



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17138/2019 (V)

THE IMMIGRATION ACTS

Heard remotely at Field House
On 3 July 2020

Decision & Reasons Promulgated
On 13th August 2020

Before

UPPER TRIBUNAL JUDGE OWENS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EMMANUEL [O]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms Sara Anzani, Counsel

For the Respondent: Mr S Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. For the sake of clarity, I will refer to Mr [O] who was the appellant before the First-tier Tribunal as the appellant in this appeal and to the Secretary of State as the respondent.
2. The appellant is a citizen of Nigeria born on 2 June 1978. He appeals against the decision of First-tier Tribunal Judge Lucas dismissing his appeal against a decision dated 18 October 2019 to refuse his human rights claim. Permission to appeal to this

Tribunal was granted on 13 March 2020 by First-tier Tribunal Judge Grant-Hutchison.

3. The hearing was held remotely. Neither party objected to the hearing being held by video. Both parties participated by UK court Skype. I am satisfied that a face-to-face hearing could not be held because it was not practicable and that all of the issues could be determined in a remote hearing. Neither party complained of any unfairness during the hearing and confirmed at the end of the hearing that the hearing had been conducted fairly.

Appellant's Background

4. The appellant has a convoluted immigration history. The appellant claims to have entered the United Kingdom in 2007 although there is no record of his entry. On 16 June 2011 he was issued with a residence card as the spouse of an EEA national valid for five years. He divorced his EEA spouse on 6 June 2012. He married his second wife, a British citizen of Nigerian origin on 17 September 2013. By that time the couple had two children one born on 23 November 2008 and one on 22 November 2012. On 10 June 2014 a decision was taken to revoke his EEA residence card. On 30 July 2014 he was convicted at Woolwich Crown Court of possession of counterfeit currency and on 27 August 2014 he was sentenced to fifteen months' imprisonment. On 8 October 2014 he was served with a notice of liability to deportation. On 22 May 2015 the Deportation Order was signed. During 2015 various representations were made on the appellant's behalf. On 30 March 2016 First-tier Tribunal Judge Howard heard an appeal against the decision to revoke the EEA residence card and against the decision to deport. In that appeal the judge decided that the appellant and his EEA spouse were in a marriage of convenience and dismissed the EEA appeal. The judge also found that it would not be unduly harsh for the appellant's Nigerian spouse to relocate to Nigeria with the appellant. The judge found that the appellant's Article 8 ECHR rights were not engaged and dismissed the appeal. The appellant appealed to the Upper Tribunal. On 5 January 2017 Deputy Upper Tribunal Judge Davey upheld the decision of the First-tier Tribunal finding that there was no error of law in the judge's approach.
5. An unsuccessful enforcement visit was conducted at the appellant's home address on 20 May 2018. On 29 May 2018 the appellant made a request to revoke the deportation order which enclosed further evidence from a social worker regarding the effect on his children on his deportation. The claim was refused on 5 September 2018. The appellant was detained and served with a notice of removal window. He then lodged Judicial Review proceedings. Permission was refused on the papers and on 17 December 2018 permission was refused at a renewed oral hearing. On 14 June 2019 Lord Justice Males made an order refusing permission in respect of the fresh claim. Four more sets of further submissions were made resulting in a decision to refuse a human rights claim on 18 October 2019 which carried a right of appeal.

The Respondent's decision

6. The respondent gave consideration as to whether it was appropriate to revoke the deportation order under Section 32(6) of the UK Borders Act 2007. It was accepted that the appellant was living in a family unit with his British wife and children and that he had a genuine and subsisting parental relationship with all three of his children who are under the age of 18. Nevertheless, it was not accepted that it would be unduly harsh for the children to relocate to Nigeria with their parents, nor for the children and the appellant's spouse to remain in the United Kingdom without the appellant. The respondent considered the contents of the independent social worker report and accepted that the eldest daughter was suffering from distress, showing signs of anxiety and having emotional problems but was of the view that she could access treatment in the UK. The respondent pointed to the fact that the appellant and his partner conceived their third child after the appellant had been served with a signed deportation order at a time when he was aware that he might be deported to Nigeria. The appellant could not meet paragraph 399(b) of the Immigration Rules because he formed his relationship with his wife when he was unlawfully in the United Kingdom. It was not accepted that the appellant had spent most of his life in the United Kingdom, nor that there were very compelling circumstances outweighing the public interest in his deportation. The respondent considered that the appellant had shown no regard for UK laws in deliberately committing a fraudulent offence, his children are accessing support for their additional needs and that this support can continue when the appellant is deported. It is also considered that the appellant's partner could continue to access assistance with her mental health problems in the UK.

The Decision of the First-tier Tribunal

7. The judge applied the principles in Devaseelan v SSHD [2002] UKAIT 702 and treated the findings of First-tier Tribunal Howard in the previous appeal dismissed on 30 March 2016 and the findings of Males LJ in 2019 as a starting point for consideration of the appeal. The judge heard oral evidence from the appellant and his wife. The judge noted at [4] that the appellant was convicted at Woolwich Crown Court of possession of counterfeit currency and on 27 August 2014 was sentenced to fifteen months' imprisonment. At [8] it is said:

"As stated, the appellant was convicted before the Woolwich Crown Court and sentenced on 27 August 2014. The appellant had pleaded guilty to the possession of £237,100 (in \$100 bills) of US dollars. The appellant was dealt with as 'a mere custodian of this large quantity of US dollar ... [but] ... there is no room for doubt in my judgment of the gravity of this offence'."

8. The judge outlined the evidence before him including the oral evidence of the appellant and his partner. He also took into account two best interests reports in respect of the children dated 8 May 2018 and 8 July 2019 prepared by Sally-Anne Deacon, an independent social worker, as well as letters from an NHS Family Early Help Practitioner and the Patient Mental Health Team. The judge took into account that the appellant is married to a British citizen and was living in a family unit with

his wife and three children aged ten years and 6 months, six years and 8 months and two years and 8 months at the date of the appeal hearing.

9. The judge then summarised the submissions of the representatives. Mr Whiteman for the respondent submitted that that there were no very significant obstacles to return to Nigeria and that it was not unduly harsh for the family to relocate there. The family could return to Nigeria as a unit. There had been clear findings of fact by the previous Tribunal and Lord Justice Males. The consequences were not “severe and bleak” as set out in the decision in **PG (Jamaica) [2019] EWCA Civ 1213**. The public interest in removing foreign criminals outweighed the private and family life of the appellant.
10. Ms Anzani submitted that it would be both unduly harsh for the children to live in Nigeria and for them to live in the UK without the appellant. She relied upon the reports of Sally-Anne Deacon. She highlighted the pivotal role that the appellant plays in the lives of the children and pointed to the concerning levels of distress displayed by the eldest child throughout the recent interaction with the social worker. Her submission was that there has been a deterioration in the children’s presentation particularly since the enforcement visit. The children’s best interests would be best served by the ongoing full-time presence of the appellant. They have little or no contact with Nigeria. They are close to their maternal grandfather and grandmother, both of whom live locally. The children attended schools and were extremely settled in their respective classes. It was submitted that it would be extremely harsh for the appellant’s wife to relocate to Nigeria given her depression and low mood as well as her full-time employment. The whole family had been referred to the Primary Mental Health Team in 2019 due to concerns expressed by professionals. There was a risk that if the children were deported they would be taken into care.
11. The judge’s findings are at paragraphs 69 to 86 of the decision and are somewhat brief. At [71] the judge states:

“There is a clear public interest in deporting those who commit serious criminal offences in the UK and the appellant can have no realistic challenge to this principle”,
12. The judge then states:

“On his own, this Tribunal concludes that the appellant would or could not have any objection to the decision to deport him. The Tribunal regards this as a starting point for consideration of this appeal.”
13. The judge then goes on to make the core findings at [77] to [84];

“The point is that he is not on his own. He is married to a UK citizen with three UK citizen children. His dishonesty and criminal behaviour is not their responsibility.”

“It is clear that the family have significant problems. The wife of the appellant has mental health issues and the family as a whole are subject to Social Services and other professional input and surveillance. The Tribunal is satisfied that the

appellant does indeed play a pivotal role in the lives of these children and is very supportive to his wife. She is in full-time employment and is, in effect, the 'bread winner'. She is dependent upon the appellant and so are the children, for his basic input."

"The children are well-settled in school and it is clear that they are dependent upon the role of the appellant. It is possible if the appellant were to be removed from the UK there would be a dramatic and direct consequence for the welfare of the children. The possibility of them being taken into care is not implausible."

"The children are UK citizens and so is their mother. They are all well-settled in the UK and none of the children in particular have any realistic ties or contacts within Nigeria. Relocation to that country would in all of the circumstances of this case, be unduly harsh."

"The Tribunal relies upon the findings of the two best interest reports prepared by Ms Deacon in this case. It is clear that the consequences of deportation in respect of the family would be devastating.

"The Tribunal has little sympathy for the appellant himself. He chose to become involved in criminal offending despite the interests of his family."

"However, he has not offended since and it is clear that he is the primary and often sole carer for the three children who bear no responsibility for what he decided to do in 2014."

"In the view of the Tribunal – just – the consequences of removal/deportation in this case are unduly harsh and potentially devastating".

"The appeal is therefore allowed and the Tribunal is persuaded that the exception set out in paragraphs 398 to 399 apply to this case."

The Secretary of State's Grounds of Appeal and grants of permission.

14. The Secretary of State advances two grounds of appeal.

Ground 1: The judge has given inadequate reasons for why it would be unduly harsh for the family to relocate to Nigeria.

15. The judge has failed to explain why it would be "severe and bleak" for the children to relocate to Nigeria. The judge has failed to explain why he has departed from the previous findings of the First-tier Tribunal and the Upper Tribunal as well as the recent decision of LJ Males particularly in respect of the child's mother's ties to Nigeria. The reasons given by the judge do not provide a proper evidential basis for concluding that the "unduly harsh" test is met. The judge has failed to consider that there would be no language barriers in Nigeria and no findings have been made on the availability of schooling for the children or medical treatment for their mother. The social worker's report focuses on the impact of deportation if the appellant left the United Kingdom and the wife and children remain in the UK. This evidence, which was not before the previous judge, does not disturb the findings regarding relocation to Nigeria for the entire family. The judge improperly focused on the fact that the offence was committed in 2014 and he has committed no further offences. The appellant previously appealed unsuccessfully against the decision to deport him

and since then has been trying to avoid deportation. He is subject to automatic deportation and can only succeed if he meets the exceptions to deportation, which has been inadequately reasoned by the judge.

Ground 2: The judge has provided inadequate reasons for why it would be unduly harsh for the appellant's wife and children to remain in the United Kingdom if he is deported.

16. It is said that in a few short paragraphs the judge finds that the deportation would be unduly harsh because the wife has mental health problems, the whole family are subject to Social Services input and the appellant plays a pivotal role in the care of his children. The judge's finding that the consequences of deportation would be unduly harsh and potentially devastating are not adequately reasoned because it is not explained why the appellant's deportation would have "severe" or "bleak" consequences for the family. The judge failed to factor in Court of Appeal's guidance in **The Secretary of State for the Home Department v PG (Jamaica) [2019] EWCA Civ 1213**. The judge has failed to consider the fact that the appellant's wife was able to cope with the children whilst the appellant was incarcerated and had the assistance of her parents, who live locally. The social worker said that the children regularly see their mother's parents although the appellant's wife appeared to downplay her relationship with them. The First-tier Tribunal failed to take into account that the appellant's wife would have the support of Social Services and although he found that it was not implausible that the children could be taken into care this was not borne out by the evidence. The judge has not given a proper evidential basis for concluding that the effect upon the family would go beyond the inevitable effects of deportation and failed to give adequate reasons as to how the unduly harsh test was met.
17. Permission was granted by First-tier Tribunal Judge Grant-Hutchinson on 13 March 2020 on the basis that it was arguable that the judge had failed to give adequate reasons in respect of the "unduly harsh" test. The grant of permission was not limited.

Respondent's submissions

18. Mr Lindsey relied on the grounds which I have set out above and amplified them. He also pointed to the fact that when considering the issue of "unduly harsh", the judge also took into consideration immaterial considerations including the length of time that has elapsed since the conviction which is not relevant to the assessment of the consequences for the children.

Appellant's submissions

19. Ms Anzani's submissions are set out in Rule 24 response and enlarged upon in her oral submissions. She submits that the judge properly acknowledged that the findings of the previous Tribunal formed the starting point for the analysis. The judge was clearly entitled to depart from the findings of the previous judge in circumstances where there had been a passage of time and evidence of professional

engagement with the family which had developed over the intervening years. Although the judge's conclusions at [77] to [84] are brief, that it is clear from reading the decision as a whole the judge has taken into account the opinion of the independent social worker in her reports. The judge was entitled to find at [78] that the family have significant problems, the wife of the respondent has mental health issues and the family as a whole are subject to Social Services and other professional input and surveillance. At [79] the judge finds that the children are well-settled in school and at [80] that the children have no realistic ties or contacts within Nigeria. The judge was satisfied that the appellant is often the sole carer for his children and plays a pivotal role in the lives of his children and wife. This finding was not challenged by the Secretary of State. She submits that the judge's findings at [80] that relocation to Nigeria would in all of the circumstances of this case be unduly harsh must be read in conjunction with the preceding paragraphs. The judge was also entitled to give weight to the social work reports when finding that the consequences of deportation of the appellant, leaving the family in the UK would be devastating for the family.

20. Her submission is that although the judge does not refer to the term "severe and bleak", he was clearly aware of the analysis expounded in PG (Jamaica) and his conclusion that it is "unduly harsh" for the children to relocate with their mother to Nigeria or to remain in the UK without their father is not undermined by his failure to use this term.
21. She submits that the judge has done enough to explain to the relevant appeal court why one party had won and one had lost. It is not incumbent on the judge to address each and every point. The question is whether a particular point in issue is of such obvious significance that the judge's failure to address that issue in itself amounts to a failure to give adequate reasons. This cannot be said in the instant appeal. The grounds amount to a disagreement with the judge's findings.

Discussion and conclusions

22. Ground 1 - failure to give adequate reasons for why it is unduly harsh for the family to relocate to Nigeria,
23. The judge's conclusions on this issue are summed up at [80] where he states;

"The children are UK citizens and so is their mother. They are all well settled in the UK and none of the children in particular have any realistic ties or contacts within Nigeria. Relocation to that country would in all of the circumstances of this case be unduly harsh".
24. The starting point as correctly identified by the judge at [73] were the previous findings of First-tier Tribunal Judge Howard in the deportation appeal heard in 2016, which were upheld by the Upper Tribunal on 5 January 2017 as well as the comments of Males LJ made on 14 June 2019.

25. FtT Judge Howard in 2016 considered the issue of whether it would be unduly harsh for the children to relocate to Nigeria with their parents. At that time there were two children aged 7 and 3. Judge Howard found at [32];

“So I am satisfied it is in the best interests of the children that they are brought up together. So it is I ask myself if it would be unduly harsh for that to take place in Nigeria. The appellant’s wife was born in Nigeria. She came to the UK when young and has been educated to degree level in the UK. She is employed as a secondary school teacher. These are significant ties to the UK, but she also retains significant ties to Nigeria. She affirms that she has been a regular visitor to Nigeria, but asserts that she does not feel at home there. What she has played down and significantly in my judgement, is her actual links to Nigeria. Given the fact of her visits and that she has taken her elder child there I am satisfied that she still has significant family living in the country. I am further satisfied that she has retained strong cultural links to Nigeria via her family and visits. It is not by accident that she has married a Nigerian national. The employment types she has in the UK are not of a type that has no application to Nigerian society and so I cannot conclude that it would be unduly harsh for her to leave with the appellant as a family in Nigeria”.

26. At [33] and [34] FtT Judge Howard considered the position of both of the children concluding that the younger child was focused on his family and home and that the elder child at the age of 7 would adapt to life in Nigeria.
27. On 5 January 2017 Deputy Upper Tribunal Judge Davey upheld the findings that the family could relocate to Nigeria without undue harshness although pointed to the lack of an assessment from a specialist social worker to show that there were any other significant adverse effects likely to arise for either child by the family’s removal back to Nigeria. Thereafter social work reports were prepared and submitted.
28. In 2019 Males LJ refused permission on a further challenge to the refusal of a fresh claim stating;

“notwithstanding that a report from a social worker was not previously before the FTT or UT in the previous decisions... However, nothing in the report produced amounts to evidence of significant adverse effects or suggests that the consequences of the children moving to Nigeria with their parents would be unduly harsh”.

29. The judge in the decision under challenge before me states at [75]

“It is common ground that the best interest reports were not before the Tribunal at the appeal in 2016. This is referred to in the decision before the Upper Tribunal. Both of the reports were not before Males LJ”.

30. Ms Anzani’s submission is that the judge has found that given the passage of time and the additional reports before him that the judge is able to depart from the findings of First-tier Tribunal Judge Howard. I note for completeness that the judge erred at [75] in that it is manifest from Males LJ’s comments that he had sight of least the earlier report dated 8 May 2018 because he comments on it as above and finds that the report is not helpful to the appellant. I accept that he did not have the

second report which post-dates the decision and that this may have been what the judge meant in this paragraph although it is not clear. The judge does not refer explicitly to the passage of time but it is apparent that his reason for departing from the previous findings is because the reports contain more up to date information about the effect of the deportation on all of the members of the family.

31. At [81] the judge relies on the “Best Interest” reports prepared by Sally Ann Deacon to support his conclusions which he quotes earlier in the decision.

32. The 2018 social work report states; (This paragraph is not replicated in full by the judge in the decision however, I infer that the judge had regard to it at [81] and I insert it for the sake of completeness).

“It would unreasonable and disproportionate for the children and their mother as British citizens who have lived all their life in the UK, in the case of the children their whole lives to re-locate in order for them to be afforded a family life with all parties remaining physically close, X, Y and Z were born and raised in the UK and have no affiliation with the country or any significant relationships with it. The older siblings have clearly stated their wish to remain in the UK for their family unit to remain intact and for them not to suffer the loss of those they love in the UK. Young people remaining in an environment that is familiar in terms of their extended family network and culture is crucial in order to sustain their growth and development in the future. For the children to relocate to a country with which they have no knowledge and that is indeed dramatically dissimilar in terms of culture, climate, education, health and expectations I feel is likely to undermine their sense of security and stability”.

33. At [64] the judge points to evidence in the social work report that the children have little or no contact with Nigeria. It is said;

“The eldest child has visited twice. They have no other contact with that country. They are said to be close to their material grandfather and grandmother both of whom live locally”.

34. Mr Lindsay points to the fact that in his decision at [57] the judge refers to the appellant’s wife’s evidence that she took all 3 children to Nigeria in 2017 to visit their grandmother which indicates some kind of ongoing links to Nigeria. When reaching the conclusion that it would be unduly harsh for the children to relocate, he submits that the judge has manifestly failed to take into consideration the starting point of the previous findings about the strength of the appellant’s partner’s ties with Nigeria, failed to explain why that position has changed over time or how the social work report affects those findings.

35. The judge at [80] appears to have accepted the social worker’s conclusions about the family’s weak ties to Nigeria at face value without further analysis when deciding that it is unduly harsh for the children to relocate to Nigeria. The judge does not appear to have taken into account or consider those findings which were made in the earlier decision, including the fact that the children’s mother is also of Nigerian origin, came to the UK as a child and visits Nigeria regularly.

36. I am satisfied that when considering whether it is unduly harsh for the children to relocate to Nigeria with their parents, the judge has manifestly failed to both give a proper explanation as to why he has departed from the findings of the previous judge in relation to the family's ties to Nigeria and that the judge has also failed to consider all of the factors in the round, including both children's parents' strong ties to Nigeria, the fact that the children have extended family in Nigeria and all visited Nigeria in 2017. The judge has failed to make findings as to what actual difficulties the children would face beyond undermining of their sense of security and stability as pointed out by the social worker. There is no reference to the fact that the appellant's partner is educated to degree level, that she herself speaks Yoruba and is familiar with Nigerian culture, that, throughout the family's difficulties she has carried on working as a teacher, that her employment is transferable and that the children's father, the appellant, also has strong links to Nigeria. There is no reference to what kind of financial or other circumstances the family and children would find themselves in Nigeria or acknowledgement that the family would be travelling to Nigeria as a family which would mitigate some of the stress of being separated. Nor is there any evaluation of whether the children could obtain an education in Nigeria, the stages of their education in the UK or whether the appellant's partner would be able to obtain medical treatment.
37. I agree with Ms Anzani that a judge does not need to set out all of the evidence to which he refers and that the reasoning need only be adequate, however in my view the judge here has failed to make an assessment in the round and has failed to explain what he makes of the family's links to Nigeria and to what extent they would be able to mitigate any difficulties by securing employment or getting help from their families. The judge has simply accepted the conclusions of the social work report without taking into account the remainder of the evidence. It is no doubt the case that the social work reports will carry weight and that the social worker has spoken to other professionals working with the family, nevertheless when the judge states that he has taken into account "all of the circumstances", it is not apparent that he has in fact done this.
38. I also accept Mr Lindsay's submission that the judge has erred in taking into account immaterial factors in his assessment of unduly harsh. In particular at [72] the judge has taken into account the fact that the appellant was previously of good character, committed the offences in 2014 and that 6 years have elapsed since then. This appears to have influenced his finding at [80] that relocation would not be unduly harsh. I am satisfied that this is an immaterial consideration and is not relevant to whether it is unduly harsh for the children to go to Nigeria in line with KO (Nigeria) v SSHD [2018] UKSC 53.
39. As Ms Anzani submits, the judge has at [59] referred to PG (Jamaica) and I agree with her that it is not an error of law *per se* to fail to set out the applicable legal tests. It is not on its own a material error for the judge to fail to refer to the words "severe" and "bleak". Nevertheless, it must be apparent from a reading of a decision as a whole that the judge has understood and applied the correct legal tests.

40. In MK (Sierra Leone) v SSHD [2015] UKUT 223 it was said
- “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 uncomfortable. Furthermore, the addition of the adverb ‘unduly’ raises an already elevated standard still higher”.
41. This wording was approved in KO (Nigeria). In PG Jamaica the Court of Appeal emphasises that deportation will inevitably cause hardship and trauma to families because the effect of deportation is to separate families and that what is required is a degree of harshness which would go beyond what is necessarily involved for a child faced with a parent who is being deported.
42. In my view, although the judge referred to PG(Jamaica), he did not explain adequately why it would be severe and bleak for this family to relocate together as a family to Nigeria. It was not sufficient to conclude that it would be severe and bleak just because the children are well settled in the UK and none of the children in particular have any realistic ties or contacts within Nigeria. It will inevitably difficult for all school age children who have born and spent all of their lives in the UK to relocate to a new country. It was incumbent on the judge to set out what factors in particular would be severe and bleak for the family when relocating as a family unit together to Nigeria and why there would be a degree of harshness going beyond the expected difficulties of the children relocating with their parents at the age of 10, 7 and 4.
43. I am satisfied that when making the assessment of whether it is unduly harsh for the children to relocate to Nigeria, the judge’s reasoning was inadequate in that he failed to explain adequately why he departed from the earlier findings of the judge in relation to the family’s ties to Nigeria, failed take into account material factors as set out above, took into account immaterial factors including the length of the time that has elapsed since the appellant’s sentence, failed to make adequate factual findings and failed to apply the correct legal tests in respect of “unduly harsh”.
44. I am satisfied that this is an error of law which is material to the outcome of the appeal.

Ground 2 – Error in assessing whether it would be unduly harsh for the children to remain in the UK without the appellant

45. The judge’s findings in respect of why it would be unduly harsh for the children and partner to remain in the UK without him are set out at paragraphs [78], [79], [81], [83] and [84] all of which are very short paragraphs. The judge makes a broad reference to the Best Interest report and at [78] takes into account the appellant’s partner’s mental health issues, that the family has input from social services and other professional input that the appellant plays a pivotal role in the care of the children because his partner is in full -time employment and the breadwinner.

46. The judge's findings in respect of why it would be unduly harsh for the children to remain in the UK without their father are also flawed.
47. I take into account Ms Anzani's argument that a judge does not need to set out all of the evidence before him for a decision to be lawful and that there was significant evidence in the social worker's report pointing to the significant difficulties that the family would have in their father's absence.
48. However, when concluding that it is unduly harsh for the children to remain in the UK without him, the judge also refers to the same immaterial factors at [72] in that the appellant has not offended since 2014 and that six years have elapsed since then. The judge also comments that children bear no responsibility for what the appellant decided to do in 2014, but this will be the same for all children whose parent is being deported and is not relevant to the assessment of undue harshness.
49. I am satisfied that the judge failed to look at all the factors in the round including the evidence that when the appellant was in prison the children, the appellant's mother continued to work and was assisted by her own parents - the children's maternal grandparents. The judge has failed to resolve conflict in this evidence in that on the one hand it is recorded at [58] that the children's mother says that there is not much contact with her siblings and parents whilst the social worker refers to the close and loving bonds with the grandparents.
50. The assessment of unduly harsh necessitates findings on what difficulties the family would have in the absence of the father and what practical and emotional assistance would be rendered by the grandparents who assisted the appellant's partner whilst the appellant was in prison and enabled her to continue working and these findings are missing.
51. The judge also concludes at [79] that;

"The possibility of them being taken into care is not implausible".
52. I am concerned at the wording of this sentence. It is not clear what standard of proof the judge is using. For the judge to make a finding that it is likely that the children would be taken into care should the appellant be deported there would need to be significant evidence from social services to this effect. The evidence is that the children's mother is a loving and involved parent who has assistance from her own parents. She is currently under a lot of stress and pressure and is receiving input from mental health services, but the judge's finding is premised on the wording of the social worker who states;

"Should he no longer be there, I feel it is inevitable that the concerns for the children would escalate to the a point whereby statutory services would need to become involved".
53. It is not explained by the social worker what steps social services would take to assist the family to prevent this from happening or why this is such a risk. The judge's conclusion that the children might be taken into care appears to be premised on the

basis that this is a possibility. The judge's analysis is so brief that it is difficult to follow his reasoning.

54. The judge has failed to look at the principles in PG(Jamaica) and has not explained adequately why the situation of these children go above and beyond the usual difficulty and distress experienced by children whose parent is being deported. I am conscious that there is evidence in relation to the deterioration in the oldest daughter's mental health and that of the appellant's partner but I am satisfied, for the reasons set out above that the judge's findings and reasoning are inadequate in respect of whether it would be unduly harsh for the children to remain in the UK without their father.

Disposal

55. Ms Anzani submitted that it would be appropriate to remit the appeal to the First-tier Tribunal to be re-heard de novo. Mr Lindsay remained neutral on this issue. I have had regard to paragraph 7.2 of the Senior President's Practice Statement and take into account that there are significant factual findings to be made in this appeal and I find it appropriate to remit the appeal to the First-tier Tribunal.

Decision on error of law

56. **The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law such that it is unsafe and cannot stand.**
57. **The decision of the First-tier Tribunal is set aside.**
58. **The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at a venue in London by any Judge except First-tier Tribunal Judge Lucas.**
59. **No factual findings are preserved.**

Signed

R J Owens

Date 10 August 2020

Upper Tribunal Judge Owens