



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05556/2019

THE IMMIGRATION ACTS

Heard at Field House, London
On Friday 24 January 2020

Decision & Reasons Promulgated
On Tuesday 27 February 2020

Before
UPPER TRIBUNAL JUDGE SMITH

Between

PAUL ALIMAMY BANGURA

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Nadeem, Counsel, instructed by Sabz solicitors LLP

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

DECISION

BACKGROUND

1. By a decision promulgated on 3 October 2019, I found an error of law in the decision of First-tier Tribunal Judge Bart-Stewart promulgated on 21 June 2019 which allowed the Appellant's appeal. I therefore set aside Judge Bart-Stewart's decision and gave directions for further evidence and a resumed hearing. It is on that basis that this appeal comes back before me. My error of law decision is annexed to this decision for ease of reference.

2. By a decision dated 29 October 2019, an Upper Tribunal Lawyer extended the parties' time for filing further evidence to 15 November 2019. That was on application by the Appellant who indicated that his solicitors had ceased to act.
3. The resumed hearing was initially listed on 5 December 2019. However, the Appellant's new solicitors, Sabz Solicitors, applied, on 29 November 2019, for an adjournment of that hearing as they had been unable to obtain the Appellant's file of papers from the previous solicitors in spite of a number of requests. By a decision dated 6 December 2019, that adjournment was granted by the Upper Tribunal Lawyer. The new solicitors were directed to update the Tribunal by 6 January 2020 whether they had been successful in obtaining the client's file and otherwise the appeal file was to be sent to me for review. As it was, and although the solicitors did not expressly indicate whether the file had been received, they filed a supplementary appeal bundle on 7 January 2020 from which I inferred that they were ready to proceed. So it was that the appeal came before me on 24 January 2020.
4. The Appellant appeals the Respondent's decision dated 13 March 2019 refusing his human rights claim made in the context of a decision to deport him to the US. The Appellant is entitled to be admitted to the US, having been born there at a time when his father was working there. He is however a national of Sierra Leone and has never lived in the US other than for a short period when he was a baby. The factual background to the Appellant's case is set out at [2] to [4] of my error of law decision and I do not need to repeat what is there said.

THE LEGAL BACKGROUND

5. The Appellant is a foreign criminal to whom the automatic deportation provisions in section 32 UK Borders Act 2007 apply. He also falls within the definition for the purposes of Section 117 Nationality, Immigration and Asylum Act 2002 ("Section 117"). Section 117C is of particular relevance. The sentence passed on the Appellant for the index offence was one of eighteen months.
6. The relevant provisions of the Immigration Rules ("the Rules") relating to this Appellant are as follows:

"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) ...

(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 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) ...
- (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.

399A. This paragraph applies where paragraph 398(b) or (c) applies if –

- (a) the person has been lawfully resident in the UK for most of his life; and
- (b) he is socially and culturally integrated in the UK; and
- (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.

7. Section 117C reads as follows (again so far as relevant):

“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, ..., and the effect of C's deportation on the partner ... 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.

...”

8. The Rules and Section 117C are in materially the same terms. Where, as here, a person is sentenced to a term of imprisonment of under four years but more than twelve months, the Tribunal is required to consider whether either of the two exceptions at rule 399/exception 2 (“Exception 2”) or rule 399A/exception 1 (“Exception 1”) are met. If they are not, the Tribunal is required to consider whether there are very compelling circumstances over and above those

exceptions. Although, as appears at Section 117C (6) (and the corresponding provision in the Rules) on the face of the legislation this provision applies only to those sentenced to at least four years, the Court of Appeal held at [24] to [27] of its judgment in NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662 that this was an unintentional drafting error. Accordingly, that same “fall-back” protection applies equally to those in the position of the Appellant.

9. Although dealing with the position of children rather than partners, the Supreme Court gave guidance as to the meaning of “unduly harsh” at [23] of its judgment in KO (Nigeria) and others v Secretary of State for the Home Department [2018] UKSC 53 (“KO (Nigeria)”) as follows:

“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...”

10. At [27] of the judgment in KO (Nigeria), the Court expanded upon what is meant by “unduly harsh” by reference to what was said by this Tribunal in MK (Sierra Leone) v Secretary of State for the Home Department [2015] UKUT 223 (IAC) as follows:

“...‘unduly harsh’ does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. ‘Harsh’ in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb ‘unduly’ raises an already elevated standard still higher.”

11. In relation to the test for “very significant obstacles to integration” within Exception 1, the Court of Appeal described this in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 (“Kamara”) in the following way:

“14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a

variety of human relationships to give substance to the individual's private or family life.”

12. It is also relevant to note the comment of the Court of Appeal in Secretary of State for the Home Department v Olarewaju [2018] EWCA Civ 557 that “[v]ery real culture shock’ is not the same as ‘very significant obstacles’” although of course each case will turn on its own facts and balance.
13. In the context of integration in country of return, Mr Jarvis also directed my attention to two further cases which post-date Kamara and expand on what is there said.
14. In El Gazzaz v Secretary of State for the Home Department [2018] EWCA Civ 532, the Court of Appeal said the following:

“35. So far as concerns other aspects of living in Egypt if removed there, the appellant had been brought up in Egypt and had made frequent trips there to see family members, as the Tribunal noted had been the position down to 2006: [31]. It was not suggested that the appellant could not speak the language, nor that he lacked any understanding of how society operates in Egypt. This is in contrast to the position of the individual in *Kamara v Secretary of State for the Home Department* [2016] EWCA Civ 813; [2016] 1 WLR 152, an authority particularly relied on by Ms Ward on this appeal. Also, *Kamara* involved a person who had come to the United Kingdom at a significantly younger age (six) than the appellant. Contrary to Ms Ward’s submission, it is not an authority which shows that the Tribunal erred in its assessment in the present case. She submitted that, if removed to Egypt, the appellant would not be able ‘to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships there as he has in the United Kingdom. Those are limited in both cases by his mental ill-health, and the treatment for that in Egypt might not be at the same level as in the United Kingdom. But as already pointed out above, such gap as there is in that regard does not indicate that his removal to Egypt would be disproportionate for the purposes of Article 8.”

15. In AS v Secretary of State for the Home Department [2017] EWCA Civ 1284 (“AS”), the Court of Appeal said this about the judgment in *Kamara*:

“57. Mr Buley can point to the UT’s reference to AS’s ability to ‘adapt to life in Iran’ but it is clear that it did not, as submitted by Mr Buley, substitute this for the issue of obstacles to integration. Further, whether someone is able to adapt to life in the other country easily fits within an assessment of the extent to which there are obstacles to their integration.

58. I do not consider that Mr Buley’s categorisation of some factors as ‘generic’ is helpful. Consideration of the issue of obstacles to integration requires consideration of all relevant factors some of which may be described as generic. What Mr Buley identified as ‘generic’ factors, as referred to above, can clearly be relevant to the issue of whether there are very significant obstacles to integration. They can form part of the ‘broad evaluative judgment’ as is specifically demonstrated by the reference in *Kamara* to ‘good health’ and ‘capable of working’.

59. I also reject Mr Buley's submission that, following *Kamara*, whether someone is 'enough of an insider' is to be determined by reference to their ties or links to the other country. This is to turn what Sales LJ said in *Kamara* into just the sort of gloss which he expressly warned against. It is clear, to repeat, that generic factors can be of significance and can clearly support the conclusion that the person will not encounter very significant obstacles to integration.

60. The UT undertook an assessment which took into account a range of factors including AS's ability to speak Farsi, his ability to adapt to Iranian culture, his intelligence, his academic abilities and character. Additionally, given Mr Buley's submissions in respect of the relevance of the mother's ties to Iran, it is probably helpful to quote more fully what was said about ties in *Ogundimu*, paragraph 124 (my emphasis):

'His father may have ties but they are not the ties of the appellant *or* any ties that could result in support to the appellant in the event of his return there.'

This analysis in *Ogundimu*, including specifically the latter part of this passage, was expressly approved in *YM (Uganda)*. In any event, the broad evaluation required when this court is considering obstacles to integration can clearly include the extent to which a parent's ties might assist with integration."

16. The judgment in AS is also of interest for what it has to say about the applicability of the case of Maslov v Austria (2008) 47 EHRR 20 ("Maslov") on which Mr Nadeem placed some reliance in his written submissions. In AS, the Court of Appeal made the following observations about the applicability of that case:

"50. In *Ali*, Lord Reed JSC said, when concluding his consideration of the Strasbourg jurisprudence, including *Boultif* and *Maslov*.

'35. While the European court has provided guidance as to factors which should be taken into account, it has acknowledged that the weight to be attached to the competing considerations, in striking a fair balance, falls within the margin of appreciation of the national authorities, subject to supervision at the European level. The Convention on Human Rights can thus accommodate, within limits, the judgments made by national legislatures and governments in this area.'

51. In *Akpinar*, the Court of Appeal directly considered the reference in *Maslov* to 'very serious reasons' being required to justify expulsion. The submission that *Maslov* laid 'down a new rule of law, creating a consistent and objective hurdle to be surmounted by the state in all cases to which it applies; in other words, irrespective of the other factors involved, unless the state can show that there are 'very serious reasons' for deporting ..(him), his article 8 rights will prevail' was rejected: paragraph 30. Sir Stanley Burnton considered that the Strasbourg court's 'extensive citation of its previous case law (did) not suggest that it intended to depart from it'. A conclusion further supported by the way in which the court had expressed its ultimate conclusion, in paragraphs 100 and 101, which reflected 'a conventional balancing exercise: paragraph 31 of *Akpinar*."

17. Mr Nadeem relies on what is said about the applicability of Maslov by the Court of Appeal in CI (Nigeria) v Secretary of State for the Home Department [2019] EWCA Civ 2027 ("CI") at [103] to [114] of the judgment, the relevant parts of which read as follows:

“Applicability of the Maslov case

103. As noted earlier, the object of Part 5A of the 2002 Act is through a structured approach to produce a final result that is compatible with article 8. To ensure that this is achieved, it is necessary when considering whether circumstances are sufficiently compelling to outweigh the public interest in the deportation of a "foreign criminal" to take into account the jurisprudence of the European Court of Human Rights, including the important decisions of *Üner v The Netherlands* (2006) 45 EHRR 14 and *Maslov v Austria* [2009] INLR 47: see *NA (Pakistan)*, para 38.
104. In *Maslov* the European Court reaffirmed the criteria, already established in its judgment in *Üner*, which are to be applied when assessing whether the expulsion of a foreign national on account of criminal offences is consistent with article 8. These include the need to have regard to "the special situation of aliens who have spent most, if not all, of their childhood in the host country, were brought up there and received their education there" (see para 74 of the *Maslov* judgment). In *Maslov* the court further stated (at para 75):
 "In short, the court considers that for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country, very serious reasons are required to justify expulsion."
105. ...
109. ... Although the points made in the *Maslov* case about the need to take account of the applicant's age when he or she (a) moved to the host country and (b) committed criminal offences are of general relevance in deportation cases, the observations made about the 'special situation' of persons who have spent most of their childhood and youth in the host country and the need for 'very special reasons' to justify their expulsion are not applicable to criminal offenders who are unlawfully present in the UK.
110. Unlike the appellants in *JO (Uganda)*, *ED (Ghana)* and *DM (Zimbabwe)*, however, CI is not unlawfully present in the UK. He has indefinite leave to remain and is thus a "settled migrant", as that expression has been used in the case law of the European Court. On the other hand, he has not spent all or the major part of his childhood and youth lawfully in the UK, and therefore does not fall within the description in para 75 of the *Maslov* judgment. This raises the question whether, as the Upper Tribunal judge in this case thought, the principles stated in *Maslov* (and, in particular, para 75 of the judgment) are inapplicable because they are confined to settled migrants who have had that status – or who at any rate have been lawfully present in the host country – for most of their childhood.
111. In my view, the relevance of the *Maslov* case (and other cases in the same line of authority) is not limited in this way. In the first place, it would be wrong to read the court's judgment in that case as if it were a legislative text. As discussed by Sir Stanley Burnton (with whom McFarlane and Maurice Kay LJ agreed) in *R (Akpınar) v Upper Tribunal* [2014] EWCA Civ 937; [2015] 1 WLR 466, paras 30-54, the statement in para 75 of the *Maslov* judgment about the need for 'very serious reasons' is not to be read as laying down a new rule of law but rather as indicating the way in which the balancing exercise should be approached in the circumstances of that case. As Sir Stanley Burnton pointed out, this is confirmed by the way in which the court expressed its ultimate conclusion in para 100 of the judgment that there had been a violation of article 8 in that case:

"Having regard to the foregoing considerations, in particular the – with one exception – non-violent nature of the offences committed when a minor and the State's duty to facilitate his reintegration into society, the length of the applicant's lawful residence in Austria, his family, social and linguistic ties with Austria and the lack of proven ties with his country of origin, the Court finds that the imposition of an exclusion order, even of a limited duration, was disproportionate to the legitimate aim pursued, 'the prevention of disorder or crime'. ..."

This was a conventional balancing exercise, with no bright line rule applied in relation to the length of the applicant's lawful residence in Austria.

112. Secondly, as I have indicated, the distinction of principle drawn in the case law of the European Court is between the expulsion of a person who has no right of residence in the host country on the one hand and, on the other hand, expulsion which involves the withdrawal of a right of residence previously granted. There is no such distinction of principle between a person who has spent most of their childhood lawfully in the UK and someone who has spent part but less than half of their childhood living in the country lawfully. The difference is one of weight and degree. Such a difference is compatible with adopting the condition specified in section 117C(4)(a) that a foreign criminal has been lawfully resident in the UK for most of his life as a *prima facie* requirement. But it would not be consistent with the test of proportionality under article 8, which involves a balancing exercise, to treat the principles stated in the *Maslov* case as inapplicable to a settled migrant with a right of residence just because the individual concerned, although present in the country since early childhood, has not had a right of residence for a particular length or proportion of their time in the host country..."

18. I make three observations about what is there said. First, it does not appear that the Court of Appeal was taken to the judgment in AS although I accept does refer to the case of Akpinar on which the Court's judgment depends in part. Second, the Court of Appeal was in CI concerned with whether the Judge below was right to have no regard to the case and was making observations about why it might have had some relevance. The appeal was remitted for redetermination. That leads on to the third point that the Court was there concerned with the application of Section 117C(6) and whether there are very compelling circumstances over and above the exceptions and not to the test in Exception 1 *per se*. As the Court of Appeal itself points out, the requirement that a beneficiary of Exception 1 must have lived for most of his life lawfully within Exception 1 is consistent with the distinction drawn in Maslov. I will come to the application of that requirement in this case below.

19. Although, in KO (Nigeria), the Supreme Court decided that no reference is to be had to the public interest when assessing whether the impact of deportation is unduly harsh on a partner or child (as it is already inherent in the threshold which applies), the same does not apply when considering the very compelling circumstances outside the two exceptions, applying Section 117C (6). At [1] of its headnote in MS (s.117C (6): "very compelling circumstances") Philippines [2019] UKUT 00122 (IAC), the Tribunal provided the following guidance:

“In determining pursuant to section 117C (6) of the Nationality, Immigration and Asylum Act 2002 whether there are very compelling circumstances, over and above those described in Exceptions 1 and 2 in subsections (4) and (5), such as to outweigh the public interest in the deportation of a foreign criminal, a court or tribunal must taken into account, together with any other relevant public interest considerations,, the seriousness of the particular offence of which the foreign criminal was convicted, not merely whether the foreign criminal was or was not sentenced to imprisonment of more than 4 years. Nothing in KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53 demands a contrary conclusion.”

20. In summary, therefore the issues for me to determine are as follows:

- (a) Does the Appellant meet either Exception 1 or Exception 2? If he does, he is entitled to succeed.
- (b) If he does not, are there very compelling circumstances over and above Exceptions 1 and 2 which are sufficient to outweigh the public interest in the Appellant’s deportation?

EVIDENCE AND SUBMISSIONS

21. The Appellant relies on his bundle of evidence before the First-tier Tribunal to which I refer below as [AB/xx]. I also have a supplementary bundle from the Appellant to which I refer below as [ABS/xx]. I refer to documents in the Respondent’s bundle, so far as relevant, as [RB/xx]. Mr Nadeem also sought to introduce in evidence at the hearing two articles drawn from the internet entitled “The High Cost of Endometriosis” (published on “Hormonesmatter.com”) and “How US Healthcare Costs Compare to Other Countries”. Although Mr Jarvis complained about the late production of this evidence, he did not object to its inclusion. He submitted (and for reasons I give below I accept) that those articles have little if any relevance to the issues I have to decide.
22. In addition to the written evidence, I heard oral evidence from the Appellant, his partner, Ms Smith, and his mother, Ms Bangura. I have had regard to all of the evidence when reaching my decision, but I set out below only the evidence which I consider to be of relevance to the issues.
23. In my error of law decision, I also expressly preserved the record of the evidence given in the First-tier Tribunal’s decision which I set aside. I have set out those paragraphs as they apply below and take into account the evidence there given in relation to the relevant issues.
24. The Appellant relies on three aspects of his private and family life in his assertion that deportation to the US would be disproportionate. First, he says that he would not be able to live in the US because he has lived in the UK from a very young age, is socially and culturally integrated here and there would be very significant obstacles to integration in the US because he has never lived there (except for a very short period which he does not remember as he was a baby).

He has no family living there. His family are all in the UK. Second, he says that he and Ms Smith are in a long-standing, genuine relationship and that she could not go to live in the US because of her own circumstances (which I describe below). The relationship could not continue if they were separated. Third, he says that he provides care to his mother who suffers from various illnesses and has some responsibility towards other family members. I will come to the detail of those and the care he provides below. I take each of those factors in order although I accept that there is an overlap of the factors when it comes to considering the case as a whole.

Appellant's Integration in the UK and Ability to Move to the US

25. Judge Bart-Stewart set out the Appellant's previous evidence about this aspect at [27], [31] to [32] and [36] of his decision as follows:

"27. The appellant's witness statements are fairly short confirming the chronology and family circumstances as set out in the refusal letter. The appellant said that he had no friends or family members in the USA. A few months after his birth he lived with family in Sierra Leone for 2 years and then moved to the UK where he attended nursery, primary, high school and college. Ms Smith has been his long-term partner for 13 years. They became engaged on 8 November 2018 and plan to marry. He said he is not at risk of reoffending and would not contemplate committing another crime. He accepts what he did and is sorry. He wants to continue to care for his brother who depends on him and is struggling to cope without him. His fear is that his family life would not continue. His partner cannot realistically relocate to the United States because of health problems for which she is receiving treatment and her commitments to her father's health problems.

31. He said he would not be able to integrate and support himself in the USA. He has no qualifications for the US and does not think that his work as an estate agent would assist him there as the industry and the market is different and it is a large country. He would be a fish out of water as he had never lived there and spent at most a couple of months after being born there. He was born in Atlanta Georgia then taken to Sierra Leone at a few months old. He understands his family were based in Sierra Leone at the time and came to the UK because of the civil war.

32. In cross-examination he said he believed his mother was in the US briefly before his birth but does not know why. He had Maths, English and Science GCSE, went to college and then chose to work. He is the only member of his family with US nationality. He had not applied for British nationality as he had indefinite leave to remain and thought that was as good as having a passport. He holds a US passport.

...

36. He visited the US with his father when he was 9. They are no longer in contact and he does not know where his father was living. The last contact was when he was a child. His brother is aged 21 and in employment."

26. The Appellant's very brief witness statement at [AB/3-5] largely confirms the above. The Appellant says that he would be unable to go to live and work in the US. He has been here since the age of two years. He has never lived in the US. His parents are from Sierra Leone. He lived in Sierra Leone for one year

after the US and then came to the UK when he was still a baby. He “does not know anything about the US”. He “does not know the country”. He “would be lost”. In relation to employment, he said that if he tried to get work there, he would be unable to find a job as he has no qualifications for that country. He would be up against millions of other people more familiar with the US and with qualifications from that country. Why, he said, would an employer take him? I note that the evidence is that the Appellant has three GCSEs obtained in the UK, two relating to the core subjects of English and Maths. There is no documentary evidence as to his qualifications.

27. Similarly, there is limited documentary evidence as to the Appellant’s employment in the UK. He says in a letter dated 21 December 2018 ([RB/D1-4]) that he did a “numerous amount of different jobs until [he] found [his] foot in the property industry (Estate Agency) where [he] could see [himself] creating a career”. He says that he has worked for five different companies in the field. He said in oral evidence that he is now employed in an estate agency firm close to his home. He earns £18,000 per annum plus commission on sales of 10%. However, he started this job only in December 2019. He earned £1400-1500 in that month. He told me that he is very good at his job. He had been due to start another job in an estate agency business at the time of his sentence for the index offence with a salary of £22,000 and a promise of promotion to management but obviously was not able to take up that employment. Prior to beginning his current job, the Appellant took temporary jobs “in order to relax”. Although there is evidence in the Appellant’s and Respondent’s bundles as to various job offers in the past and at the time of conviction, there is no evidence from his past employers. There is no documentary evidence as to the Appellant’s current employment and employment prospects in the UK.

28. The Appellant said that he had no savings on which he could rely on arrival in the US. He and Ms Smith had been saving for a house together but the £8,000 they had saved had been spent supporting him in prison and on legal bills for this appeal. Ms Smith confirmed that to be the position and I accept their evidence even though, as Mr Jarvis pointed out, there is no documentary evidence about the Appellant’s or Ms Smith’s financial circumstances.

29. There are a number of letters in the Appellant’s and Respondent’s bundles from various friends of the Appellant, his family and Ms Smith attesting to his character, the assistance he has offered various of them and asking that he be allowed to remain in the UK. I have read and take those into account when reaching my decision.

The Appellant’s Relationship with Ms Smith and Ms Smith’s Circumstances

30. The details of the Appellant’s relationship with Ms Smith and her circumstances are recorded at [27], [29], [35] and [37] to [39] of the First-tier Tribunal’s decision. I have already set out [27] of the decision. The remaining paragraphs read as follows:

“29. [Ms] Smith said that she was born in the UK and lived here since birth. She works as an executive assistant with Wellington Management International. She first met the appellant in 2006 and their relationship started soon afterwards. They lived together a year in 2013, were engaged in November 2018 and they planned to marry shortly before the appellants issue with the UK authorities. During the relationship she has known the appellant to be a good character and always supportive. He came to the UK when he was 2 years old and had not lived in another country since being brought here. She is still committed to their relationship. She would not like to move or live outside the UK because of her health issues. She receives medication and treatment for endometriosis and adenomyosis. Her father is also seriously ill and receiving treatment for cancer. It would be very unreasonable for her to move to another country.

...

35. He and his partner discussed what she would do if he was deported. It is difficult for her as she has a medical condition and her father is ill. She would have to remain in the UK. It would be very expensive to fly to the US and he doubts she could visit. It would have a detrimental effect on their relationship. They were trying to save to buy a property and so there is some money but there was a question as to how often she could visit. He had not used cannabis for more than 6 or 7 years and never used any other drug. He drinks mildly.

...

37. [Ms] Smith adopted her witness statement and said that she suffers from gynaecological problems which are debilitating and sometimes she is unable to get up or go to work. She has been suffering for 8 years and diagnosed 2 years ago. The medication allows her to enjoy a good quality of life but if this was to cease she would be debilitated. If she went to the US she would not have access to the medication that she needs. Her father is also seriously ill. He was diagnosed with cancer for the 4th time in August 2018 and is receiving treatment. She has strong family connections in the UK and cannot envisage leaving her father. It has been a difficult time for the family. She lives with her parents and helps out with her father’s medication and as required as a family.

38. In cross-examination she said she has a 21 year-old brother who is at university but home when he can. There were no other siblings and she has no children. It would be difficult to visit the appellant in America as she is in work and there is not a lot of money to spare. They have roughly £8000 saved towards a house purchase.

39. Their relationship began in 2006 and she has not known the appellant to have been involved in anything of this gravity. She is aware of the dispute with his older sister resulting in the sister calling the police and him being cautioned 2 or 3 times. On each occasion it was the same sister. She has always found the appellant to be kind, calm and the offence completely out of character. She was with the appellant on the night of the index offence. The victim was very intoxicated and kept coming up to them as they were leaving. He was very provocative with his behaviour and his language. The victims friends tried several times to remove their friend and it culminated in the appellant’s action. She knows that it would not be repeated.”

31. Ms Smith’s witness statement is at [AB/8-9] and confirms some of what is said in the First-tier Tribunal’s decision.

32. I accept that the Appellant and Ms Smith are in a genuine and subsisting and long-standing relationship. They have been together since they were in their teens. I did not understand Mr Jarvis to contend otherwise. Although he did ask Ms Smith and the Appellant questions about why they were not living together in their own place, I accept the answers given that they had done so for a year but were now trying to save up to buy a property rather than rent. For a young couple, I accept that this is a normal situation.
33. I note however that there is no evidence as to the couple's financial circumstances. Whilst they were consistent about having spent the £8000 savings which they had accumulated, I was told nothing about Ms Smith's earnings or ability to fund trips to the US if she was not able to go with the Appellant.
34. The Appellant said that the relationship would not survive a separation. A long-distance relationship is "hard for anyone". The couple speak every day and would struggle to communicate at long distance. Not seeing each other "would be huge". The Appellant said that he and Ms Smith were now living together at his mother's house. The Appellant also asked how they could be expected to continue a relationship at a distance when they wanted to start a family. Ms Smith reiterated the same concern.
35. As regards Ms Smith's family circumstances, those have moved on. I was told that her brother has a partner who is pregnant and has moved to Manchester to start his own family. That means that he is not dependent on her (if he ever was). Equally, however, it means that he cannot support her with help for her father.
36. However, in the latter regard, Ms Smith gave evidence that her father's cancer is currently in remission. He has though had lymphoma four times. She fears that his cancer might return. The last supporting evidence is at [AB/12] and is dated October 2016 at which time Ms Smith's father was still receiving treatment. At the current time, however, there is no evidence that Ms Smith needs to be in the UK to support her father. Indeed, I was told by the Appellant that Ms Smith lives with him at his mother's house most of the time. I also note that the Judge Bart-Stewart records that Ms Smith lives with her parents which suggests that her mother is also there to support her father. That appears to be supported by a document at [ABS/7] which describes Ms Smith as "the daughter of one of my midwifery colleagues" and at [ABS/3] which describes Ms Smith attending an appointment with her mother who is a staff member.
37. The main factor relied upon as a reason why Ms Smith could not move to the US is her medical condition. The evidence about that appears at [ABS/2-11]. Those documents confirm Ms Smith's condition. The most recent report is one dated 17 December 2019 from Mr M Nawar, Consultant Obstetrician and Gynaecologist at London North West University Healthcare. He records that he saw Ms Smith in May 2018 and arranged for her to have an ultrasound scan. She was diagnosed with the conditions from which she confirms she suffers. He says that the medication prescribed is controlling her symptoms but that she

may have difficulties conceiving and may require IVF treatment to do so. He says that “[h]er recurrent and ongoing pain interferes with her daily activities and she does get certain days when she is unable to do simple tasks in view of the pain”. He advises that it will be necessary to continue with the medication (which appears to consist of a contraceptive pill together with mefenamic acid tablets and tranexamic acid tablets) until she attempts conception to avoid putting her fertility at risk from the condition.

38. The Appellant’s case is that Ms Smith would be unable to afford the medication she needs. The Appellant said in his evidence that the cost of the medication would be £11,000 to £15,000 per annum and they could not afford it. No documentation was provided in support of that assertion save the article entitled “The High Cost of Endometriosis” which provides the following information:

“The economic cost of endometriosis is staggering. The World Endometriosis Research Foundation (WERF) has conducted and published a prospective study of the direct and indirect costs associated with endometriosis in women over 10 different countries. Direct costs were mostly health care costs, and indirect costs were costs associated with loss of productivity. This study found that the average cost per year, per woman was 11,497USD. In the US, using the incidence of endometriosis of 10 percent of reproductive age women, this amounts of 85 billion dollars per year. Of this amount, approximately two-thirds is associated with lost productivity, and one-third is due to direct health care costs.”

39. As Mr Jarvis pointed out, and I accept, if the Appellant’s evidence is based on this article (and no other source was provided), it is misconceived and based on a misunderstanding of what this article shows. The “11,497USD” is an average annual cost per woman to the countries surveyed. The figure is given in US dollars because it is a wider survey of 10 countries. In any event, it does not show the cost to the individual but to the economy of the country. The information about the US does not assist. First, it is not clear that “direct health care costs” are passed on as a whole to the individuals affected. Second, and more importantly, it is not said how many people are affected. If anything, the article does not assist the Appellant’s case because it shows the prevalence of the condition in the US and therefore that treatment would exist there. The other article regarding healthcare costs in the US does not refer to the cost of treatment for this condition. Moreover, the article is undated and refers to data to 2014 which might suggest that it is out of date. In any event, what that article does not deal with is the availability of publicly funded care for those who cannot afford treatment and/or the availability of insurance to cover medical treatment.

The Appellant’s Relationship with his Mother, her Circumstances and Other Family

40. This aspect of the Appellant’s case is dealt with in evidence at [33], and [40] to [42] of the First-tier Tribunal’s decision as follows:

“33. At the time of his arrest he lived with his mother and siblings who visit him in prison. His brother is aged 21 and he has 2 older sisters. He had been his mother’s full-time carer and was receiving a carer’s allowance until about 5 months before his arrest...

40. [Ms] Bangura confirmed that she is the appellant’s mother. She said she was in the US for about 2 months and the appellant born there. They then went to Freetown Sierra Leone before entering the UK in 1993. She would be unable to assist the appellant financially if he went to the US as she is not working and is receiving employment and support allowance due to ongoing illness. She is also studying. She suffers from chronic pains and taking medicine for her cancer which is in remission. She also suffers from diabetes, high blood pressure and a few other conditions. The appellant received a carer’s allowance as the medication she was taking inhibited her from doing things and he was helping out. She was taking more than 10 different tablets a day and also suffers from nerve problems following 3 operations.

41. In cross-examination she said that she had 2 operations from breast cancer and one where they removed part of her intestine. She has been in remission for about 2 years. When the appellant was born she had spent 6 months in total in the US. She and her husband had a business at the time and were there on a business trip. She also had sisters in the US at the time. She moved back to Sierra Leone and died there 7 or 8 years ago [sic]. She is married which does not know what became of her husband. They had their children.

42. She said that she and the appellant’s brother had visited him in prison. 2 of his sisters were planning to do so, waiting to do so together, but were told he had been moved and both were at court. Both sisters remain contact with the appellant. The appellant had been living at home before being sent to prison. There were one or 2 occasions when he and his sister got into an argument and she called the police on him. She thinks she was present during one of the altercations but does not see why the sister called the police. She cannot recall the precise events but heard voices in an argument. She did not see anything worth calling the police and told her so. There had been family arguments leading to raised voices but she did not feel threatened by her daughter and her daughter did not feel threatened. She knew that the appellant would not have harmed her. The daughter argues a lot with them.”

41. Ms Bangura’s statement is at [AB/6-7]. It deals with the family background. It says nothing about her medical conditions. Ms Bangura confirmed during cross-examination that no medical evidence has been adduced as to her conditions. She did present for inspection her repeat prescription which was not put in evidence as it does not provide any details of the conditions for which the medication is prescribed. Mr Jarvis did however accept that one of the medications (Sertralin) is an anti-depressant and others appear to be painkillers.
42. The difficulty with the lack of evidence concerning Ms Bangura’s condition arises from the Appellant’s case that he needs to remain in the UK to care for her. The evidence that he cared for her before he went to prison and received carer’s allowance in that regard was not challenged. He was also not challenged in his evidence that the flexibility of his current employment and proximity of his workplace to his home allows him to go home to check on his mother periodically during the day.

43. However, the evidence about what happened whilst the Appellant was in prison was unsatisfactory. The Appellant and his mother said it was very hard for her. She said that her other children struggled to come to support her. She did however admit that her daughters had visited her once per week and left her meals as she said that she needed help with cooking. She misunderstood a question asked about the need for the Appellant to care for her prior to his imprisonment as being critical of her for allowing him doing so. She said that she thought he should have been doing other things because he had potential to do more. Sometimes she needed help, but she had been trying to get her daughters to do more. She had a conversation with him, but he said he was happy to be helping. However, she “felt he was doing too much”.
44. When asked whether she had considered asking for local authority support with care when the Appellant was in prison, she said that she had not. She “did not feel comfortable to have someone from the outside”. In light of the lack of evidence about Ms Bangura’s need for care and her own evidence, I do not give much weight to this factor when considering the case. Ms Bangura was, on her own evidence, able to manage with such family support as her daughters were prepared to offer whilst the Appellant was in prison. There is no evidence that she came to harm as a result.
45. The Appellant also says that he has a “strong relationship with [his] brother who depends on [him] wholly and solely for his care in his academics and has been struggling coping with life without me”. That appears to be at odds with the evidence that his brother is in employment. In his oral evidence on this point, the Appellant now says that his younger brother “comes and goes”. He has a partner with whom he stays most of the time and the Appellant sees him “once every two weeks”. He went on to say though that his brother “fell into depression while [the Appellant] was in prison and because he thought that [the Appellant] was going to be deported”. The Appellant said that he is close to his brother and has “tried to steer him away from bad people”. The Appellant is “trying to help [his brother] focus and be consistent with work”. There is some inconsistency within the evidence as to the relationship between the two brothers, particularly since it is now said that the brother lives most of the time with his partner and the Appellant sees him infrequently. There is no witness statement from the Appellant’s brother, and he did not attend to give evidence.
46. The Appellant also has two sisters. One has been diagnosed with cancer (as is confirmed by a document at [ABS/12-13]). The other has children. That evidence is relevant to their ability to look after their mother. Some of the Appellant’s offending relates to one of the sisters and I will come to that below when considering the evidence about the offences. Neither sister has provided a witness statement and neither attended the hearing to give evidence.

The Appellant’s Offences and the Public Interest

47. Having dealt with the evidence about the interference with the Appellant's private and family life and that of his partner and family, I turn to deal with the evidence on the other side of the balance, namely the public interest in the Appellant's deportation as a foreign criminal.
48. The index offence is one of wounding/ inflicting grievous bodily harm. The offence was committed on 3 December 2017. The Appellant was convicted on 27 November 2018 at Harrow Crown Court and sentenced to 18 months in prison and ordered to pay a victim surcharge.
49. Judge Bart-Stewart set out the particulars of the index offence at [21] to [26] of her decision as follows:

"21. The details of the index offence are set out in the sentencing remarks. The appellant pleaded guilty to one count of inflicting grievous bodily harm contrary to section 20 of the Offences against the Person Act. On 3 December 2017 he was outside a bowling venue in Stanmore. The victim was there with his works Christmas outing. There was a conversation between the victim and the appellant which was said to be initially friendly but at some point the mood turned. The victim was ushered away by colleagues. The appellant approached the victims group, threw his cocktail glass to the floor and threw a single punch at the victim's face. This knocked him unconscious. The appellant left.

22. The CCTV of the incident has gaps. It showed one attempt to separate the victim from the appellant but witnesses said there were 2 attempts. It appears from the CCTV that the victim was irritating the appellant, had rather too much to drink and thought he was being funny when in fact he was not. However the judge considered that the appellant's response was out of proportion to any irritation he should have felt. When talking to probation about what happened the appellant described himself as in effect having had an out of body experience. The judge called this 'the red mist'.

23. The effect was serious in that the victim's eye socket and nose were broken. He suffered nerve damage to his face and chipped teeth, cut the back of his head from the fall and there was substantial swelling to his face. He had surgery to his nasal area. He was in great pain throughout his body for weeks after the assault and his ability and quality of life affected. The victim describes being unable to taste properly because of the operation on his nose and his face being numb. He was inhibited in his interactions with his young children and described his anger and frustration that what happened affected his family life. He was off work for about 3 months which affected him financially.

24. His victim statement was written 6 months after the assault when he still had nerve damage to his face, was unable to feel some of his teeth and his lips tingled when touched. His nose was out of alignment and he still had bruising around his eyes with a chip to his front tooth which he could not afford to have fixed. He described looking in the mirror and finding himself unable to recognise the person who was there.

25. The appellant pleaded not guilty at the plea and trial preparation hearing the defence being identification and he challenged DNA evidence on the basis of transfer. He indicated a change of plea in October 2018 formally entering the plea on 19 October which was the date set for hearing of an application to dismiss the

first count of wounding with intent. The Crown agreed not to proceed on that count.

26. The maximum sentence is 5 years imprisonment. The sentencing guidelines for the offence is category 2 as it is in the category of greater harm but of lower culpability because none of the factors that might indicate higher culpability were present. The starting point was therefore 18 months custody and the range recommended between one and 3 years custody."

50. The above extract neatly encapsulates the particulars of the offence and what the Judge said when passing sentence about the seriousness of it. However, the sentencing remarks go on to deal with the aggravating factors and the factors pointing the other way in mitigation. It is appropriate to take those into account when looking at the wider public interest. I therefore set out that part of the sentencing remarks ([RB/B1-7]):

"..There are a number of factors that increase the seriousness of your offence; the location and timing of the offence; social setting; outside the bowling venue with friends and colleagues present; the ongoing effect on Mr Armstrong; the presence of others, Mr Armstrong's were colleagues in particular; and the fact that your offence was committed whilst you were under the influence of alcohol.

I bear in mind also your previous convictions. I have heard on your behalf, and I accept that they are convictions for violence in a completely different context. A 2012 caution for common assault against your sister, a 2013 conviction for battery against the same sister and a 2013 caution, again, for common assault against the same sister, all arising out of arguments between you and her.

In terms of factors reducing the seriousness of your offending behaviour. There is the fact that this was a single blow. I accept that the CCTV shows that you walked away afterwards. I accept the probation officer says, and I accept, that it appears that you are genuinely sorry for this offence. I have also read the numerous character references that you have managed to get friends and former employers to provide. I note that your referees describe you as courteous, not aggressive, even under provocation. They mention occasions when you have broken up a fight and acted as a calming influence as captain of a football team, amongst other incidents. I know that your sister, who is the subject of the other cautions and the conviction I have mentioned, has provided a character reference, and it is urged on me that that was a difficult family situation that both she and you were facing, because your mother was undergoing cancer treatment at the time.

I am told, and I accept, that your mother suffers from multiple disabilities. She has diabetes, hypertension and depression. I am told that your instructions are that you are in receipt of a carer's allowance for your mother, but your younger brother, who also lives with you and your mother, works full time and therefor the bulk of the caring responsibilities falls on you. Your two sisters, the one I have already mentioned and another sister, live locally but are married and have children of their own.

I bear in mind, as seems to be the case, that the level of violence on this occasion is something that you have not committed before and appears from your character references to be out of character, as it is known to your referees. I have read the probation report carefully. I note there is a risk of reconviction is put at 87%, high risk. However, the risk you pose of causing serious harm in the future is assessed as low.

This is an offence which it is accepted by your counsel on your behalf, passes the threshold for a custodial sentence and it is unavoidable. I think this is right in my judgment that a custodial sentence should be imposed. I have considered carefully what the shortest terms of imprisonment I could impose, commensurate with the seriousness of the offence, bearing in mind those aggravating factors, particularly the ongoing effect on the victim. In my judgement, those factors taken together and in spite of the mitigating factors, mean that the sentence has to go up from the starting point."

51. The sentence of 18 months was arrived at by giving an appropriate deduction for the guilty plea. The Judge took into account the mitigating factors which are much the same as some of those raised by the Appellant in this appeal; that is to say, his relationship with Ms Smith and his caring responsibilities for his mother. The Judge concluded that other family members would be able to care for his mother whilst the Appellant was in prison. Taking into account those mitigating factors, the Judge declined to suspend the prison sentence.
52. I heard little evidence about the offence or the Appellant's attitude to it. It was suggested to me by Mr Nadeem that the offence was provoked by the victim's behaviour. Whilst I accept that the offence was not pre-meditated, the sentencing Judge concluded that the violence meted out by the Appellant was "out of all proportion to any irritation that you should have felt". I note also that the "Short Format Pre-Sentence Report" ([RB/E70-74]) says that "[t]he case summary indicates that the offence was an unprovoked attack which the defendant does not accept". The report does however accept that the Appellant's regret at the offence "did appear to be convincing". The report sets out the Appellant's background, including his early aspirations to play professional football and interest in sport. The Appellant admitted to smoking cannabis "in his younger days" but said he no longer used the drug and had never taken Class A drugs. His alcohol consumption is described as "occasional and social". Nonetheless, as the sentencing Judge noted, his risk of general offending reconviction is high (87%); the "statistical determinate" of that high score is his "five previous sanctions" with which I deal below. The report accepts however that the index offence "does appear to be dissimilar in nature to those sanctions". His risk of serious harm is predicted at 1.2%. There are a number of protective factors, namely the Appellant's employment history, secure accommodation and long-term supportive relationship.
53. In addition to the index offence, the PNC report which appears in the Respondent's bundle records the following convictions:

- 1 January 2011: possession of cannabis. Cautioned.
- 8 August 2012: common assault. Cautioned.
- 7 March 2013: common assault on 6 March 2013. Cautioned.

- 3 September 2013: possession of cannabis on 26 June 2013. Forfeiture and destruction ordered (no separate penalty).
- 3 September 2013: Battery on 13 August 2013. Pled guilty. Conditional discharge 18 months.
- 17 May 2018: driving whilst under the influence of drugs on 6 March 2018. Pled guilty. Fined and ordered to pay costs and victim surcharge. Disqualified from driving for 12 months.

54. Mr Nadeem submitted that the previous offences were of a different nature to the index offence in terms of violence. I have already noted the comments of the sentencing Judge and in the pre-sentence report about the nature and circumstances of those offences which were committed against his sister. Nonetheless, offences of common assault and battery are undoubtedly ones involving violence and the Appellant accepted that he had committed them. I cannot therefore accept the evidence recorded by Judge Bart-Stewart of the Appellant's mother who said that there was no reason for the police to be called. I note that the other offences are related to cannabis use. The pre-sentence report records that the Appellant no longer uses that drug although I note that the most recent offence of driving under the influence of a controlled drug occurred even after the index offence was committed.

55. I did not hear evidence about the Appellant's remorse for his crimes, I assume because I had preserved the previous evidence and he was not asked about this. The pre-sentence report accepted that his remorse "appeared" to be genuine. Judge Bart-Stewart records the following which is corroborated by the Appellant's statement and the other evidence before the Judge:

"30. In oral evidence, the appellant adopted his witness statement and produce the letters from Forward Trust and Vitality Group in respect of drugs, alcohol and anger courses that he has undertaken in prison. He said this is to manage substance misuse and temper. He began the course 4 to 5 weeks into his sentence and it is continuing. The course looks at potential triggers for anger and loss of control, how to handle difficult situations, the impact of drink and drugs and how to manage on release into society. Each of the programs take place once a week and he continues to attend both. He is not aware of any other anger management course at the prison and had made a self-referral.

...

34. He was reminded of the judge's sentencing remarks and it was put to him that he showed an ability to become aggressive and was asked how this would be prevented if he was allowed to remain in the UK. He apologised for the situation and his actions and said he was still being punished. In relation to his sister they are family and care for each other. She was going to hit his mother and had intervened but throwing Ribena at her was a step too far. He said he genuinely regrets the index offence. It was the first time something of this nature happened. He does not normally get into fights and is not a bully. He is usually the person to break up a fight and it was out of character. Attending the courses indicates he is actively working on his anger and on being a better person."

56. The Appellant's supplementary bundle contains a letter from Sofia Niazi, Probation Officer with the National Probation Service, who is the Appellant's Offender Manager. That letter records that the Appellant was released from prison on 10 September 2019 on licence and has reported to the Probation Office on six occasions since. She says the following:

"Throughout his custodial part of his sentence, Mr Bangura has been a model prisoner, and was keen to maintain contact with Probation by regularly calling, so that he could develop a working relationship and share his objectives/plan for when he is released.

Mr Bangura has positively engaged in the supervision process, and settled into the community with relative ease. He is currently residing with his mother, and has managed to secure temporary employment.

Mr Bangura is a highly motivated individual with plans and set objectives that he has been quick to implement and work towards. Mr Bangura will continue to report to Probation until his Licence end date which is 27/08/2020..."

DISCUSSION AND CONCLUSIONS

57. I begin with Exception 1 concerning the Appellant's private life. The Appellant did not have any status in the UK until he was granted exceptional leave to remain with his family in April 2004 and then indefinite leave to remain in February 2005. The Appellant was by that time aged thirteen or fourteen years. I accept that during the time between his arrival in the UK in 1993 and then, the Appellant, as a child, could not be held responsible for the fact that he was here with no immigration status. However, his presence was nonetheless not lawful for that period. The Appellant was served with an automatic deportation decision in March 2019. As such, by my calculation, the Appellant's presence was lawful for a period of fifteen years. He is now aged just under twenty-nine years.
58. The Respondent accepts that the Appellant has been lawfully present in the UK for more than half his life. She does not however accept that the other two limbs of Exception 1 are met.
59. Dealing first with social and cultural integration in the UK, I accept that the Appellant is integrated. He has lived in the UK since the age of two years. He was educated here. He has worked in the UK. He has formed a relationship here. All his family are here. There are letters from friends and other family members which support his involvement in life in the UK. I accept that it can be said that the Appellant's criminal offending indicates non-integration. However, other than the index offence, those offences have been more minor in nature and have never led to any period of detention. Those offences indicate a certain disregard for the law which I accept is relevant to the wider public interest balance, but I do not consider that they are sufficient to undermine the Appellant's integrative links with the UK.

60. I turn then to the very significant obstacles said to prevent deportation to the US. The Appellant speaks English fluently. That is the language used in the US. The Appellant has some qualifications and has embarked on a career in the UK in estate agency. He said that he is good at his job. There is no evidence that he would not be able to apply for and obtain a job in that sector in the US. I do not have any evidence that the Appellant has any particular qualifications in this sector but neither do I have any evidence that any qualifications which he does have would not be accepted in the US. The US is a developed country with a property market and, by all accounts, a thriving economy. I have been provided with no evidence that there is any shortage of jobs in the real estate sector and his assertion that an US employer would not look at him appears to be mere speculation.
61. Similarly, provided the Appellant is able to seek and find employment in the US, there is no evidence that he would not be able to accommodate himself. I accept that he does not presently have any savings (although there is no formal evidence to that effect) but he would be able to apply for work before he arrives in the US and could save something from his present employment which would tide him over until he starts work.
62. I accept that the Appellant has no ties to the US. He lived there only for a very short while as a baby and I accept that he will have no recollection of that country. He apparently visited with his father when he was aged nine years but there is no evidence that his father remains in the US and the visit appears to have been no more than a holiday. There is evidence however that he does have a US passport. There is no evidence therefore that the US authorities would not accept him. He is a recognised citizen of that country.
63. I am prepared to accept that the Appellant might find it difficult to integrate initially as he will not know anyone in the US. However, culture shock is not of itself a very significant obstacle. Moreover, the US is not culturally very different from the UK. He will be able to make friends as he assimilates to life there via employment contacts and the such like. Such difficulties as the Appellant might face do not come anywhere near to meeting the threshold of "very significant obstacles". For that reason, the Appellant cannot meet Exception 1.
64. Turning then to Exception 2, the only relevant relationship for these purposes is that with Ms Smith. The Appellant does not have any children. The Appellant's relationship with his mother and other family does not fall within this exception although falls to be considered when looking at the case outside the exceptions.
65. In order to consider whether Exception 2 is met, I must consider the impact of the Appellant's deportation on Ms Smith both on the premise that she will accompany him and that she will remain in the UK and therefore be separated from him.

66. I accept that the Appellant and Ms Smith are in a genuine and subsisting relationship which was formed some time ago. They are, I accept, committed to each other.
67. I fully accept that Ms Smith would not wish to move to the US. As a British citizen, there is obviously no question of her being obliged to do so. If I accept that the Appellant can be deported, it will be a matter of choice for her whether to accompany him.
68. The reasons Ms Smith gives for being unable to join the Appellant in the US are that she knows nothing of the country (and I accept neither does the Appellant), that she has family in the UK for whom she bears some responsibility and that she is receiving treatment for her medical condition and is anxious not to change that treatment or leave her present consultant who she trusts.
69. I have already dealt with the reasons why I do not accept that the Appellant would face very significant obstacles to integration in the US notwithstanding his lack of ties to or knowledge of that country. Those reasons apply equally to Ms Smith. There is evidence that she is employed. There is no evidence that she would be unable to find a job nor any evidence that the US authorities would not accept her as the unmarried partner of the Appellant.
70. The evidence about Ms Smith's caring responsibilities has moved on. Her father is currently in remission. I recognise that it is quite possible that his cancer will recur given his previous history. However, it is not difficult to travel between the US and the UK at short notice should the need arise. There are regular flights. Although the evidence also now shows that Ms Smith's brother has moved to the north of England to start his own family, there is no evidence to suggest that he would not be able to come back to London to be with his father or that his father could not go to stay with him if his medical problems reoccurred. In any event, the evidence suggests that Ms Smith's mother remains living her father and is able to provide him with support.
71. Dealing finally with what is really the focus of the Appellant's case that Ms Smith could not obtain or afford treatment for her conditions in the US, I have already explained why the evidence produced does not demonstrate what the Appellant suggests it does. There is no evidence that treatment cannot be obtained, at what cost and what alternatives there are to payment, whether via public funds or insurance. I appreciate that she would have to change consultants but, although that is contrary to her wishes, there is no evidence that the standard of treatment and care which she would receive in the US is not of at least equivalent standard.
72. I am not satisfied on the evidence that Ms Smith's medical condition prevents her from moving to the US. The impact has to be shown to be unduly harsh. Even though she does not wish to relocate, and the impact of the move may be hard

for her, at least initially, I am not persuaded on the evidence that it comes anywhere near to the high threshold which applies.

73. Even if I am wrong in that analysis, there is no evidence that the impact of separation would be unduly harsh. I fully recognise that to maintain a relationship at long-distance, particularly between countries, is difficult. Ms Smith may be able to visit the Appellant at regular intervals. I have no evidence that she would be unable to afford to do so. However, since it is apparently the wish of the Appellant and Ms Smith to start a family, I accept that the effect of the separation if that occurs may well be to bring to an end what has been a long-standing and close relationship due to the impracticality of having children whilst the couple remain living apart. However, that does not mean that the impact is unduly harsh.
74. Separation of partners including the break-up of relationships is a common consequence of deportation. Whilst I do not downplay the upset which is caused by the breakdown of a relationship which has been as longstanding as this, the evidence does not show that there would be any impact beyond the fact of that separation and breakdown. There is no evidence that Ms Smith is particularly dependent upon the Appellant either in emotional or financial terms. I accept that she would be very upset. However, that does not begin to show that the impact would be unduly harsh.
75. Since I do not accept that the Appellant can meet either of Exception 1 or Exception 2, I turn to consider whether there are very compelling circumstances beyond those exceptions. In so doing, I take into account my conclusions in relation to Exceptions 1 and 2. I therefore accept that the Appellant has lived in the UK for most of his life, over half of that time lawfully and I accept that he is socially and culturally integrated. I recognise that, for that reason, the judgment in Maslov may have some relevance which would require “very serious reasons” to justify deportation. However, as the Court of Appeal made clear in CI, whether there would be a breach of Article 8 based on length and extent of residence and the difficulties in the country of return depends on an assessment based on proportionality, balancing the fact sensitive nature of the interference with an individual’s private and family life against the public interest.
76. I also accept that the Appellant’s deportation will have consequences for Ms Smith, either in the form of upheaval and disruption of her own private and family life if she chooses to accompany the Appellant or the ending of their relationship if she chooses to remain in the UK. I accept that either alternative will be very upsetting for her and the Appellant.
77. I also take into account the impact of the Appellant’s deportation on the Appellant’s other family members. It appears from the evidence that the Appellant’s siblings have moved away from the family home or are in the process of so doing and have formed their own lives. I do not have supporting witness statements from those family members nor did they attend to give evidence. I

therefore have limited if any corroborative evidence of the impact of the Appellants' deportation on those family members nor evidence of the impact of separation from them on the Appellant. Some of the Appellant's earlier offences relate to heated arguments with one of his sisters. It is unclear whether those differences have been resolved now that they are older. I therefore place little weight on this factor.

78. I accept that the deportation of the Appellant would be unwelcome for his mother. Notwithstanding the lack of evidence as to her medical conditions I am prepared to accept that she is unwell in certain respects. She attended the hearing and is mobile. She did not claim to be housebound but says that she needs help with some household tasks. However, the evidence is that she managed to cope whilst the Appellant was in prison. She herself said that she would prefer the Appellant to do less for her so that he can focus on his own life. There is evidence that the Appellant's sisters looked after her to some extent whilst he was in prison. Whilst it was not necessary for her to call on help from the local authority at that time and I recognise that the Appellant's mother does not want outside help, she could obtain that if she needed to do so. I can therefore place little weight on this factor.
79. I turn then to the public interest side of the balance which in this case is based on the Appellant's criminal offending. I have set out the particulars of the index offence and the sentencing Judge's remarks, and I do not repeat those matters. The Appellant considers that he was provoked but there is no doubt that this was a violent assault which occurred when the Appellant lost his temper. There was a severe and ongoing impact on his victim as described in the sentencing remarks. Although I accept that the Appellant has been found to be genuinely remorseful by those professionals with whom he has had dealings, there is still some evidence that he continues to blame his victim.
80. I recognise that the Appellant's earlier offences are to some extent different. Some did involve violence, but I accept from the descriptions of those offences given at [AB/29] that they are in the form of family disputes and, whilst that does not make them any the less serious, none led to any form of sentence of imprisonment.
81. I cannot ignore however the Pre-Sentence Report which gives the risk of reoffending as high (87%) albeit the risk of serious harm being only 1.2%. As the writer of that report explains the "statistical determinate of such a high score" is the Appellant's previous offences which demonstrate a disregard for the law. The letter from the Probation Officer is positive as to the Appellant's time in custody and engagement with the service. However, that letter was written on 13 November 2019 following the Appellant's release on 10 September 2019 and therefore covers a period of only about two months (six visits). I am unable to give that evidence much weight and there is no evidence undermining the risk assessment carried out pre-sentence.

82. In any event, risk of reoffending is only one facet of the public interest. Allied to that is the deterrence of other foreign offenders and the expectation of the public that serious offences, here the infliction of grievous bodily harm, will be dealt with appropriately.
83. Having balanced the factors for and against the Appellant, I have concluded that deportation is a proportionate response. Although I accept that the Appellant has made his home from a young age in the UK and that this is where his partner and family members live, I am not satisfied that the difficulties which he (and his partner if she chooses to go) will face in the US are such as to render deportation disproportionate when the effect is balanced against the strong public interest in the deportation of those foreign nationals who commit crimes whilst in the UK. The Appellant's criminal offending, in particular the index offence, in the context of the overall proportionality assessment, provides very serious reasons which justify his deportation.
84. For those reasons, I conclude that the Respondent's decision to deport the Appellant is not unlawful under the Human Rights Act 1998 and I dismiss the appeal.

DECISION

The Appellant's appeal is dismissed.



Signed
Upper Tribunal Judge Smith

Dated: 17 February 2020

APPENDIX: ERROR OF LAW DECISION



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

Appeal Number: HU/05556/2019

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice, London
On Monday 30 September 2019**

Determination Promulgated

.....03/10/2019.....

**Before
UPPER TRIBUNAL JUDGE SMITH**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

PAUL ALIMAMY BANGURA

Respondent

Representation:

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer

For the Respondent: Mr R Claire, Counsel instructed by Forward & Yussuf solicitors

ERROR OF LAW DECISION AND DIRECTIONS

BACKGROUND

1. This is an appeal by the Secretary of State. For ease of reference, I refer to the parties as they were before the First-tier Tribunal even though the Secretary of State is strictly the Appellant at this juncture. The Respondent appeals against a decision of First-tier Tribunal Judge Bart-Stewart promulgated on 21 June 2019 (“the

Decision”) allowing the Appellant’s appeal against the Respondent’s decision dated 13 March 2019 refusing his human rights claim made in the context of a decision to deport him to the US.

2. The First Appellant was born on 28 February 1991. He came to the UK accompanying his mother and three siblings on 20 December 1993. He was a dependent on his mother’s asylum claim. That claim failed but the family were granted exceptional leave to remain on 10 April 2004 and indefinite leave to remain on 17 February 2005. The Appellant’s mother is from Nigeria and his father from Sierra Leone. The Appellant has acquired US nationality by virtue of his birth in that country at a time when his father was working there. The family returned to Sierra Leone thereafter and left that country when the Appellant was aged two, due to the situation in that country. The Appellant has never lived in the US either as a child or adult other than for a couple of months.
3. The Appellant has convictions for offences of violence, possession of drugs and driving whilst over the specified limit for a controlled drug. The index offence is one of wounding/ inflicting grievous bodily harm of which he was convicted on 19 October 2018. He was sentenced to eighteen months in prison.
4. The Appellant’s human rights claim is one based on his private life and family life. As to the former, he points out that he has lived and grown up in the UK since the age of two years. He has lived here lawfully for over half his life. He has been employed here. He is socially and culturally integrated. He has no knowledge of life in the US. He has no family or friend there. His family life is based on two component factors. First, he is in a relationship with Ms Corrine Smith. They have been in a relationship for twelve years. She is a British citizen. She has a father who has suffered from cancer albeit is currently in remission. She could not leave him to go to the US. Second, the Appellant’s family are in the UK. His parents separated when he was a child and the Appellant says that he has no contact with his father. His mother also has suffered from cancer albeit she too is in remission.

THE DECISION AND GROUNDS

5. Judge Bart-Stewart accepted that the Appellant had lived half his life in the UK lawfully; the Respondent concedes that is so ([63]). The Judge also accepted that he was socially and culturally integrated here for the reasons given at [63] and [64] of the Decision. Mr Clarke confirmed that no issue is taken in relation to that finding. The Respondent’s grounds challenge the finding at [64] and [65] of the Decision that there are very significant obstacles to integration in the US. I will come to the detail of that challenge below.
6. As to the Appellant’s family life, the Judge concluded at [61] of the Decision that it would be unduly harsh for Ms Smith to accompany the Appellant to the US for reasons given at [58] to [61] of the Decision. That finding is challenged by the Respondent for reasons which I set out in detail later. The Respondent also challenges the Judge’s failure to make any finding whether it would be unduly harsh for Ms Smith to remain in the UK without the Appellant.

7. The Judge went on to consider whether the decision to deport was disproportionate applying Article 8 ECHR more generally at [67] to [76] of the Decision. Mr Clarke fairly conceded that the Respondent has not expressly challenged that section of the Decision. However, for reasons which I set out below, the errors which I have accepted exist in relation to the Judge's consideration of private and family life within the Immigration Rules ("the Rules") impact on the lawfulness also of the Judge's consideration outside the Rules.
8. Permission to appeal was refused by First-tier Tribunal Judge Grant-Hutchison on 16 July 2019 in the following terms so far as relevant:

"...3. The Judge has carefully considered the evidence and has made appropriate findings which were open to her to make having also had the benefit of oral evidence on the day of the hearing. It was open for the Judge to consider what weight she felt it appropriate to place on the evidence before her. In so doing the Judge has properly applied the statutory law and case law to the facts and circumstances of the appeal. The Judge has given cogent reasons for her decision.

4. The grounds disclose no arguable error of law."

9. Permission to appeal was granted by Upper Tribunal Judge Kekic on 6 August 2019 as follows (so far as relevant):

"..Arguably, the judge failed to apply the correct threshold when assessing whether the appellant would be able to integrate back into US society and whether he would be able to form an adequate private life there. It is also arguable that she failed to make findings as to whether there would be unduly harsh consequences for the appellant's partner were she to remain in the UK after his deportation.

All the grounds are arguable."

10. The case comes before me to determine whether the Decision contains errors of law and if so whether the Decision should be set aside.

DISCUSSION

11. Mr Claire for the Appellant very fairly conceded that the Judge had failed to consider whether it would be unduly harsh for Ms Smith to remain in the UK without the Appellant and that this amounts to an error of law. However, he submitted that the Judge had not erred in her consideration of the private life exception nor when considering the Article 8 claim outside the Rules and in consequence the error was not material.
12. I accept, of course, as Judge Grant-Hutchison indicated, that it is not for this Tribunal to interfere with findings lawfully made by a First-tier Tribunal Judge if the criticisms of those findings do not identify errors of law but merely challenge the weight given to the evidence (and see also the Court of Appeal's judgment in UT (Sri Lanka) v Secretary of State for the Home Department [2019] EWCA Civ 1095 at [19]). However, for the reasons which follow I do not accept that this is what the grounds do in this case and nor do I accept that the error of law which is conceded is immaterial.

13. As an overall criticism, the section of the Decision dealing with the Appellant's private and family life is muddled as between the two tests. The errors made in that regard are unfortunately not rescued by the section dealing with the Article 8 claim overall, first, because, in conducting that exercise, it is relevant whether the tests in relation to private and family life are met (and therefore the errors in that regard have a knock-on consequence) and, second, because the Judge fails in that section to have regard to the fact that, in the deportation context, the statute required her to consider whether there are "very compelling circumstances, over and above Exceptions 1 and 2" and not simply whether the Respondent's decision is disproportionate (see section 117C(6) Nationality, Immigration and Asylum Act 2002 ("Section 117C") read with NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662 - "NA (Pakistan)" - at [23] to [27] of the judgment). I recognise that this criticism does not form an express part of the Respondent's grounds but, as I have indicated, it follows from the errors made in relation to the consideration of the Appellant's family and private life and whether he meets the exceptions in that regard.
14. As to the specific errors made, dealing first with the Appellant's relationship with Ms Smith, as I have already indicated, the Judge has failed to consider whether it would be unduly harsh for her to remain in the UK without him. As Mr Clarke pointed out, that error arises at a very early stage due to the Judge's failure at [55] of the Decision, when setting out the test under the Rules, to have regard to the third indent of rule 398(b) which required her to consider also whether it would be unduly harsh for Ms Smith to remain in the UK whilst the Appellant goes to the US.
15. Second, when dealing with whether it would be unduly harsh for Ms Smith to go with the Appellant, the Judge also fails to have regard to the high threshold which applies. As Mr Clarke points out, the Judge failed to mention the Supreme Court's judgment in KO (Nigeria) and others v Secretary of State for the Home Department [2018] UKSC 53 ("KO (Nigeria)"), which is the most recent, and most authoritative word on the threshold which applies. Oddly, since the Supreme Court has resolved the issue, the Judge refers at [59] to the previous decisions of the Tribunal in KMO (Section 117 - unduly harsh) Nigeria [2015] UKUT 00543 and MAB (para 399: "unduly harsh") USA [2015] UKUT 00435 ("MAB") and as a result falls into error by referring to a balance needing to be struck between the seriousness of the offence and the impact on the partner. It is fair to say that it is not evident from the paragraphs which follow that this is the way in which the Judge has approached the test and she does note the passage from MAB which the Supreme Court cited with approval in KO (Nigeria) drawing attention to the threshold which applies. However, thereafter it is difficult to discern any application of the high threshold which is there encompassed.
16. A summary of the problems which Ms Smith might face in the US appears at [58] of the Decision. In short, those are that she suffers from endometriosis and adenomyosis which she says are debilitating conditions affecting her life. She said that she would not be able to afford the medication to deal with those conditions in the US. As the Respondent points out in her grounds, and as the Judge appears to

accept at least to some extent, there was little evidence in relation to the conditions from which Ms Smith suffers and none in relation to the cost of the medication in the US. The second element is the medical condition of Ms Smith's father. Ms Smith says that her father was undergoing treatment for cancer and that she assists with his care. As the Judge notes at [58], the only evidence in this regard dates back to October 2016 and there is no updating information suggesting that Ms Smith's father is still undergoing treatment. In fairness to the Judge, she does there refer to "the possibility of relapse and alarm symptoms for which to be observant" but, similarly, there is no medical evidence as to the likelihood of recurrence.

17. The findings made by the Judge in this regard appear at [60] and [61] of the Decision as follows:

"60. I accept that the USA is a modern country which shares a common language. However, the appellant's partner is a British citizen and suffers from a serious gynaecological condition. It is not suggested that the appellant's immigration status in the UK has been precarious. He was lawfully in the UK when the relationship began. He has been settled and in employment. It would not have been in either party's contemplation that he could be removed. Indeed his oral evidence is that because he had indefinite leave he assumed it was as good as a British passport. The appellant has never spent any significant period of time in United States. He would be going there as a stranger. They have no home or support there. Whilst couples relocate to other parts of the world, it differs if it is through choice.

61. It is noted that they have savings and I accept this could be used to provide accommodation however with the need to also pay for medication and treatment this would only be for a very short time. There is no known family or other form of support available to them in the United States and it is well known that treatment costs in the United States are prohibitive. I consider that for the appellant's partner this would amount to more than very significant difficulties but very serious hardship. I find it would be unduly harsh to expect the appellant's partner to relocate with the appellant to the United States."

18. The Respondent's challenges these finding on the basis that they are based on speculation as to treatment costs, that the Judge has failed to consider that the Appellant and Ms Smith would be able to work in the US, and has also failed to consider that they could access money from the Facilitated Returns Scheme which, with their £8,000 savings, would be sufficient to tide them over until they could find work. In summary, as Mr Clarke put the Respondent's case, there is an inadequacy of reasoning and a failure to explain on what basis the high threshold is met.

19. It is indeed difficult to discern on what basis the Judge found in the Appellant's favour on this issue. I accept that the Judge was entitled to point to the Appellant's unfamiliarity with the US as one reason. Although that is predominantly concerned with his own ability to integrate which falls within the private life exception, it is a factor relevant to Ms Smith's ability to adapt. Difficulties in adapting and a general preference to continue family life in the UK though, are not of themselves sufficient to overcome the threshold in a removal context, let alone a deportation one where the threshold is higher.

20. I accept the Respondent's categorisation of the Judge's finding about Ms Smith's medication as "speculative". That is evident from the Judge's reference to it being "well known that treatment costs ...are prohibitive". On the face of it, that element of the findings has no evidential underpinning as is also clear from [58] of the Decision to which I have already referred. Mr Claire did not seek to suggest that the Appellant had put forward evidence in that regard, and none is apparent either from the Appellant's bundle nor the record of the evidence given.
21. For those reasons, I agree that there is an error of law made in relation to the test whether the consequences of deportation of the Appellant would be unduly harsh for Ms Smith, both on the issue whether it would be unduly harsh for her to go with the Appellant and the failure to refer at all to the possibility of her remaining in the UK without him.
22. Turning then to the private life test, this was the focus of Mr Claire's submissions for obvious reasons since, if he were able to show that there was no error in this regard, the error in relation to the family life exception would make no difference.
23. The Judge's findings in this regard begin at [62] of the Decision. The test is accurately set out. The Judge was clearly entitled to find that the Appellant has been in the UK lawfully for half his life. He was given exceptional leave to remain in 2004 aged thirteen years. He is now aged twenty-seven years. Similarly, the Judge found and was entitled to find on the evidence that the Appellant is socially and culturally integrated in the UK. The Judge's reasoning in that regard appears at [63] and [64] of the Decision and, whilst brief, is nonetheless adequate. However, the factors and evidence relied upon by the Judge at [64] of the Decision on this issue are not relevant to the question whether there would be very significant obstacles to integration in the US. The two are separate issues. I therefore reject Mr Claire's submission which sought to introduce that evidence in support of his assertion that the Judge has reached a finding properly open to her on the issue of integration in the US.
24. The Judge's findings that there are very significant obstacles to integration in the US therefore are as follows:

"65. Whether there are very significant obstacles to the appellant's integration into the USA is less clear. Objectively as the respondent states, it is a modern country and shares a common language however the appellant has never lived there and he reasonably says he would not know where to start. There are likely to be obstacles in that he was never part of US society, has the most tenuous link by sting of being born there and so it is not re-integration in any real sense. He is being sent to a country he does not know.

66. It was held in MF (Nigeria) *It is common ground that the first step that has to undertaken under the new rules is to decide whether deportation would be contrary to an individual's Article 8 rights on the grounds that (i) the case falls within para 398(b) or (c) and (ii) one or more of the conditions set out in para 399 (a) or (b) or para 399A (a) or (b) applies. If the case falls within para 398(b) or (c) and one or more of those conditions applies, then the new rules implicitly provide that deportation would be contrary to Article*

8. *Whether a case satisfies the criteria set out in para 398 (a), (b) or (c) is self-evidently a question of "hard-edged" fact; and whether one or more of the conditions set out in para 399 or 399A applies may also involve a question of "hard-edged" fact. However taken with my finding with the [sic] regarding the appellant's partner I find on balance there would be very significant obstacles to integration."*

25. Mr Clarke relied on the oft-cited paragraph in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 ("Kamara") as to how the test in relation to integration is to be applied:

"14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

26. I accept Mr Claire's submission that the Judge was not required to make express reference to Kamara. However, reference to it may have avoided the errors which the Respondent has identified in the passage of the Decision which I have set out and which I accept amount to errors of law.

27. First, as Mr Clarke pointed out, the test is one of "integration" and not "re-integration". That is not a significant error. As I accepted in discussion with Mr Claire, one of the relevant factors in this case is that the Appellant has never really lived in the US and that clearly has some bearing on the question whether he might be able to integrate there at all (in other words, whether he would be "enough of an insider in terms of understanding how life in that society is carried on").

28. Second, the Judge is of course entitled to find that the Appellant would be unfamiliar with US society due to that factor. However, the other question is whether the Appellant would nonetheless be able to participate in society in the US. As the Judge notes at [65] of the Decision, the US is a modern country and there would be no language difficulties. The Appellant has worked in the UK. There is reference in the record of the evidence to problems which he considers he would have in transferring that experience over to the US market but there is no consideration of that evidence by the Judge in her findings and no finding made as to the position in relation to employment.

29. Third, as Mr Clarke pointed out, the finding made by the Judge at [65] of the Decision is only that "there are likely to be obstacles in that he was never part of US society". That is not a finding that there would be very significant obstacles. In fact,

the Judge's conclusion that there would be very significant obstacles stems from what is said at [66] of the Decision. That paragraph is very difficult to follow. It is not clear whether, by the reference to what is said in MF (Nigeria), the Judge is saying that her finding that it would be unduly harsh for Ms Smith to go to the US with the Appellant is to be amalgamated with her finding as to the obstacles to the Appellant's private life integration in US to enable him to succeed as a whole or whether she is saying that the inability of Ms Smith to go with the Appellant is a factor which affects his own ability to integrate. Either way, there is an error.

30. If the first interpretation applies, then, if the Judge had found without error that the consequences of deportation for Ms Smith were unduly harsh, there would be no need to make any further finding in relation to the private life exception. The Appellant would be entitled to benefit from the family life exception. As it is, I have concluded that there is an error in relation to the unduly harsh finding which therefore impacts on this finding. Leaving aside the error in that regard, if there were no error in relation to the finding on the private life exception and the Judge had independently found that there were very significant obstacles to integration leaving this paragraph out of account, I accept that what is said at [66] of the Decision would not be material.
31. However, either the Judge has taken into account the unduly harsh finding and coupled that with the finding of obstacles to reach an overall conclusion that there would be very significant obstacles by amalgamating the two exceptions (which would be the wrong approach at this stage) or has taken into account that, in her view, Ms Smith could not go with the Appellant and therefore that would impact on his integration in the US. The separation from Ms Smith if she could not go with him is part of the consideration in relation to the unduly harsh consequences of deportation when considering a possible separation of the partners. It is in consequence of the Judge's failure to consider that at the appropriate point that the finding made at [66] of the Decision is out of place. In any event, as I have already concluded, the earlier unduly harsh finding itself contains errors of law and therefore, whatever is said to be the relevance of that finding at this point in the Decision, the Judge's finding that there are very significant obstacles to integration is similarly flawed.
32. The finding that there are very significant obstacles to integration is therefore flawed by an insufficiency of reasoning and failure to take into account relevant evidence (as to employment, accommodation etc) and by the taking into account of an irrelevant consideration as to the separation of the Appellant from Ms Smith.
33. As I have already pointed out and as Mr Clarke accepted, there is no express challenge to the Judge's consideration of Article 8 outside the Rules. However, given Mr Claire's reliance on this part of the Decision as reason for saying that there the errors are not material, I need to say something about this.
34. First, as I have already pointed out, the test when looking at Article 8 outside the exceptions is governed by rule 398(c) and Section 117C (6). Although Section 117C

(6) expressly applies only to a case where the prison sentence is under four years, the Court of Appeal in NA (Pakistan) concluded that this was a drafting error and that the same test applies, namely whether there are very compelling reasons over and above the exceptions. Indeed, the Judge recognises at [54] of the Decision that this is the correct test. However, there is no recognition of that test at [67] to [76] of the Decision. I accept that the Judge is required to carry out a balancing exercise, but that balancing exercise has to be carried out giving appropriate weight to the public interest which applies. The Judge is obliged by statute to have regard to the relevant test.

35. Second, and in any event, that passage is infected by the errors made when assessing the private and family life exceptions, particularly that relating to the Appellant's family life as is evident from what is said at [75] of the Decision. Put another way, the errors made when determining whether the exceptions are met infect the consideration whether there are very compelling circumstances over and above those exceptions (see also what is said by the Court of Appeal at [36] of the judgment in NA (Pakistan)) For those reasons, that section of the Decision cannot save the remainder.
36. I therefore find that the Decision contains errors of law. I set aside the Decision. In relation to re-making, this is not a case where it is necessary or appropriate to remit the appeal to the First-tier Tribunal. There is no or no significant dispute of fact. There are some assertions relied upon by the Appellant which, as I have indicated, do not appear supported by evidence. As Mr Clarke pointed out, there is no recent evidence about the medical conditions of Ms Smith's father or the Appellant's mother. Similarly, there is no or no substantial evidence in relation to the extent and impact of Ms Smith's own medical condition, the treatment she requires and the cost in the US of the medication which she requires (even if that is only evidence obtained from the internet). However, there are no disputes of fact concerning the genuineness of the Appellant's relationship with Ms Smith or that with his family nor any challenge to the finding that the Appellant is socially and culturally integrated. As such, I am prepared to take as read the record of the evidence set out in the Decision at [20] to [42] of the Decision and to preserve the finding that the Appellant is socially and culturally integrated in the UK.
37. Equally, though, I did not consider it appropriate to continue with the re-making of the decision at this hearing. Although there has been no application to adduce further evidence, I have identified above some areas where further evidence would be of assistance to the Tribunal. There may be other areas where the Appellant wishes to adduce further evidence. Further, and in any event, the Tribunal made a direction that the Appellant should not be produced from detention and he was not therefore present at the hearing. Nor, so far as I am aware, was Ms Smith present. Despite the lack of any application to adduce further evidence, I would be reluctant to re-make a decision, particularly in an appeal previously allowed, without giving the Appellant and his main witness(es) the opportunity to attend to give oral evidence. I have therefore given directions below in preparation for the resumed hearing.

CONCLUSION

38. For the above reasons, I conclude that the decision of First-tier Tribunal Judge Bart-Stewart promulgated on 21 June 2019 contains errors of law. I set that aside. I give directions below for the re-making of the decision.

DECISION

The decision of First-tier Tribunal Judge Bart-Stewart promulgated on 21 June 2019 contains errors of law. I set that decision aside. I make the following directions for the re-making of the decision:

- 1. Within 28 days from the date when this decision is sent, the parties are to file with the Tribunal and serve on the other party any further evidence on which they rely.**
- 2. The resumed hearing will be relisted on the first available date after 6 weeks from the date when this decision is sent with a time estimate of ½ day. The Appellant's representatives are to inform the Tribunal within 28 days from the date when this decision is sent whether an interpreter is required (and for which language) so that one can be booked and whether the Appellant remains in detention (and if so at which establishment) and confirm that he wishes to attend the hearing.**



Signed
Upper Tribunal Judge Smith

Dated: 2 October 2019