



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/01963/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 24<sup>th</sup> July 2018

Determination Promulgated  
On 31<sup>st</sup> July 2018

Before

**THE HON. MR JUSTICE LEWIS  
(SITTING AS AN UPPER TRIBUNAL JUDGE)  
UPPER TRIBUNAL JUDGE LINDSLEY**

Between

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

and

**KIRTIS KRISTOPHER GLENFIELD MILLAR  
(ANONYMITY ORDER NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer

For the Respondent: Mr R Singer, of Counsel, instructed by Bishop & Sewell LLP

**DECISION AND REASONS**

*Introduction*

1. The claimant is a citizen of Barbados born on 12<sup>th</sup> September 1991. He arrived in the UK in July or August 2002 when he was 10 years old as a visitor to see his mother who was settled here. He then overstayed. An application was made to regularise his stay

in 2005, but had to be remade in 2007 as the first application was invalid. The claimant was eventually granted indefinite leave to remain in March 2010.

2. On 21<sup>st</sup> November 2012 the claimant was convicted of violent disorder and sentenced to a term of 42 months imprisonment (three and a half years). The Secretary of State commenced automatic deportation proceedings against him in September 2013 as a result of this index offence, having signed a deportation order against him in the same month.
3. The claimant's appeal against the decision was allowed by First-tier Tribunal Judge Moore on Article 8 ECHR grounds in a determination promulgated on the 20<sup>th</sup> June 2014. This decision was upheld by Upper Tribunal Judge Eshun in a decision promulgated on 11<sup>th</sup> November 2014. The Secretary of State appealed to the Court of Appeal, and permission to appeal was granted in a decision dated 17<sup>th</sup> April 2015. The Court of Appeal allowed the appeal in a judgement dated 19<sup>th</sup> January 2018 which quashed the decisions of the First-tier Tribunal and Upper Tribunal, as it was found the First-tier Tribunal had misdirected itself in failing to look at the appeal in a clear and legally correct fashion through the prism of the Immigration Rules. The appeal was remitted to be heard de novo by the Upper Tribunal.
4. The matter came before us to remake the appeal. This is our joint decision to which we have both contributed.

#### *Evidence & Submissions - Remaking*

5. The claimant, his partner [SW], his mother [PJ], his partner's mother [JW] and younger brother [NB] all attended the Upper Tribunal and gave evidence. They all adopted their supplementary and previous witness statements, and answered further oral questions. There was no challenge to the credibility of the evidence, and we accept that the witnesses all gave honest testimony. All the witness expressed their respect for the appellant as a loving, caring, helpful and respectful person. [MW], [SW]'s father also provided a supportive witness statement but was unable to take time off work to attend the Upper Tribunal. There are letters in support from Croydon Community Church and the Youth Centres Manager of Merton Youth Service. We have taken into account all of the material in the consolidated claimant's bundle and the Secretary of State's bundle in determining this appeal. The factual matrix of this case, as set out in the witness and other evidence is, in short summary, as follows.
6. The claimant lives with his partner, [SW], and her parents. He has been together with [SW] for more than ten years; they started to cohabit after he left prison in 2014; and they plan to marry and have children if the claimant is allowed to remain in the UK. [SW] earns £34,000 per annum from her work, and has a net amount available to her of £1000 per month after contributions to bills. [SW] is a British citizen. [SW] and her parents have supported the claimant psychologically and financially since his release from prison in 2014. [SW] would not accompany the claimant to live in Barbados if he were deported there as she was born in the UK and has lived here all of her life; she has her rewarding career in the UK as a technical IT consultant; she has a close relationship with her parents as their only child; and she is a joint carer with four other

relatives for her grandfather who has chronic obstructive pulmonary disease (although he has a paid carer for the day time as they all work full time). [SW]'s mother [JW] works as a legal secretary, and her father, [MW], for Capita. They are both British citizens, with whom the claimant has close and positive relationships.

7. The claimant visits his mother, [PJ] (a citizen of Barbados with indefinite leave to remain) and two youngest siblings, [SJ] and [NB] every day. He lives 2 miles away from their home. [SJ] is 10 years old and [NB] is 16 years old, and they are both British Citizens. The claimant helps his mother with her housework, gardening, shopping and caring for his siblings as she has health problems. His mother provides him with emotional support, and he provides her with the same and practical support, particularly with bringing up his younger siblings. His relationship with his mother is very important to him as he has never had a relationship with his biological father. He has a particularly close relationship with his younger brother [NB], who sometimes refers to him as Dad. The claimant provides [NB] with support with schoolwork and with football – which is important as he hopes to have a career in football. The claimant also attends the school plays in which [SJ] performs. [PJ] visited Barbados between January and February 2013 for her father's funeral and between July and September 2016 to visit her unwell and aged mother. The claimant also has relationships with his adult brothers [K] and [W] who live in the UK.
8. The claimant has some contact over social media with his brothers [R] and [N] who live in Barbados in difficult circumstances and who would not be able to assist him if he went back there. [R] lived initially with his maternal aunt [PE] when he returned to Barbados but is now basically homeless and without stable employment. [N] lives with his partner, son and mother-in-law, and also struggles to survive without settled accommodation. The claimant's maternal grandmother is now very old and unwell being blind with glaucoma, but she does have her own small two room house. His maternal aunts ([PE] and [JJ]) would not be able to help him on return to Barbados due health and marital problems, and his maternal uncle [A] would be of no assistance as he is an alcoholic. The claimant's mother sends [R] and [N] small sums of money sometimes, but she is currently struggling herself as she is on benefits, and often avoids contact as she finds it upsetting not to be able to help them due to her own financial difficulties in the UK. She would not be able to financially help the claimant if he were deported.
9. The claimant asserts that he is truly sorry for participating in the London riots in August 2011, when he was 19 years old, and says that prison has made him re-evaluate what he did at that time. He accepted that he had thrown missiles at the police, which initially he had denied to the authorities. The claimant denies being a member of a gang. He states that he is now motivated to make his family proud of him. As he cannot work at the current time he helps in a youth centre, visits his mum and goes to the gym. He has been trained by a friend to use music equipment. He accepts that since being released from prison for the index offence in 2014 he has a conviction, in January 2017, for driving whilst under the influence of alcohol, for which he was given a £120 fine and 9 months disqualification, He has done a course for drink drivers, and is very sorry for his act which he attributes to feeling low and helpless about his immigration

situation. In October 2017 he was also given 6 penalty points for driving without insurance, which he says was an error as his friend had told him he had put him on his insurance. This particular issue has now been remedied, and there is documentary supporting evidence from the friend. The claimant accepts that he still has an occasional drink problem, due to a desire to shut out what he is going through whereby he consumes alcohol to excess, and that this could cause him to act recklessly. He has however stopped smoking cannabis.

10. The claimant has GCSEs in maths, English, science and PE; a BTEC in electrical engineering; and some football coaching badges. He has also done one year of an accounts course, and had worked prior to being sent to prison, for two or three years, doing football coaching. He believes if he is allowed to remain in the UK with permission to work he would be able to obtain employment and contribute to society as well as to his family.
11. The Secretary of State argues in the reasons for refusal letter and skeleton argument of Mr Jarvis that it is proportionate for the claimant to be deported as he is unable to show compliance with the Immigration Rules which are a complete code for the consideration of deportation appeals, and which are mirrored in the statutory scheme.
12. Mr Jarvis draws attention to the fact that the claimant has convictions for robbery, driving whilst uninsured and taking without consent, theft, possession of cannabis, as well as the index offence of violent civil disorder, for which he received a three and a half year prison sentence. He submits that this amounts to a serious criminal record creating a particularly potent public interest in his being deported. The sentencing judge, in relation to the index offence, described the claimant as participating in extremely violent disorder bringing terror to the streets of Croydon and fear to its inhabitants. He had no mitigation beyond the fact that he was 19 years old at the time of the offence, and 21 years old at the point of conviction, but this is not a factor relevant to deportation as the claimant was an adult at the time of conviction. It is also noted that he has been convicted of two driving offences subsequent to the index offence, and that one of these was for drink driving, and that the claimant has accepted an on-going alcohol problem. Mr Jarvis argues that this record shows an on-going issue of recklessness and a failure to make sensible decisions by the claimant. The OASys report finds that there is a medium risk of reoffending and of serious harm, and this is supported by the 2017 history of reoffending as drink driving could have caused serious harm. In any case protection against reoffending is only one aspect of the public interest in deportation, and not the most important one as the focus should be on the nature of the offending. There is no properly arguable delay point relevant in this case as the Secretary of State has been actively and promptly pursuing the claimant's deportation, and the length of proceedings has been brought about by the appeals process.
13. It is accepted by the Secretary of State that the claimant has a genuine and subsisting relationship with his partner, [SW], and that she is a British citizen, but it was not accepted that they cohabited prior to his being sent to prison, and it is thus argued that a family life relationship only came into being after his immigration status became

precarious, and thus that only in exceptional circumstances will it be a breach of the right to respect to family life for the claimant to be expelled. It is not accepted that there are insurmountable obstacles to family life continuing in Barbados for the claimant and [SW]. There will be difficulties but more than this is needed, and therefore it is not accepted that the claimant can meet s.117C(5) of the 2002 Act. It is not accepted that the claimant has family life relationships with his mother and siblings. It is not accepted that the claimant's family circumstances, or the impact of his deportation on other family members, amounts to a compelling matter.

14. It is only accepted that the claimant had lived lawfully in the UK for 3 years and six months at the date of decision. It is not accepted that the claimant has lived lawfully for half of his life in the UK. It is argued that the claimant would have family he could turn to in Barbados, having lived with his grandmother before coming to this country, and that he could obtain employment given his UK schooling. The claimant's brother [R] stayed with an aunt when he went back, and this might also be possible for a while. The claimant's partner and her mother also gave evidence that they would send him some financial assistance for a while if he were deported. As stated by the Court of Appeal, there is absolutely no reason why the claimant could not enjoy private life in Barbados. There was also a lack of any evidence directly from those in Barbados: the claimant's two brothers in that country, his grandmother and two maternal aunts had not written letters supporting any contention of his return there amounting to severe hardship. In all the circumstance it would therefore be proportionate despite the claimant's family and private life ties in the UK to deport him, as there are no exceptional or compelling circumstances in his case.
15. Mr Singer accepted for the claimant that he cannot meet the exceptions to deportation in the Immigration Rules at paragraph 399(a) or (b) or paragraph 399A. He therefore argues his appeal on the basis that there are very compelling circumstances over and above those described in these paragraphs which mean he is entitled to succeed in his appeal in accordance with paragraph 398 of the Immigration Rules, with particular reference to s.117C(5) of the 2002 Act.
16. The claimant accepts that the following matters are against him when assessing the proportionality of his removal. He cannot show he meets the requirements of the exceptions to deportation under the Immigration Rules because he does not have a parental relationship with a child; because he formed his relationship with his partner when he did not have lawful residence and started to cohabit with her when his leave was precarious due to the deportation proceedings; and because he has not been lawfully resident for most of his life in the UK. The claimant accepts that there is a strong public interest in deportation or foreign criminals in accordance with s. 32 and 33 of the UK Borders Act 2007, and that an Article 8 ECHR claim must be "very strong indeed" to succeed, in accordance with SS (Nigeria) [2013] EWCA Civ 550. Further, it is accepted that the nature of the offence, and the fact that he has committed other offences in the UK is also against him, although Mr Singer argued that having his life in limbo and being unable to work for the past four years has led to his having issues with alcohol and the subsequent minor reoffending. He submitted that if this had not

been the case the claimant would have grown up like his other friends, and would have developed his life in a positive way.

17. The claimant argues that in his favour are the following points. That he can meet the requirements under s.117C(5) of the Nationality, Immigration and Asylum Act 2002 because he has a genuine and subsisting relationship with a qualifying partner, and the effect of his deportation would be unduly harsh because it would cause the relationship to break down because she could not reasonably relocate to Barbados as she has a good job with Wanstor as a technical consultant, her mother has high blood pressure and type 2 diabetes, and her grandfather (for whom she is a joint carer) is very ill with chronic obstructive pulmonary disease.
18. Further cumulative factors in the claimant's favour are as follows: he has lived in the UK for 17 years and has no meaningful ties with Barbados and would struggle to reintegrate there; he has strong family and private life ties with the UK having lived in the UK since he was ten years old; he is remorseful for his criminal behaviour; his deportation would have a negative impact on his mother who is unwell, and his younger brother [NB] and sister [SJ] who are children, and whose best interests must be a primary consideration and given he has family life relationships with all of these people; the appellant would not have support on return to Barbados because his grandmother is old and unwell and because his two brothers, aunts and uncles are poor, unwell and/or dealing with other difficulties in their own lives; it was not the claimant's fault that he was without legal status until 2010, as he was a minor in the period 2002 to 2007 when no effective application was made; and that the Secretary of State delayed, taking three years to make a decision on his indefinite leave application between 2007 and 2010 – and it has also taken another five years for these proceedings to run their course. As a result of these cumulative factors it is argued that the appeal should be allowed.
19. At the end of the hearing we reserved our decision.

#### *Conclusions – Remaking*

20. The key legislative provision guiding the remaking of this appeal is s.117C of the Nationality, Immigration and Asylum Act 2002:
  - '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.
  - (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
  - (4) Exception 1 applies where –
    - (a) C has been lawfully resident in the 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.

7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.'

21. It is accepted by both sides that the exceptions set out in the Immigration Rules at paragraph 399(a) or (b) or paragraph 399A cannot be met by the claimant and thus that he cannot meet the exceptions to deportation set out in the Immigration Rules. To succeed in accordance with the Immigration Rules he will therefore have to show very compelling circumstances over and above those described in these paragraphs, as set out at paragraph 398 of the Rules.
22. We find that this might be done, on the fact of this case, either by showing that the effect of deportation on the claimant's partner is unduly harsh, and thus that the requirements of s.117C(5) of the 2002 Act are met, or by showing that cumulatively a number of factors reach the high threshold of showing that there are very compelling circumstances over and above the exceptions to deportation in the Immigration Rules. S.117C(5) of the 2002 Act differs from the exception at paragraph 399(b) as there is no explicit requirement that the relationship with the claimant's partner was formed at a time that the claimant was in the UK without unlawful or precarious status in this statutory provision. It is because of this particular requirement that the claimant accepts he cannot meet paragraph 399(b) of the Immigration Rules. It is of course the case however that the immigration status of the claimant at the time that family life comes into being may be a factor going to the assessment of whether any harshness caused to the claimant's partner is undue when making the s.117C(5) assessment.
23. We therefore commence the consideration of our conclusions with consideration under s.117C(5) of the 2002 Act. It is accepted by the Secretary of State that [SW] and the claimant have a genuine and subsisting relationship as partners, as they have cohabited as such since his release from prison in 2014, a period now of about four years. It is accepted by the Secretary of State that [SW] is a British citizen, and thus a qualifying partner. Whether the claimant's deportation is unduly harsh is a matter which must be determined by way of a proportionality exercise in which any elements of harshness to [SW] are balanced against the claimant's criminality and any failings

in his immigration record. The nature of the claimant's offending is described more fully below. In essence, however, the index consisted of very serious criminal behaviour, namely an offence of violent disorder. It involved participation in the riots in London, when the claimant as he accepts threw bricks and missiles at the police who were trying to restore order. He was sentenced to 3 and ½ years' imprisonment for that offence.

24. Whether the effect of the deportation on [SW] will be unduly harsh will in turn be informed by whether there are insurmountable obstacles to family life taking place in Barbados, the country of which the claimant is a citizen. It is argued that this is the case as for family life to take place in Barbados [SW] would have to give up her well paid job of choice as a technical consultant with Wanstor; would have to give up her close family and private life ties with her parents, with whom she shares a home, and close contact with other extended family in the UK including her caring role with respect to her grandfather who has chronic obstructive pulmonary disease; and she would lose her close contact with friends in the UK and the opportunity to live in her country of nationality where she was born and brought up. As [SW] is not prepared to make these sacrifices the deportation of the claimant will end their 10 year relationship, and mean that relationship does not progress to marriage and having children.
25. We are satisfied that, whilst it is understandable that [SW] is not prepared to leave the UK to have family life in Barbados because it would be unsatisfactory to her for the reasons she gives, the degree of hardship she would experience if she went to Barbados has not been shown to constitute insurmountable obstacles to family life, following what is said in Agyakro and Ikuga v SSHD [2017] UKSC 11 relying upon Jeunesse v Netherlands [2014] ECHR 1309. The evidence before us does not enable us to find, on the balance of probabilities, that the claimant and [SW] would not be able to earn enough to support and accommodate themselves in Barbados using their qualifications and work experience, and that they would not be able to make themselves a circle of friends and maintain contact with UK family and friends through phone, email, social media and in [SW]'s case through visits. In all the circumstances therefore, the effect of the deportation of the claimant on [SW] would not be unduly harsh within the meaning of section 117C(5) of the 2002 Act.
26. Having established that s.117C of the 2002 Act cannot enable the claimant to succeed in this appeal we now go on to conduct a complete consideration of all factors, conducting a proportionality balance sheet exercise of the matters for and against there being very compelling circumstances over and above the exceptions to deportation in the Immigration Rules, and thus ultimately whether paragraph 398 of the Immigration Rules can be met in this way. We bear in mind the approach of the Supreme Court in *Ali v Secretary of State for the Home Department* [2016] 1 W.L.R. 4799 and the other cases to which we were referred.
27. We begin our balance sheet exercise but setting out the positive matters this claimant has identified in his favour. Whilst the impact on [SW] would not be unduly harsh, within the meaning of section 117C(5) of the 2002 Act. we consider that there would be negative impact on his relationship with [SW]. That long established relationship



will in all likelihood come to an end. We do regard that as a factor which can be taken into account in the claimant's favour when considering the assessment of proportionality overall. A further significant matter is, in our opinion, the fact that the claimant had lived in the UK for 16 years since the age of 10 years, which is the majority of his life, and leads naturally to the fact that he has all of his private life ties in the UK. He has been brought up in this country and has very little recollection of Barbados, and we accept he has had very little contact with his relatives there. It was put to us that he was in reality a home-grown criminal, a contention we have sympathy with, and that in accordance with the principles in Mavlov v Austria [2009] INLR 47 this ought to be a factor which weighs heavily in the claimant's favour.

28. We give some weight to this long period of residence in the claimant's favour, particularly as it commenced with him being a primary school aged child. We find that there was some element of historic delay by the respondent who took three years to process the application to regularise the claimant's position from 2007 to 2010 and we would not place much weight on that period as being a period when he was not here lawfully, given that that period of delay was the respondent's responsibility. However we note that private life ties with the UK can only be given little weight when they are formed whilst a person is unlawfully or precariously resident, see s.117B(4) and (5) of the 2002 Act, which is the majority of his time in the UK. We note that he endangered or made precarious his indefinitely leave to remain granted in 2010 just one year and five months after obtaining it by engaging in the criminal behaviour which formed the index offence. We also find that the Court of Appeal correctly stated in their judgment that there is "absolutely no reason why he should not be able to enjoy a private life" in Barbados. The claimant has a number of academic qualifications, including GCSEs and a BTEC in electrical engineering, and some football coaching certificates with work experience and some further studies in accounting. He has a number of relatives in Barbados who could give him advice, and we are satisfied that he could live with his grandmother in the home she owns, as he did prior to coming to the UK, although the accommodation may be basic and cramped particularly as his aunt Jennifer is currently staying with his grandmother. Whilst his relatives in Barbados may not be in a position to help financially his partner and her mother did agree that they would be in a position to help the claimant financially for a while during a period in which he sought work. There was no country of origin evidence before us supporting any contention that the claimant would not be able to obtain some sort of employment to cover his basic needs in the longer term, or other evidence which suggested that he would not be able to develop friendship in his country of origin. Unlike the claimant in Maslov this claimant has committed a serious offence of public order violence as an adult and not as a minor; he has not been lawfully present for the majority of his life in his country of residence; he will not have a language problem on return to his country of nationality; and he does have close family to whom we find he can turn for accommodation and guidance in reintegration if not funds.
29. It has also been argued that the claimant has Kugathas v SSHD [2003] EWCA Civ 31 family life relationships with his mother and two younger siblings and that these are a further compelling matter which should be given significant weight in his favour. We will determine this aspect from the position that, on the particular facts of this case,

these are family life relationships which demonstrate more than normal emotional ties given the regularity of contact and time spent together, and the health problems of the claimant's mother and the lack of involvement of [SJ] and [NB]'s fathers with their upbringing. The claimant visits his mother and two youngest siblings, [SJ] and [NB] every day. [NB] is 16 years old and is a British Citizen, [SJ] is 10 years old and likewise a British citizen. The claimant helps his mother with her housework, gardening, shopping and caring for his siblings due to her health problems. His mother provides him with emotional support, and he provides her with emotional support and practical assistance bringing up his younger siblings, which she needs as she is unwell with arthritis, high blood pressure and heart problems. The claimant's relationship with his mother is all the more important to him as he has never had a relationship with his biological father. He has a particularly close relationship with his younger brother [NB], who sometimes refers to him as Dad, and provides him with support with school work and with football, and also attend the school plays in which [SJ] performs. The claimant's role with his younger siblings is all the more important to them due to the lack of involvement by their biological fathers.

30. We give weight in the claimant's favour to these family life ties, which we accepted will be broken to a large extent if the claimant is deported to Barbados. We treat the best interests of [SJ] and [NB] as a primary consideration. We find that it is in their best interests for the claimant to remain in the UK providing them with practical support and love. We accept that it is very unlikely that the claimant's mother, [SJ], and [NB] will have money for visits to Barbados given that they currently live on benefits due to the claimant's mother's ill health, and that that this will significantly curtail their family life relationships. We do note however that the claimant has two other brothers in the UK, [K] and [W], and whilst their lives have complexities [W] clearly visits his mother and there was no evidence that these two could not assist their mother and siblings in some of the ways that the claimant has done to date.
31. On the negative side of the balance it is accepted by all sides that the claimant cannot meet the Immigration Rules, and in accordance with s.117B(1) of the 2002 Act, there is a public interests in effective immigration control, and thus the removal of those who cannot meet those Rules. We also acknowledge that there must be a very strong Article 8 ECHR claim to remain to displace the public interest in the deportation of foreign criminals, and in this case that must amount to very compelling circumstances over and above the exceptions to deportation in the Immigration Rules. The public interest includes the need to show abhorrence for the crimes, the need to deter other foreign nationals from such behaviour, as well as the protection of the public against recidivism by foreign criminals.
32. The index offence is for violent disorder in the London riots of August 2011 which resulted in the claimant being sentenced to three and a half years imprisonment on 21<sup>st</sup> November 2012. This violence was directed at businesses and residential premises, and members of the public were injured with one elderly man lost his life. The claimant took part in that violence in Croydon, which was particularly badly hit by rioting. The claimant was found to have bombarded police officers with missiles, and to have been part of an action which brought terror to the streets of Croydon and fear to its

inhabitants. The claimant offered no mitigation for his crimes, beyond drawing attention to his age. We take note of the seriousness of this index of offence in which violence was aimed at police officers. The claimant had already, between the years of 2006 to 2012, been convicted of seven crimes of robbery, theft, possession of cannabis and driving offences, although none of these had attracted a custodial sentence. Since being convicted of the index offence he has had two further driving convictions: one for driving whilst under the influence of alcohol and another for driving without insurance. Although neither resulted in a further custodial sentence we agreed with Mr Jarvis's submission that the subsequent criminal behaviour indicates an on-going recklessness to causing others serious harm. The OASys Assessment attributes the offending prior to the index offence to: "a lack of structure in his life, his cannabis use, his association with other offenders and his poor consequential thinking." At the time of writing of that report the claimant denied the index offence, but it was concluded that similar factors led to his involvement in that criminality. The assessment by OASys was that he posed a medium risk to the public and police, with a low risk to children and known adults. His reoffending risk was medium both in relation to non-violent and violent type offending. The subsequent reoffending shows that the report was correct in relation to the risk of reoffending, and we find that the claimant's candid admissions as to having a sporadic alcohol problem re-enforce the conclusion that there is a medium risk of causing serious harm. We accept that the claimant is remorseful for his offending, and that he may have given up smoking cannabis and that some friends who were offenders no longer have such behaviour, but do not find that this causes us not to follow the OASys report conclusions about recidivism. As a result, we find a strong public interest in his removal covering all aspects of the public interest in the deportation of foreign criminals.

33. We conclude that the deportation of the claimant is proportionate, as the circumstances, considered both individually and cumulatively, do not outweigh the strong public interest in the deportation of foreign criminals. They do not satisfy the test of very compelling circumstances over and above the exceptions to deportation in the Immigration Rules for the following reasons. There are no insurmountable obstacles to family life with the claimant's partner continuing in Barbados and there are no very significant obstacles to integration for the claimant in society in Barbados. We accept that deportation will in all probability break up the claimant's ten year relationship and also end his face to face family life relationship ties with his mother and younger siblings, family life relationships which are in the best interests of the children. But, as is said in many deportation authorities, these are the ordinary consequence of deportation is to break up family life relationships, and this cannot be considered a factor which very compelling and over and above the human rights exceptions laid out in the Immigration Rules. The claimant's long residence, starting from his entry as a ten year old child, and private life ties are a factor in his favour, but his lack of lawful or non-precarious stay for the large part of this period diminish the weight that these can be accorded in accordance with the Immigration Rules and statutory scheme under which this appeal must be determined.

Decision:

1. The making of the decisions of the First-tier Tribunal and Upper Tribunal involved the making of an error on a point of law.
2. We re-make the decision in the appeal by dismissing it.

Signed: *Fiona Lindsley*  
Upper Tribunal Judge Lindsley

Date: 25<sup>th</sup> July 2018