



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

Appeal Number: HU/04633/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 September 2019**

**Decision & Reasons Promulgated  
On 23 October 2019**

**Before**

**UPPER TRIBUNAL JUDGE DAWSON**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Appellant**

**and**

**HI  
(ANONYMITY DIRECTION MADE)**

**Respondent**

**Representation:**

For the Appellant: Ms Willocks-Briscoe, Senior Presenting Officer  
For the Respondent: Mr A MacKenzie, instructed by TRP Solicitors

**DECISION AND REASONS**

**INTRODUCTION**

1. I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the respondent (hereinafter referred to as the claimant) and his family members pursuant to the Tribunal Procedure (Upper Tribunal) Rules 2008. Failure to comply with this order may result in contempt proceedings.

2. In my decision dated 26 March 2019, I set aside an earlier decision by First-tier Tribunal Judge Boylan-Kemp who had allowed the appeal by the claimant, a national of Afghanistan, against the decision to refuse a human rights claim dated 24 March 2015. The reasons for doing so are set out in my annexed decision, which has been anonymised to give effect to the above order.
3. The claimant arrived in the United Kingdom in 2001 and although refused asylum, he was nevertheless granted exceptional leave to remain. He obtained indefinite leave to remain following a marriage in 2004. On 5 October 2007 he was convicted at Lincoln Crown Court of six counts of making false statements to obtain insurance, possessing documents with intent to deceive, driving while disqualified, driving while in excess of alcohol and using a vehicle whilst uninsured, and sentenced to eighteen months' imprisonment. He was also convicted on the same date for driving whilst being in excess of alcohol, for which he was sentenced to nine months' imprisonment to be served consecutively.
4. The claimant unsuccessfully appealed against an earlier decision to deport him dated 9 October 2008. On 29 April 2009 a deportation order was signed. There followed judicial review proceedings seeking revocation of the deportation order based on a pending appeal. Matters at that point became rather complicated however it is unnecessary to set the detail out other than to note that a further decision to make a deportation order was made on 14 October 2009 that gave the claimant an in-country right of appeal which was allowed on 10 January 2010.
5. In May 2012 and August 2014, the claimant was convicted of further offences although these did not lead to a custodial sentence. One related to the sending of offensive/indecent/obscene/menacing messages and the other to the production of cannabis. These were the trigger for the Secretary of State to make a decision dated 3 February 2015 to make a deportation order as conducive to the public good and thus making the claimant liable to deportation by virtue of section 3(5)(a) of the Immigration Act 1971. A human rights claim was refused in a decision dated 24 March 2015 and a deportation order was made dated 23 July 2015 which resulted in judicial review proceedings. The claimant made a further human rights claim on 1 October 2015 which was refused on 28 January 2016 (the 2016 decision) which is the focus of this appeal. The claimant's relationship with Ms [L] (whom he had married on 15 October 2004) that had been the basis of the appeal being allowed in 2010 had ended due to domestic violence that had resulted in a restraining order against the appellant in 2012. It appears that this relationship had been the basis of the appeal being allowed in January 2010 and the reason for the refusal in March 2015. In the 2016 decision, regard was had to the family life the claimant had by then established with CL and their child R who had been born a year earlier.
6. As explained in my error of law decision, the claimant's appeal against the 2016 decision (wrongly referred to as the March 2015 decision) was dismissed by First-tier Tribunal Judge Hawden-Beal in June 2016. This decision was set aside by Deputy Upper Tribunal Judge Juss resulting in a remittal of the case to the First-tier Tribunal, where it was heard by Judge Boylan-Kemp.

7. On 21 August 2018, a month after the date of Judge Boylan-Kemp's decision allowing the appeal, the claimant was convicted by Worcester Magistrates of causing injury by dangerous driving, driving a motor vehicle with the proportion of specified controlled drug above the specified limit, driving a vehicle with excess alcohol, and failing to stop after an accident. He was committed to Crown Court for sentence (and granted unconditional bail). On 5 October 2018 HHJ Cole sentenced the claimant to three years' imprisonment, directing that he should serve one half before being released on licence. T
  8. The claimant remains in prison. He was not produced for the hearing and his partner CL declined to give evidence in the light of her mental health difficulties. Mr Mackenzie was content to proceed without the claimant and Ms Willocks-Briscoe had no objection to the appeal going ahead in these circumstances. Supplementary evidence has been filed which, in addition to updated statements by CL and her parents, comprises reports on R in relation to his schooling, a letter from a Paediatrician (Dr Garstang), medical records, an updated letter from an independent social worker (Ms Harris), a psychiatric report on CL by Dr Y Saleem, a Consultant Forensic Psychiatrist and a report on R by Ms Holmes, a Speech and Language Therapist.
  9. Mr MacKenzie and Ms Willocks-Briscoe accepted that the sole issue for me to decide is whether the effect of the claimant's deportation on CL and/or R would be unduly harsh with the focus on section 117C of the Nationality, Immigration and Asylum Act 2002. Mr MacKenzie made it clear that he relied solely on the issue whether deportation would be unduly harsh and did not seek to advance a case that there were very compelling circumstances over and above those captured by this issue.
  10. Following the claimant's most recent conviction, the Secretary of State has made a further decision to deport dated 15 December 2018. Neither party considered this had an impact on my jurisdiction to decide the case which is a challenge to the earlier decision of refusing the human rights claim. With the claimant having been sentenced for less than four years, the legal framework remains the same.
  11. Section 117C is as follows:
- "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.
  - ..."

12. Paragraphs 398 and 399 of the Immigration Rules provide:

- "398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and
  - (a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;
  - (b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or
  - (c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law, the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.
- 399. This paragraph applies where paragraph 398(b) or (c) applies if -
  - (a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and
    - (i) the child is a British Citizen; or
    - (ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case
      - (a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and
      - (b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or
  - (b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and
    - (i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and

- (ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and
  - (iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported."
13. The Secretary of State did not accept in the 2016 decision that the claimant had a genuine and subsisting parental relationship with R or that he had a genuine and subsisting relationship with CL. These relationships are no longer disputed.
14. The sentencing remarks by HHJ Cole explain the nature of the claimant's recent offending. Observations are made as to his dangerous driving and overtaking, crossing clearly marked double white lines without any regard to the safety of vehicles coming the other way. The judge observed that the claimant had been trying to travel as fast as possible –
- “... without any regard to road conditions or the risk to others, all of this while you were unfit to drive through a mixture of alcohol, cocaine and metabolite of cocaine which remained in your body. This is in no doubt in my mind that this would have seriously impaired your ability to drive and is a significant aggravating factor.”
15. The judge also observed a further indication of the claimant's unfitness to drive was that he had no recollection of where he was going. The driving resulted in a head on collision with a serious injury and left with ongoing symptoms. The claimant ran off. He was chased and apprehended when he was violent to the arresting officers “kicking and hitting out”.
16. The approach I am required by Parliament to take in deciding this case was recently summarised by Hickinbottom LJ in his short judgment in *SSHD v PG (Jamaica)* [2019] EWCA Civ 1213 at [46] with particular reference to children:
- “46. ... in section 117C(5) of the 2002 Act, Parliament has made clear its will that, for foreign offenders who are sentenced to one to four years, only where the consequences for the children are "unduly harsh" will deportation be constrained. That is entirely consistent with article 8 of the ECHR. It is important that decision-makers and, when their decisions are challenged, tribunals and courts honour that expression of Parliamentary will.”
17. This followed the lead judgment of Holroyde LJ who explained *KO (Nigeria) v Secretary of State for the Home Department* [2018] UKSC 53 with reference to the proportionality exercise which was the subject of the appeal as follows at [32]:
- “32. However, in *KO (Nigeria)* the Supreme Court took a different view as to the interpretation in this context of the phrase "unduly harsh". At paragraph 22, Lord Carnwath (with whom the other Justices agreed) said that on its face, Exception 2 in section 117C of the 2002 Act raises a factual issue seen

from the point of view of the partner or child . At paragraph 23 he went on to say:

"23. On the other hand the expression "unduly harsh" seems clearly intended to introduce a higher hurdle than that of "reasonableness" under section 117B(6), taking account of the public interest in the deportation of foreign criminals. Further the word "unduly" implies an element of comparison. It assumes that there is a "due" level of "harshness", that is a level which may be acceptable or justifiable in the relevant context. "Unduly" implies something going beyond that level. The relevant context is that set by section 117C(1), that is the public interest in the deportation of foreign criminals. One is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent. What it does not require in my view (and subject to the discussion of the cases in the next section) is a balancing of relative levels of severity of the parent's offence, other than is inherent in the distinction drawn by the section itself by reference to length of sentence. Nor (contrary to the view of the Court of Appeal in *IT (Jamaica) v Secretary of State for the Home Department [2017] 1 WLR 240*, paras 55 and 64) can it be equated with a requirement to show "very compelling reasons". That would be in effect to replicate the additional test applied by section 117C(6) with respect to sentences of four years or more"."

18. At [34] Holroyde LJ further explained:

"34. It is therefore now clear that a tribunal or court considering section 117C(5) of the 2002 Act must focus, not on the comparative seriousness of the offence or offences committed by the foreign criminal who faces deportation, but rather, on whether the effects of his deportation on a child or partner would go beyond the degree of harshness which would necessarily be involved for any child or partner of a foreign criminal faced with deportation. Pursuant to Rule 399, the tribunal or court must consider both whether it would be unduly harsh for the child and/or partner to live in the country to which the foreign criminal is to be deported and whether it would be unduly harsh for the child and/or partner to remain in the UK without him."

19. Accordingly the seriousness of the most recent offending by the claimant is not the focus of this appeal and my analysis of the effect of his deportation on CL and R does not require a balancing exercise against the severity of that offending when considering the degree of harshness of the effect on his family members. The circumstances of the offending however has potential relevance to the assessment of the effect of deportation on CL and R when measured in accordance with the rules and section 117C.
20. Mr MacKenzie relied on two Court of Appeal decisions in support of his submission that the threshold in section 117C(5) is met if there is evidence showing a harsh effect

on a child or partner which goes materially beyond what is normally to be expected where their family member is to be deported. He argues that it is not necessary that the effect should go substantially or extensively beyond what is normally expected. This was consistent with the judgment of Lord Carnwath regarding a need for rules to be "straightforward" and for the court's area of discretion to be reduced rather than widened. In his argument in any given case to delve exactly how far the effect of deportation goes beyond the norm, would be contrary to the principle established in *KO (Nigeria)*. *SSHD v ZP (India)* [2016] 4 WLR 35 was a decision where, as explained by Mr MacKenzie, the Court of Appeal upheld a decision of the First-tier Tribunal allowing an appeal against refusal to revoke a deportation order where there was evidence from family members and a child psychologist that the child in question was suffering "psychological harm" as a result of separation from his deported parent.

21. In *SSHD v JG (Jamaica)* [2019] EWCA Civ 982 the court similarly upheld a decision of the First-tier Tribunal to allow an appeal where there was evidence of psychological and emotional damage to the respondent's son. Mr MacKenzie refers to a specific passage from the judgment of Underhill LJ at [20]:

"20. At paras. 93-104 he reverts to the question of the impact of the Respondent's deportation on "the children", noting that their best interests are a primary consideration. He notes that it has not been argued that any of them, or their mothers, could reasonably be expected to move to Jamaica. He makes clear that he is considering not only JG but also the step-children (and their children), but he reserves his detailed consideration to the impact on JG. As to that, JG had for some time been displaying symptoms of emotional and psychological damage and was under the care of the North Bristol Child and Adolescent Mental Health Service ("the CAMHS"). The Judge refers to, and quotes from, a number of letters from the local NHS Trust and/or the CAMHS and to two reports, the more recent being from an independent social worker, Mr Robert Simpson. Only short passages are quoted, and we were not shown the documents from which they were extracted; I need not reproduce them in full here. I should note, however, that at para. 97 the Judge quotes a letter from the Trust which refers to JG suffering from "sleep difficulties and tempers, physicality and emotional upset", with "oppositional behaviours and threats of self-harming", and describes his bond with the Respondent as "intense". (The self-harming is also referred to at para. 74, where it is said that the Respondent regards himself as responsible for it - as I understand it, because of his having been away in prison.) The Judge summarised the effect of Mr Simpson's report as being that "there will be serious emotional harm to the child if the appellant is deported at this time". He concludes, at para. 104:

"It is having considered all the circumstances that I find it would be unduly harsh for the child to remain in the UK without the appellant."

The reference to "the child" is plainly to JG."

22. I reminded Mr MacKenzie that Holroyde LJ in *PG (Jamaica)* explained in [38] that in the circumstances of that appeal he did not think it necessary to refer to decisions pre-dating *KO (Nigeria)*:

“... because it is no longer appropriate, when considering section 117C(5) of the 2002 Act, to balance the severity of the consequences [for the parties to the appeal of the claimant’s [deportation] against the seriousness of his offending. The issue is whether there was evidence on which it was properly open to Judge Griffith to find that deportation of PG would result for SAT and/or the children in a degree of harshness going beyond what would necessarily be involved for any partner or child of a foreign criminal facing deportation.”

23. Ms Willocks-Briscoe argued in her submission that this approach should be of wider application. Nevertheless. I have considered *ZP (India)* to see if it can provide assistance free from any balancing exercise of the public interest. The appeal was against the decision refusing to revoke a deportation order in respect of an Indian national who as a consequence of the deportation order had been returned to her home country. The offences of which she had been convicted resulted in twelve months’ imprisonment for obtaining leave to enter the United Kingdom by deception and twelve months’ imprisonment for which she had been convicted in her absence with the two terms to run consecutively.
24. The First-tier Tribunal dismissed the appeal. The Upper Tribunal found error of law and re-made the decision allowing the appeal and revoking the deportation order. The evidence before the judge included a report from a child psychologist. The context was evidence of behavioural problems by a child affected by the deportation. An extract from the judge’s decision is cited in the judgment of Underhill LJ as follows:

“Here, there is evidence the child has behavioural difficulties. The oral evidence to that effect is supported by letters from his school and from medical sources. It was not suggested that these were solely the consequences of the absence of his mother. He has had problems since birth. However I find of some assistance a letter from a child psychologist at Homerton University Hospital (9 August 2013) stating that the child is unsettled by living in both countries, here and abroad with his mother. Also, a letter from the deputy head of his primary school in which she states: ‘with regard to the impact of his mother not being with him is having: this could only be my opinion, I do feel it would definitely have a positive impact to have his family back together’.”

25. After a further review of the judge’s findings, Underhill LJ observed that he regarded the cases “very near the borderline” and further observed that he was unsure that every tribunal would have reached the conclusion that was reached in this case, but he was nevertheless satisfied the decision was not perverse.
26. To my mind the decision is of limited assistance, particularly in light of the observation by Underhill LJ in [31] that the court had not been shown the witness statements or documents and that the judge had not summarised their effect, although he had given some details.

27. The more recent decision in *JG (Jamaica)* also involved the consideration of a perversity and reasons challenge. The respondent had been sentenced to five years' imprisonment and thus in the "serious" category of offender identified by the Court of Appeal in *NA (Pakistan) v SSHD [2016] EWCA Civ 662*. Again, Underhill LJ gave the judgment of the court and observed the evidence before the judge at [20] as follows. (JG also being the initials given to JG's son)

"... As to that, JG had for some time been displaying symptoms of emotional and psychological damage and was under the care of the North Bristol Child and Adolescent Mental Health Service ("the CAMHS"). The Judge refers to, and quotes from, a number of letters from the local NHS Trust and/or the CAMHS and to two reports, the more recent being from an independent social worker, Mr Robert Simpson. Only short passages are quoted and we were not shown when the documents from which they were extracted: I need not reproduce them in full here. I should note, however, that at para. 97 the Judge quotes a letter from the Trust which refers to JG suffering from "sleep difficulties and tempers, physicality and emotional upset", with "oppositional behaviours and threats of self-harming" and describes his bond with the Respondent as "intense"..."

28. Underhill LJ observed that the judge summarised the effect of Mr Simpson's report as being that there would be serious emotional harm to the child if the appellant were deported which led to the conclusion that it would be unduly harsh for the child to remain in the United Kingdom without the appellant.
29. In the context of the perversity challenge, Underhill LJ concluded that the evidence before the judge was "at least potentially capable of showing that there was in the present case a risk of harm to JG's mental health that reached the necessary threshold. It did not rely on the "mere" impact of separation but on the specific psychological damage evidenced by the materials referred to ..."

"I have to say that the judge's summary of the medical and professional evidence does not itself paint a very full picture of the situation, or of the precise extent of JG's problems, though the references to self-harm are striking; and it may be that if we were making our own judgment I might not have regarded it as compelling as the Judge did. But that is not the role of this Court: we could only, so far as this ground is concerned, go behind the judge's decision if it was one which was not reasonably open to him on the evidence."

30. This decision is of some assistance but it is limited having regard to the scope of the Court of Appeal's enquiry and the intensely fact specific nature of any appeal such as this. It is appropriate therefore to return to the evidence now before me and of particular relevance is the evidence that has emerged since the family unit was split by the claimant going to prison on 5 October 2018. As submitted by Ms Willocks-Briscoe, the earlier reports were created at a time when the family were together. She argued that particular regard had to be given to the more recent material to determine how the parties had managed. Both she and Mr MacKenzie made detailed reference to that new material (and cross-referenced the former material). I have taken all their points into account in my own analysis of the evidence.

31. The most recent statement from CL (described as the “further statement”) explains that her anxiety has increased as has her medication, with the main support for her mental health problems being provided by her GP. She rarely leaves the house and only does so when it is essential. When she does it will only be short periods, for instance, taking a twenty-minute trip to the park with R. She saw her parents every fortnight or so. R will be starting school soon and it would be a struggle to take him there. She found it hard to sleep and had no appetite. She explains:

“It is extremely difficult for my son and I to try and lead the “normal” life that we had with [the claimant] but I have to try for the sake of [R]. I do feel guilty about the impact of all this has had on him.

It’s difficult to know how I would cope if [the claimant] were sent away permanently.”

32. Specifically in respect of R, CL explains how he has struggled with his recent separation. His speech is several years behind his age group. R has become very angry and violent which has only started since the claimant has been imprisoned and it is always after seeing his father, who misses him. She describes the claimant as being, and has always been, a great dad and partner, phoning every day and writing letters. CL refers to her financial circumstances and the recent advice from the Job Centre that she could begin claiming disability living allowance.
33. CL’s parents in their statement refer to the negative impact on the parties of the court challenges. They rarely see CL as she is so isolated and when R sees his father “you could see from his body language that he is so excited...the family try to rally round as much as [they] can but...[they] have their own lives to lead and jobs to do...both work long hours and try to support to CL where [they] can”. They identify the “fault of the potential permanent separation purely at the government’s doorstep...which tries to destroy a good and loving family unit”.
34. The papers include earlier statements (described as “updated”) by the claimant and CL prepared at the time of the most recent First-tier Tribunal hearing before Judge Boylan-Kemp. The claimant indicates that he had not drunk any alcohol or committed any crimes and did not intend to do so. CL explains how hard the previous eighteen months had been, and its frustration. She refers to the claimant having a good relationship with her family whom they saw on a regular basis. Her relationship with the claimant was as strong as it could be and she loved him very much.
35. I now turn to the recent medical and other evidence referred to in [9] above. Dr Garstang, a Consultant Community Paediatrician reported on 28 August 2018 that R is delayed in all areas of development, speech, understanding, playschools and self-care skills, but also that he has made significant developmental progress since starting at nursery school in January. He explained in one of the un-numbered paragraphs:

“[R] is your first child. He was born at term following an unremarkable pregnancy. He was an undiagnosed breech birth. He is fully immunised. He has no physical health concerns. There is no developmental problems on Mum’s side of the family.

His father has significant mental health problems. There are many boys on Dad's side of the family with developmental delays and speech difficulties. Dad is currently facing deportation."

36. With reference to CL's reported concerns regarding R's early development, Dr Garstang reports:

"With your consent, I had a brief telephone conversation with Head Teacher at Highters Heath Nursery School. She confirmed that [R] had made a very significant progress since he started there. He is a very sociable little boy although often does not know how to interact with other people. He plays alongside other children. He likes other children. He is showing early pretend play. He is now able to follow a one word command and routines within the nursery. He remains quite self-directed."

37. Dr Garstang observed that R in the clinic was very friendly and made good eye contact with a physical examination being entirely normal. A review would be undertaken in clinic in six months' time. Extracts from a child observation sheet have been provided from the nursery school recording R's behaviour and progress between 3 September 2018 and 10 July 2019.
38. Lucy Prever, a Speech and Language Therapist, has provided a report dated 27 July 2018 setting out recommendations for future management based on R's current communication needs.
39. A letter from NHS Birmingham Community Health Care dated 20 March 2019 explains that R was on the speech and language therapy "caseload".
40. According to an undated letter from Care UK HMP Huntercombe, the claimant has been accessing support from the Mental Health Team since December 2018 and had attended one-to-one sessions and psychology group work. The letter was received on 16 August 2019.
41. A bundle of medical notes and GP letters relating to CL have also been provided. Dr Singh, a General Practitioner explains in a letter dated 23 May 2019 that CL had attended the Practice on 3 April 2019 and had reported to another GP stress and panic attacks and that she did not feel she would be able to attend the Tribunal for her partner in London. Dr Singh also explains that CL has been receiving support for her mental health from her GP and had been previously referred to the local Mental Health Team regarding her symptoms. She had been offered cognitive behavioural therapy to help. From the records it appeared she was unable to attend her sessions due to them being group sessions. He concludes:

"Of course it is impossible to predict how someone's mental health could be affected by their partner being deported, but in the light of [CL's] history, her anxiety may worsen, although I say this is in the context of a General Practitioner and not a specialist in mental health."

42. A report by Dr Saleem, a Consultant Forensic Psychiatrist, dated 10 August 2019 has also been provided in relation to CL. Specifically in respect of her relationship with the claimant, Dr Saleem explains at [2.8]:

"2.8 She met her partner [HI] who is now 40 and unemployed. She told me that she met him online in 2012. They lived together for about two years. She told me that [HI] is currently in prison for drink driving and other charges such as not stopping and drug offences. She described him as having been "okay" at the beginning and subsequently developing "drink problem". She told me that he had just broken up with his ex-wife when they met but "managed to sort it out". She told me that he attempted to obtain employment particularly around the time her son [R] was born and worked for a few months as a carpet fitter but added that the Home Office advised him not to work due to his immigration status. She told me that uncertainty about his ability to work legitimately went on for about two years. Describing [HI] during this period she said, "he changed from having a purpose to becoming frustrated, he had I suppose, some responsibility to work and feed me and the child to be fair he was good at what he did but then the uncertainty the Home Office writing to us from time to time just made it worse and he took to alcohol and we had arguments every time there was a letter from the Home Office and the relationship suffered. There were outbursts and arguments, not loads but there was tension and frustration most of the time. Looking back now I think it was all stress, we are still together, I still love him and I cannot imagine life without him. I will be with him as long as he can assure me that he doesn't take drugs. Of course I want a relationship with him, he is after all the father of my son."

43. By way of diagnosis Dr Saleem explains at [11.2] and [11.3]:

"11.2 It is my view that [CL] suffers from a depressive illness. This is characterised by low mood, poor concentration, low energy levels, erratic appetite and sleep, hopelessness, helplessness and a bleak view of the future. At the time of my interview she was presenting as moderately depressed (levels are mild, moderate and severe). As stated above she is currently on appropriate anti-depressant medication and seems to be benefitting from them.

11.3 It is also my view that she suffers from anxiety symptoms. Her anxiety disorder can be described as a panic disorder as defined in ICD10 (International Classification of Diseases 10<sup>th</sup> edition). She complains of palpitations, chest pain, choking sensations, dizziness, feelings of unreality, losing control, fear of something going wrong etc. These seem to occur in paroxysms and intermittent fashion. She has suffered from several severe attacks of autonomic anxiety (which includes physical symptoms such as palpitations, sweating etc). The attacks appear to have occurred in circumstances where there has been no objective evidence of danger without being confined to normal predictable situations. It is also important to note that she has been comparatively free of anxiety symptoms between the attacks."

44. In response to questions asked by the claimant's solicitors Dr Saleem explains at [11.5]:

"11.5 You have asked me if [CL's] condition is linked to [HI's] immigration struggles. I can confirm that [CL's] depressive symptoms are independent of [HI's] immigration struggles. However it has to be said that his struggles have impacted on the intensity and frequency of her depressive and anxiety symptoms. It appears that her depressive and anxiety symptoms are worsened by the uncertainty she has in relation to [HI's] court case. [HI's] immigration status and threat of deportation makes her symptoms particularly worse. She is extremely worried about a situation where she has little or no prospect of her and her child enjoying a normal family life as [HI] will not be able to return to UK. She is also worried that she would not be able to visit Afghanistan without putting herself and her child at risk. The likelihood of [HI] being deported clearly is a destabilising factor for her. At the time of the interview she was clearly distressed by the prospect of him being deported."

45. And by way of conclusion at [11.7]:

"11.7 In terms of your request to comment on the impact of the forced deportation of [HI] (to his country of origin) on [CL's] mental health, I can state that this will only worsen her mental health symptoms i.e. that of depression and anxiety. It is my view that she will undoubtedly struggle which became clear at the interview. The separation of these two individuals will have an impact over and above the impact one might normally expect when separation between partners occurs. This is primarily due to the fact that [HI] will be sent to a very distant country with little prospect of her meeting him regularly to maintain family ties. Her child will clearly have little or no input from his father and this could have a negative impact on [CL's] mental health. If her mental health deteriorates, it is undoubtedly detrimental to her ability to care for her child. It is well known that mothers managing their own mental health are often unable to provide adequate care and appropriate input into the upbringing of their children. If her mental health deteriorates the symptoms of low mood, poor energy levels, poor concentration, tiredness, thoughts of self-harm, panic attacks etc. will invariably affect her ability to function as a mother caring for a young child with multiple needs. [HI's] deportation would mean that the entire burden of care and upbringing of their child will fall upon her which in my opinion can destabilise her significantly and affect her ability to care for their son. [CL] is already finding being a single parent challenging with her partner in prison. If this separation becomes permanent her difficulties will be magnified multi-fold. I am of the view that the impact of [HI's] deportation on [CL] and her child will be over and above what is expected where separation between family members occurs. [HI's] inability to see his partner and child to fulfil his duties will in my view be the predominant factor for any future deterioration in [CL's] mental health."

46. As to CL giving evidence, Dr Saleem explained at [11.8] that she would struggle to do so however with support she might by video-link where she might feel less threatened by the imposing appearance of a court room environment and if not available she might benefit from the support of a trusted friend or relative and if cross examined with compassion and professionalism she would be able to cope and manage her anxiety with breaks if needed.

47. A report dated 1 September 2019 by Soundswell Speech and Language Therapy Solutions to whom R was referred in February 2019. By way of diagnosis the author Nicki Holmes explains that speech and language assessment indicated that he has a severe speech and language delay and that he will need a range of strategies and support to develop his speech and language skills. As to the impact of separation, she explains:

"I am unable to comment on how the relationship between [R] and his father might be impacted by permanent separation. I have only known [R] since his father was sent to prison and therefore already separated from him. I am unable to predict how their relationship might be impacted by permanent separation.

In terms of supporting the maintenance of a relationship, Mum is integral to this with regard to providing opportunities for these interactions to take place. With appropriate advice and guidance, Mum might be able to support [R] to communicate with his father and also facilitate any conversations at a basic level through the use of visual aids. This applies to the maintenance of the relationship in whatever environment."

48. Diana Harris, an independent social worker, has provided a letter dated 29 August 2019 in which she explains that she has had the opportunity of reviewing the psychiatric report and explained that she confirmed her "... original conclusions and believe they are fortified by the findings of Dr Saleem". Ms Harris explained in her earlier report dated 19 October 2017 in respect of R's well-being and best interests of the child that the claimant and CL were currently providing the necessary care, routine and stability for their son to develop and thrive.
49. Lisa Davies, a registered psychologist, provided a psychological report dated 14 October 2017 in which she explained her view that the claimant presented a low level of risk for violent reoffending, a low level of risk for intimate partner violence and a low risk of serious harm to the public in the UK. She expressed the opinion that his risk of reoffending and risk of harm to the public was manageable should he be permitted to stay.

## ANALYSIS

50. The evidence points to CL having mental health difficulties for some period and before she met the claimant in 2012. It is significant that in November 2018 and so after the claimant went to prison she reported to her GP that the anti-depressant medication was working well. It also appears that the developmental difficulties R has encountered have an early origin and these are not attributed to the current absence of the claimant. The earlier evidence refers to the positive and supportive role played by the claimant in their lives.
51. It is difficult to reconcile the conduct recorded in the sentencing remarks with the theme of CL's evidence on the positive aspects of the claimant's reformed role. Furthermore, her remarks to Dr Saleem suggests the relationship itself is being tested. It is clear from the sentencing remarks that the claimant has a problem with alcohol and class A drug use yet this is not addressed in any meaningful way by Dr Saleem in his assessment of the background circumstances. Dr Saleem does not

factor this aspect into the assessment of the strength of the relationship and the impact of long term separation particularly in the light of the sentiments that CL expressed as to the future of the relationship. Another aspect which was not considered by Dr Saleem relates to the evidence that CL himself suffers from depression or a form of mental health difficulties and how this would impact on the future course of the relationship and how this aspect has affected the relationship in the past. In the circumstances of this case the weight I can give to his report is reduced by these aspects which could have been addressed if he had also interviewed the claimant. To my mind an assessment of the strength of a relationship and the impact of separation requires both parties to be seen.

52. The concluding observations by Dr Saleem are couched in general terms. He speculates that if CL's mental health deteriorates, the symptoms will invariably affect her ability to function as a mother which is explained by it being well-known that mothers "... managing their own mental health are often unable to provide adequate care and appropriate input into the upbringing of their children". The evidence points to NHS intervention in relation to the management of CL's mental health difficulties and so it is not the case that she is then required to manage her difficulties alone. Whilst Dr Saleem observes that it "is well-known" that mothers are often unable to provide adequate care, it is significant that he did not see R or carry out an assessment of the impact on R of the claimant's absence since August 2018. It would have been more helpful if he had assessed whether the claimant's absence in prison had been detrimental to CL's ability to care for R.
53. The observation that if separation became permanent (by deportation) CL's difficulties will be "magnified multifold" lacks diagnostic precision. Dr Saleem's observation that the claimant's inability to see his partner and child "to fulfil his duties" is not well explained. The concluding remarks by Dr Saleem in relation to the impact being over and above what is expected when separation between family members occurs is repeated in [11.7] and in its initial expression is by reference to the claimant being sent to a very distant country with little prospect of meeting regularly to maintain ties. He does not give consideration to the effect of contact by social media between contact that may be made on visits by CL and R to third countries where they all might meet up. There was no evidence that this has been contemplated. The reference to difficulties for CL being "magnified multi-fold" strays from careful clinical analysis. All these aspects also affect the weight which I can give to Dr Saleem's conclusions.
54. I accept that the CL's mental health will worsen if the claimant is deported. The question I need to consider is whether the degree of undoubted harsh impact is sufficient to render this worsening unduly harsh. In my judgment it does not. CL has mental health concerns independent of the claimant. The evidence shows that her moderate depression has been managed by medication. There is some doubt over the future of the relationship given the nature of the claimant's most offending and CL's explanation given to Dr Saleem how drugs could impact. Dr Saleem's report is essentially one sided since he has assessed the impact on CL of the deportation of someone whom he has not seen. To that extent he is dependent upon

her report of how she would respond to the claimant's absence in the context of her mental health difficulties. Dr Saleem's report is of assistance in determining the impact on CL in particular of the claimant's absence but it is not determinative of the measurement of harshness should that become more permanent through deportation.

55. R's developmental difficulties appear to have arisen when the couple were together and he had made significant developmental progress since starting nursery school in January 2018 as explained in Dr Garstang's report. The observations in the extracts from his school records for the period 3 September to 10 July 2019 show that R continues to progress well in what clearly is a stimulating environment despite the absence of the claimant at home. Ms Holmes accepts that she cannot comment on how R's relationship with his father will be impacted by permanent separation and she identifies the importance of the role CL has in helping R develop his speech and language skills. Although R's difficulties mean that communication by telephone would be unsuccessful without the use of additional visual support. She considers that there would be more success interacting and communicating by skype provided the claimant is trained how to use the right methods to help R understand. Such a form of communication will remain possible even if the claimant is outside the UK.
56. Taking into account all the evidence in my judgment the deportation and thus permanent separation of the claimant from CL and R will be harsh (and seen as harsh by CL) but not unduly harsh. The claimant's deportation will undoubtedly cause distress. That is inevitable. R will be without the presence of a male figure in the household and his mother will have to deal with matters alone although her family and social and medical services will be able to provide support. In assessing the impact of deportation I am bound to give weight to the behavior that led to the claimant's conviction which undermines or at the very least does not sit well with the evidence of him being such a positive role in the lives of CL and R. Taking proper account of their personal difficulties, the evidence does not support a finding that his absence would result in those difficulties being significantly compounded. CL has been able to manage despite the claimant's absence in prison and the evidence does not point to there being such a marked decline in her mental health were he to be deported that the effect would be unduly harsh nor do I consider that such a result would ensue for R in terms of his development. I am not persuaded that it would be unduly harsh on the facts of this case for that deportation to ensue.
57. This appeal is dismissed.

Signed

Date 18 October 2019

*UTJ Dawson*  
Upper Tribunal Judge Dawson