragic but unsurprising consequence that he displays post-traumatic stress disorder symptomatology. He was on a waiting list for treatment when he committed the further offence in 2017.”

- 68. Problems with violent attitudes are described as partially present and of moderate relevance, while problems with treatment or supervision response are partially present but of low relevance to the risk of violence. The doctor then draws a series of distinctions between the support to which the appellant has access in the United Kingdom and that which she surmises he would not have in Angola. It is not clear what her knowledge is of conditions in Angola, beyond the appellant’s own account. She considers that if he were returned to Angola, there would be a very high risk of suicide, or of his re-entering the United Kingdom unlawfully, and that he would cope poorly away from his partner.
- 69. Gaining employment and an end to the immigration proceedings would help the appellant become more stable. His formative life experiences were as a child trafficked to the United Kingdom and let down and unsupported by Tower Hamlets Social Services during his childhood.
- 70. Based on that analysis, and her Structured Assessment of Protective Factors (SAPROF), Dr Lackenby concluded that although the appellant did offend again while in a relationship with his partner, he had a strong motivation to desist from crime and was likely to do so as long as his relationship remained stable, his accommodation was stable, there were no changes to his living circumstances and no return to substance misuse.
- 71. Dr Lackenby’s opinion was that further offending and violence would become an imminent risk following a negative decision in these proceedings, financial hardship,

breakdown of his relationship, deterioration in the appellant's mental health, lack of support or a relapse into drug or alcohol abuse.

Other new evidence

72. The appellant undertook the RESOLVE programme in prison, and completed it on 14 December 2017, albeit with outstanding objectives. The report notes that the appellant's sentence is due to end on 3 October 2020, though he was due for release, and was released, on 3 August 2018. They record that the appellant's sentence was for robbery committed at a time when he was using crack cocaine, cannabis and alcohol in quantity. I note that the appellant only mentioned the alcohol in his latest statement.
73. The minutes of the appellant's Post Programme Progress Review for the HM Prison and Probation Services RESOLVE programmes (Attitudes, Thinking and Behaviour) are dated 1 March 2018. The post-programme objectives identified to be completed following the review concerned emotional management (rumination worksheet); interpersonal skills (assertive communication worksheet); and impulsivity (managing criticism or provocation worksheet). The review was good overall, with the appellant being encouraged to practise his new skills and stay motivated.
74. A report from the Prison Fellowship in the Sycamore Tree post-programme report is dated 14 February 2018, recording that he has made 'excellent progress towards victim awareness and his ability to make changes to positively influence his and others' future'. The course had 'opened [his] eyes to the ripple crime causes, not just affecting one victim but engulfing the families of both the victim and the offender and impacting the wider community'. He was remorseful and intended to make better choices in future.
75. An OASys assessment dated 27 September 2018, less than a month before the hearing, found the appellant still to present a medium risk to the public in the community, but a low risk to children, known adults and staff. There were concerns about breach of trust, because the robbery offence was committed whilst on immigration bail, and his previous offence of robbery in 1999 was committed while he was on bail.
76. The appellant had four adjudications while in prison: in April 2017, he was argumentative with staff and turned over a table tennis table; in June 2017 he fought with another prisoner; in November he tested positive for the drug Spice, which he said was passive smoking from his cell mate; in January 2018 he fought again with a cell mate; and in June 2018, just two months before his release on licence, the appellant refused to provide his fingerprints to HOME OFFICE.
77. The appellant was required to make contact with Oxford Social Services on release as he had self-reported near-daily crack cocaine use and daily consumption of 8-10 cans of strong beer, when last in the community. Oxford Social Services would need to assess the suitability of his involvement with his children, and any previous involvement with them. The appellant had a significant history of previous offences

as set out above. Regarding the most recent offence, the report says that the appellant went to the betting shop with two other men, left the shop, then ran back in and jumped over the counter shouting 'give me the fucking money'. The cashier left, and the appellant took a purse from a staff member's handbag on a seat behind the counter, and a quantity of cash from the tills, and ran out of the shop. One of his friends had already left; the closed circuit television cameras showed the appellant head-butting the other one on his way out of the shop, then running away. The victim was a 49-year old female betting shop manager. The appellant had debts to 'loan sharks', was owed money by one of the men he entered the shop with, and was drinking 8-10 cans of strong lager a day and spending about £200 a week on crack cocaine, which he took nearly every day.

Submissions

78. As the appellant was acting for himself, I explained that there would be an opportunity for both parties to say what they wanted about the case. I would invite Mr Avery to speak first and then the appellant could tell me what he wanted me to bear in mind when deciding the appeal.
79. For the respondent, Mr Avery relied on section 117C of the 2002 Act and accepted that Exceptions 1 and 2 were met. He invited me to find that the appellant's evidence of his connections to Angola was inconsistent and that he was not a credible witness in this respect. His evidence about his current life with his partner, to whom he is engaged to be married, and their children, should also be treated with caution where it diverged from other evidence on the same matters.
80. There was one up to date psychiatric report, to which Mr Avery asked me to have regard. It recorded that the appellant had previously been 'sectioned', that is to say, compulsorily hospitalised for assessment and/or treatment pursuant to section 2 of the Mental Health Act 1983. The evidence as to whether the appellant was currently receiving counselling was discrepant as between himself and his partner. The report indicated that the appellant was at risk of suicide if removed.
81. His offending history was serious (see section 117C(2)). The medical evidence was not particularly impressive, with a good deal about the risk to the appellant but a lack overall rigour in assessment of the asserted suicide risk. Mr Avery submitted that the report lacked a proper diagnostic approach and was based on the appellant's own assertion that he would indeed commit suicide if returned to Angola.
82. Mr Avery asked me to find that the appellant was indeed a citizen of Angola, as the Court of Appeal had found, and that until the present hearing he had given fairly consistent accounts to that effect. The Tribunal should have regard to the assessment of risk in the OASys report also. The test in section 117C(6) was not met, on these facts, and the appeal should be dismissed.
83. I then came to the appellant's submissions. I read him section 117C and explained how it works. The appellant spoke about his claimed statelessness. He confirmed that while in prison he had four adjudications, but said that the RESOLVE course

had worked for him. He had been bullied and did not cope well with sharing space with strangers, but he had been taking steps to improve his mental health, filling in a diary and so on. The authorities liked a person to open up while in prison. The conclusion to the report said he had made a lot of progress.

84. The appellant said that throughout the difficulties he had experienced in the United Kingdom, he had tried to change his life. There had always been people tugging him to left and right in his life, which had a major impact. He felt trapped in his own situation and thought processes; he needed to take control of his life. The appellant recognised that he had done bad things, due to not having good guidance. His social life was non-existent, as he was always at home. He found it demoralising to rely on his partner and needed to feel free. He did not feel as though he had ever been free. The United Kingdom was his country and he had always tried.
85. The appellant said his family was all he had. His second offence had taken place in very tense times and he needed the opportunity and a second chance. He had always lived with a tag and a restriction but he had a good family and a lovely home to support him here now.
86. The appellant's partner asked to speak on his behalf. I permitted that. She said that his mental health was the compelling factor. It made him difficult to live with and managing his attempts to kill himself was really hard. Sending him back to Angola would not be right. The reports showed only a small part of the difficulties he had experienced related to his mental health.
87. I reserved my decision which I now give. I have had regard to all the evidence set out above and also to the submissions of both parties. I recognise that it was not easy for the appellant to represent himself before me and I have approached my decision with anxious scrutiny, bearing in mind that the appellant did not have the benefit of legal representation.

Analysis

88. The first question is to establish the factual matrix. The Court of Appeal treated the appellant as a citizen of Angola and it is clear that until his written and oral evidence at the Upper Tribunal hearing, the appellant's case was that he had been orphaned very young in Angola and trafficked to the United Kingdom with his 'uncle', following which there is no dispute about the abuse which he unfortunately suffered, nor that in due course he obtained indefinite leave to remain.
89. I accept the appellant's evidence, which is corroborated in the respondent's documents, that there have been serious practical difficulties in his obtaining a travel document, or a birth certificate, from the Angolan Embassy. If the appellant is to be removed it will be for the respondent to seek to obtain an emergency travel document from Angola, without which he cannot in practice be removed. That does not affect whether it is lawful for him to be removed.

90. The appellant has made no formal statelessness claim, and until recently he seems to have accepted that he was Angolan, and that he came here because his mother, or his parents, were dead. The partner's oral evidence reflects that account and she considers it to be a significant element in the problems he has experienced.
91. His assertions now in his oral evidence that he cannot remember anything about his parents, including whether they are dead or not and whether he came from Angola originally, are not credible even to the low standard required in international protection claims. I continue to treat him as a citizen of Angola.
92. The appellant has a long criminal history, beginning in 1997 and continuing through to the offence on 31 October 2015. It appears that he has made efforts while in prison to rehabilitate himself but that is very much a work in progress at this stage. The index offence was a very nasty robbery, committed when he was 19 years old. I note that the latest offence was committed under the influence of both alcohol and drugs, and that the appellant had been using drugs and alcohol and staying away from his family home until he was sober, successfully concealing what was happening from his wife and his two young children. Despite his assertion that without documents he could not go into public houses, he was doing so and indeed that was where he got drunk in October 2015 before the betting shop offence.
93. I further note that the appellant does not mention the drug use in his witness statement, nor in his oral evidence today, and that he continued to use both alcohol and drugs, and had four adjudications while in prison, including one in June 2018, just a few months before this hearing, where he refused to provide his fingerprints to the Home Office, even though he was almost due for release on licence. The appellant's evidence was that he did not cope well with sharing space with strangers.
94. It is clear that there is a strong bond of affection between the appellant and his partner, who has supported him financially and emotionally for 10 years now. I accept that the appellant has a good, loving relationship with his children, although he has missed part of their lives while serving his latest sentence. The children are healthy and his partner is their primary carer, assisted by the appellant when he is home and his mental health permits, and otherwise by her mother. The appellant is not their primary carer.
95. The evidence of Dr Lackenby is designed to show whether the appellant continues to present a risk of violence outside prison. He has a serious past history of violence and antisocial behaviour. He has no employment history, even before his prison sentence at 19. He used crack cocaine before the 2002 offence, and again before the 2015 offence, and his licence from prison requires him to continue to address this and his mental health. He has no personality disorder. Dr Lackenby considered that the appellant had a strong motivation to desist from crime.
96. However, further offending and violence would become an imminent risk if the appellant's relationship with his partner was compromised, his mental health

deteriorated, he suffered financial problems or lack of emotional support, or a relapse into drug or alcohol abuse.

97. I place less weight on Dr Lackenby's opinions regarding what would happen in Angola. She does not assert any country expertise there. She also appears to descend into the arena when finding that an adverse decision by this Tribunal would drive the appellant back to further offending and violence. Dr Lackenby's opinion suggests, I consider, that the appellant remains very unstable and that unless his life goes perfectly, he is likely to descend back into crime and violence.
98. The appellant has mental health problems. He is assessed as having post-traumatic stress disorder and depression, as well as the consequences of his past heavy drinking and cocaine use. There is no evidence before me about what the medical facilities in Angola may be. Dr Lackenby's report simply presumes that the appellant will receive no or inadequate treatment and that his suicide risk will increase on return to Angola.
99. I consider, therefore, whether the appellant's case is made out under section 117C of the Nationality, Immigration and Asylum Act 2002 (as amended), so far as relevant to this appeal:

"117C Article 8: additional considerations in cases involving foreign criminals

- (1) The deportation of foreign criminals is in the public interest.
- (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal. ...
- (4) Exception 1 applies where –
- (a) C has been lawfully resident in the United Kingdom for most of C's life,
 - (b) C is socially and culturally integrated in the United Kingdom, and
 - (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
- (5) 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.
- (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. ..."

100. In this case, the appellant committed a very serious offence when just 19. He was sentenced to 10 years in a Young Offenders Institution. The respondent accepts, for the purpose of these proceedings, that Exceptions 1 and 2 could be met on the facts. The question then is whether there are in this case, very compelling circumstances over and above those described in Exceptions 1 and 2. I remind myself of the appellant's oral submissions, that he needed to feel free, finding it demoralising to rely on his partner financially and emotionally, but I note that he continues to blame external circumstances for his actions.

101. This is not a question, as the appellant asked me to consider, of giving him a second chance. The appellant has had many chances to improve his behaviour and even giving full weight to his attempts to improve himself during his last sentence, I take account of Dr Lackenby's evidence as to the fragility of his present abstention from crime and violence.
102. The question for the Upper Tribunal which will be determinative of this appeal is whether there are 'very compelling circumstances' over and above those described in Exceptions 1 and 2. For this purpose, his strong relationships with his partner and children do not come into account, as they fall within the Exceptions. The partner submits that the appellant's mental health is such a circumstance.
103. I am guided by the opinion of Lord Carnwath JSC (with whom agreed) in *KO (Nigeria) v Secretary of State for the Home Department* [2018] UKSC 53:
- "20. Turning to section 117C the structure is not entirely easy to follow. It starts with the general rules (1) that deportation of foreign criminals is in the public interest, and (2) that the more serious the offence the greater that interest. There is however no express indication as to how or at what stage of the process those general rules are to be given effect. Instead, the remainder of the section enacts specific rules for two categories of foreign criminals, defined by reference to whether or not their sentences were of four years or more, and two precisely defined exceptions. For those sentenced to less than four years, the public interest requires deportation unless exception 1 or 2 applies. For those sentenced to four years or more, deportation is required "unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2".
21. The difficult question is whether the specific rules allow any further room for balancing of the relative seriousness of the offence, beyond the difference between the two categories. The general rule stated in subsection (2) might lead one to expect some such provision, but it could equally be read as no more than a preamble to the more specific rules. Exception 1 seems to leave no room for further balancing. It is precisely defined by reference to three factual issues: lawful residence in the UK for most of C's life, social and cultural integration into the UK, and "very significant obstacles" to integration into the country of proposed deportation. None of these turns on the seriousness of the offence; but, for a sentence of less than four years, they are enough, if they are met, to remove the public interest in deportation. For sentences of four years or more, however, it is not enough to fall within the exception, unless there are in addition "very compelling circumstances"."
104. The circumstances relied upon by this appellant are not such as to amount to very compelling circumstances, if one subtracts the question whether there are very significant obstacles to his reintegration in Angola, and whether it would be unduly harsh for his partner, or his children. There is simply no reliable evidence before me about what mental health provision is like in Angola and no other circumstances which could bring him within the super-exception in section 117C(6).
105. Accordingly, I remake the decision by dismissing the appellant's appeal.

DECISION

106. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by dismissing the appeal.

Date: 6 November 2018

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson